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Proclamation 10588 of May 31, 2023

The President

Adjusting Imports of Steel Into the United States

By the President of the United States of America

A Proclamation

1. On January 11, 2018, the Secretary of Commerce (Secretary) transmitted to the President a report on the Secretary's investigation into the effect of imports of steel mill articles (steel articles) on the national security of the United States under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862). The Secretary found and advised the President of his opinion that steel articles are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

2. In Proclamation 9705 of March 8, 2018 (Adjusting Imports of Steel Into the United States), the President concurred in the Secretary's finding that steel articles, as defined in clause 1 of Proclamation 9705, as amended by clause 8 of Proclamation 9711 of March 22, 2018 (Adjusting Imports of Steel Into the United States), are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States, and decided to adjust the imports of those steel articles by imposing a 25 percent ad valorem tariff on such articles imported from all countries except Canada and Mexico. The proclamation further stated that any country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country, and noted that, should the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security such that the President determines that imports from that country no longer threaten to impair the national security, the President may remove or modify the restriction on steel articles imports from that country and, if necessary, adjust the tariff as it applies to other countries, as the national security interests of the United States require.

3. In Proclamation 10403 of May 27, 2022 (Adjusting Imports of Steel Into the United States), I suspended the tariffs set forth in Proclamation 9705 for the import of steel articles and derivative steel articles from Ukraine for 1 year. I also instructed the Secretary to monitor the situation in the domestic steel industry and developments in Ukraine's steel industry and inform me of any need to terminate or extend this suspension.

4. The Secretary has informed me that the situation with regard to Ukraine's steel industry has not changed since the issuance of Proclamation 10403. Ukraine's steel industry continues to be significantly disrupted by the Russian Federation's unjustified, unprovoked, unyielding, and unconscionable war against Ukraine. The significant disruption in Ukraine's steel production has decreased the total amount of steel produced by Ukraine. While the amount of steel imported into the United States from Ukraine increased slightly in 2022 compared to 2021, it is still below the average import volume prior to 2021, and in 2022 it accounted for less than 1 percent of all steel imports into the United States. At the same time, the steel industry has been historically important to Ukraine, and both the United States and Ukraine have an interest in maintaining that industry as an economic lifeline while the country recovers. The Secretary has also informed

me that the United States and Ukraine continue to be engaged in broad security discussions. The current disruption of Ukrainian steel production has been part of those discussions, and the ongoing discussion is anticipated to include alternative measures to prevent imports of steel from Ukraine from threatening the national security of the United States as Ukraine's steel production recovers from the significant disruption caused by the war.

5. The Secretary has also informed me that the disruption of the Ukrainian steel industry has caused some steel articles from Ukraine to be further processed in countries that are members of the European Union. Expanding the scope of Proclamation 10403 to include the suspension of the tariffs on products from the European Union made from steel originating in Ukraine will greatly assist the Ukrainian steel industry. A certificate of origin attesting to the Ukrainian origin of the steel articles further processed in a member country of the European Union shall be required for duty-free treatment.

6. In light of the Secretary's findings, I conclude that Ukraine's present situation remains a special case and that an extension of the suspension of tariffs in Proclamation 10403 and the inclusion of steel articles from Ukraine further processed in a member country of the European Union is warranted. The Secretary shall continue to monitor the situation in the domestic steel industry and developments in Ukraine's steel industry and inform me of any need to terminate or extend this suspension.

7. In light of my determination to adjust the tariff proclaimed in Proclamation 9705 as applied to eligible steel articles and derivative steel articles that are the product of Ukraine, I have considered whether it is necessary and appropriate in light of our national security interests to make any corresponding adjustments to such tariff as it applies to products of other countries. I have determined that it is necessary and appropriate, at this time, to maintain the current tariff level as it applies to products of other countries.

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

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

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

(1) To establish duty-free treatment on imports of steel articles when such are the products of Ukraine as set forth in clauses 2 and 3 of this proclamation, U.S. Note 16 of subchapter III of chapter 99 of the HTSUS is amended as provided for in the Annex to this proclamation.

(2) Clause 2 of Proclamation 9705, as amended, is revised to read as follows:

“(2)(a) In order to establish certain modifications to the duty rate on imports of steel articles, subchapter III of chapter 99 of the HTSUS is modified as provided in the Annex to this proclamation and any subsequent proclamations regarding such steel articles.

(b) Except as otherwise provided in this proclamation, or in notices published pursuant to clause 3 of this proclamation, all steel articles imports covered by heading 9903.80.01, in subchapter III of chapter 99 of the HTSUS, shall be subject to an additional 25 percent ad valorem rate

of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern daylight time on March 23, 2018, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and the member countries of the European Union; (ii) on or after 12:01 a.m. eastern daylight time on June 1, 2018, from all countries except Argentina, Australia, Brazil, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on August 13, 2018, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (iv) on or after 12:01 a.m. eastern daylight time on May 20, 2019, from all countries except Argentina, Australia, Brazil, South Korea, and Turkey; (v) on or after 12:01 a.m. eastern daylight time on May 21, 2019, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (vi) on or after 12:01 a.m. eastern standard time on January 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive; (vii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan, for steel articles covered by headings 9903.81.25 through 9903.81.80, inclusive; (viii) on or after 12:01 a.m. eastern daylight time on June 1, 2022, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan and the United Kingdom (UK), for steel articles covered by subheadings 9903.81.25 through 9903.81.78 and heading 9903.81.80, and from the member countries of the European Union, for steel articles covered by heading 9903.81.81; and (ix) on or after 12:01 a.m. eastern daylight time on June 1, 2023, from all countries except Argentina, Australia, Brazil, Canada, Mexico, South Korea, and Ukraine through 11:59 p.m. eastern daylight time on June 1, 2024, and except the member countries of the European Union through 11:59 p.m. eastern standard time on December 31, 2023, for steel articles covered by headings 9903.80.65 through 9903.81.19, inclusive, and from Japan and the UK, for steel articles covered by subheadings 9903.81.25 through 9903.81.78 and heading 9903.81.80, and from the member countries of the European Union, for steel articles covered by heading 9903.81.81, and from the member countries of the European Union where the steel used in the manufacture of the steel article is melted and poured in Ukraine through 11:59 p.m. eastern daylight time on June 1, 2024. Further, except as otherwise provided in notices published pursuant to clause 3 of this proclamation, all steel articles imports from Turkey covered by heading 9903.80.02, in subchapter III of chapter 99 of the HTSUS, shall be subject to a 50 percent ad valorem rate of duty with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 13, 2018, and prior to 12:01 a.m. eastern daylight time on May 21, 2019. All steel articles imports covered by heading 9903.80.61, in subchapter III of chapter 99 of the HTSUS, shall be subject to the additional 25 percent ad valorem rate of duty established herein with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on the date specified in a determination by the Secretary granting relief. These rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported steel articles, shall apply to imports of steel articles from each country as specified in the preceding three sentences”.

(3) The first two sentences of clause 1 of Proclamation 9980 of January 24, 2020 (Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States), are revised to read as follows:

“In order to establish increases in the duty rate on imports of certain derivative articles, subchapter III of chapter 99 of the HTSUS is modified as provided in Annex I and Annex II to this proclamation. Except as otherwise provided in this proclamation, all imports of derivative aluminum articles specified in Annex I to this proclamation shall be subject to an additional 10 percent ad valorem rate of duty, and all imports of derivative steel articles specified in Annex II to this proclamation shall be subject to an additional 25 percent ad valorem rate of duty, with respect to goods entered for consumption, or withdrawn from warehouse for consumption, as follows: (i) on or after 12:01 a.m. eastern standard time on February 8, 2020, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, the Commonwealth of Australia (Australia), Canada, and the United Mexican States (Mexico), and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, Mexico, and South Korea; (ii) on or after 12:01 a.m. eastern standard time on January 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Mexico, and South Korea; (iii) on or after 12:01 a.m. eastern daylight time on April 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, and Mexico, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, and South Korea; (iv) on or after 12:01 a.m. eastern daylight time on June 1, 2022, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, and the UK, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023; (v) on or after 12:01 a.m. eastern standard time on March 10, 2023, these rates of duty, which are in addition to any other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, the UK, and Russia, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2023; and (vi) on or after 12:01 a.m. eastern daylight time on June 1, 2023, these rates of duty, which are in addition to any

other duties, fees, exactions, and charges applicable to such imported derivative aluminum articles or steel articles, shall apply to imports of derivative aluminum articles described in Annex I to this proclamation from all countries except Argentina, Australia, Canada, the member countries of the European Union, Mexico, the UK, and Russia, and to imports of derivative steel articles described in Annex II to this proclamation from all countries except Argentina, Australia, Brazil, Canada, the member countries of the European Union, Japan, Mexico, South Korea, and the UK, and except from Ukraine through 11:59 p.m. eastern daylight time on June 1, 2024.”

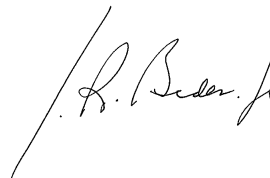
(4) Any imports of steel articles from Ukraine that were admitted into a U.S. foreign trade zone under “privileged foreign status” as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on June 1, 2022, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on June 1, 2022, to the 25 percent rate of duty imposed by Proclamation 9705, as amended; and any imports of steel articles from the member countries of the European Union where the steel used in the manufacture of the steel article is melted and poured in Ukraine that were admitted into a U.S. foreign trade zone under “privileged foreign status” as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on June 1, 2023, shall be subject upon entry for consumption made on or after 12:01 a.m. eastern daylight time on June 1, 2023, to the 25 percent rate of duty imposed by Proclamation 9705, as amended.

(5) Steel articles from a member country of the European Union where the steel used in the manufacture of the steel article is melted and poured in Ukraine are not eligible for, and shall not count against, the in-quota volume of the tariff-rate quota established in clause 1 of Proclamation 10328 of December 27, 2021 (Adjusting Imports of Steel Into the United States).

(6) Steel articles from Ukraine eligible for treatment under clauses 2 and 3 of this proclamation must be accompanied by a certificate of origin in order to be eligible for duty-free treatment. The Secretary, in consultation with the Secretary of Homeland Security and the United States Trade Representative, is authorized to take such actions as are necessary to ensure compliance with this requirement. Failure to comply could result in applicable remedies such as the collection of the tariff set forth in clause 2 of Proclamation 9705 and clause 1 of Proclamation 9980, or penalties under United States law.

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

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Annex

**Modifications to Chapter 99 of the Harmonized Tariff Schedule
of the United States**

Section A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on June 1, 2023, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (“HTS”) is hereby modified as follows:

1. Subdivision (a) of U.S. note 16 to such subchapter I is modified by revising the final sentence to read: “Unless otherwise provided in this note, iron or steel products covered by subdivision (b) of this note that are the product of Ukraine and, if entered on or after June 1, 2023, are accompanied by a certificate of origin upon entry into the customs territory of the United States, shall be exempt from the duty provided for in heading 9903.80.01 entered for consumption during the period from 12:01 a.m. eastern daylight time on June 1, 2022, through 11:59 p.m. eastern daylight time on June 1, 2024, and iron or steel products covered by subdivision (b) of this note that are the product of a member country of the European Union where the steel used in the manufacture of the steel articles is melted and poured in Ukraine shall be exempt from the duty provided for in heading 9903.80.01 entered for consumption during the period from 12:01 a.m. eastern daylight time on June 1, 2023 through 11:59 p.m. eastern daylight time on June 1, 2024.”
2. Subdivision (a)(ii) of such U.S. note 16 is modified by inserting after “therefrom” in the first sentence of such subdivision the phrase “, other than products of Ukraine that are accompanied by certificates of origin (if entered on or after June 1, 2023) and are entered for consumption during the period from 12:01 a.m. eastern daylight time on June 1, 2022, through 11:59 p.m. eastern daylight time on June 1, 2024,”.
3. The following new heading is inserted in numerical sequence in such subchapter III, with the material inserted in the columns entitled “Heading/Subheading”, “Article Description”, and “Rates of Duty 1 General”, respectively:

“9903.81.82	: Iron or steel products described in subdivision	:	:
	: (b) of note 16 to this subchapter that are	:	:
	: melted and poured in Ukraine and are	:	:
	: products of the member countries of the	:	:
	: European Union enumerated in U.S. note	:	:
	: 16(f) to this subchapter.....	: Free	:
	:	:	:
9903.81.83	: Iron or steel products described in subdivision	:	:
	: (b) of note 16 to this subchapter, when such	:	:
	: are products of Ukraine and are not	:	:
	: accompanied by certificates of origin.....	: The duty pro-	:
	:	: vided in the	:
	:	: applicable	:

	:		:	subheading +	:	:
	:		:	25%	:	:
9903.81.84	:	Derivative iron or steel products enumerated	:		:	:
	:	in note 16(a)(ii) to this subchapter, when such	:		:	:
	:	goods are products of Ukraine and are not	:		:	:
	:	accompanied by certificates of origin.....	:	The duty pro-	:	:
	:		:	vided in the	:	:
	:		:	applicable	:	:
	:		:	subheading +	:	:
	:		:	25%"	:	:

Presidential Documents

Proclamation 10589 of May 31, 2023

Black Music Month, 2023

By the President of the United States of America

A Proclamation

During Black Music Month, we pay homage to legends of American music, who have composed the soundtrack of American life. Their creativity has given rise to distinctly American art forms that influence contemporary music worldwide and sing to the soul of the American experience.

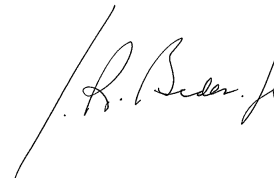
Much of Black music is rooted in African rhythms, coupled with the experience of slavery and struggle in America. Barred from expressing themselves in their native tongues, enslaved people developed a language to articulate their hopes, dreams, sense of loss, and tenacity to overcome the harrowing nature of their lives. They used music to strategically and creatively voice their most deeply held feelings. Today, the creative ways that Black music tells stories of trial and triumph in American life continue to move us all to understand the common struggles of humanity. Spirituals, gospel, the blues, R&B, rock and roll, jazz, pop, rap, hip-hop, and more have molded American culture and given rise to new American art forms emulated around the globe.

Since taking office, my Administration has supported American creators and communities—uplifting more voices, inspiring new generations, and showing the full power of our example as a great Nation. We have invested hundreds of millions of dollars in strengthening the National Endowment for the Arts and the National Endowment for the Humanities while securing over a billion more to help concert halls, theaters, museums, libraries, and other venues recover from the COVID–19 pandemic. I have also had the honor of celebrating legendary Black musicians at the White House who, along with thousands more across the country, have made a lifetime of contributions to this Nation.

This month, we celebrate the songs and artists that challenge us to think critically, stand up to injustice, and believe in ourselves. We recommit to expanding the promise of dignity and opportunity for all Americans. And we revel in the sounds, spirit, and soul of some of the very best music ever created.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as Black Music Month. I call upon public officials, educators, and all the people of the United States to observe this month by honoring Black musicians and raising awareness and appreciation of Black music.

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Presidential Documents

Proclamation 10590 of May 31, 2023

Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month, 2023

By the President of the United States of America

A Proclamation

In June 1969, a courageous group of Americans rose up to protest the violence and marginalization they faced in what became known as the Stonewall Uprising. Police had raided the Stonewall Inn—a gay bar located in New York City—and for the next six days they clashed with LGBTQI+ protestors, who bravely stood their ground. Their courage sparked a civil rights movement for the liberation of the LGBTQI+ community and changed our Nation forever.

During Pride Month, we honor a movement that has grown stronger, more vibrant, and more inclusive with every passing year. Pride is a celebration of generations of LGBTQI+ people, who have fought bravely to live openly and authentically. And it is a reminder that we still have generational work to do to ensure that everyone enjoys the full promise of equity, dignity, protection, and freedom.

Today, our Nation faces another inflection point. In 2023 alone, State and local legislatures have already introduced over 600 hateful laws targeting the LGBTQI+ community. Books about LGBTQI+ people are being banned from libraries. Transgender youth in over a dozen States have had their medically necessary health care banned. Homophobic and transphobic vitriol spewed online has spilled over into real life, as armed hate groups intimidate people at Pride marches and drag performances, and threaten doctors' offices and children's hospitals that offer care to the LGBTQI+ community. Our hearts are heavy with grief for the loved ones we have lost to anti-LGBTQI+ violence.

Despite these attacks, the LGBTQI+ community remains resilient. LGBTQI+ Americans are defiantly and unapologetically proud. Youth leaders are organizing walkouts at high schools and colleges across the country to protest discriminatory laws. LGBTQI+ young people and their parents are demonstrating unimaginable courage by testifying in State capitols in defense of their basic rights.

They are not alone: My entire Administration stands proudly with the LGBTQI+ community in the enduring struggle for freedom, justice, and equality. And we are making strides. On my first day in office, I signed a historic Executive Order charging the entire Federal Government with protecting LGBTQI+ people from discrimination—from health care to housing, education, employment, banking, and the criminal justice system. Last December, surrounded by dozens of couples who have fought for marriage equality in the courts for decades, I had the great honor of signing into law the landmark Respect for Marriage Act. This bipartisan law protects the rights of same-sex and interracial couples—like caring for one's sick partner and receiving spousal benefits. Deciding who to marry is one of life's most profound decisions, so we etched a simple truth into law: Love is love.

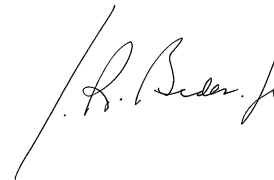
Meanwhile, I have taken unprecedented steps to support LGBTQI+ youth. During Pride Month last year, I signed an Executive Order charging Federal agencies with combating the dangerous and discredited practice of so-called “conversion therapy.” I also directed agencies to help end the crisis of homelessness among LGBTQI+ youth and adults and to address discrimination that LGBTQI+ kids face in foster care. The Department of Justice is combating laws that target transgender children, and the Departments of Education and Health and Human Services have proposed new rules to protect LGBTQI+ Americans from discrimination in health care, at school, and in sports. I also established the White House Task Force to Address Online Harassment and Abuse to develop concrete actions to prevent and respond to online harassment and abuse, which disproportionately target LGBTQI+ people. Additionally, my Administration made it easier for LGBTQI+ youth to access vital mental health support. Now, by calling the 988 Suicide & Crisis Lifeline and dialing the number 3, LGBTQI+ youth can speak to counselors who have been specifically trained to support them.

This country is stronger and more just when America’s leaders reflect the full diversity of our Nation, so I have appointed a historic number of highly qualified openly LGBTQI+ judges and public servants at all levels of the Federal Government. Our Armed Forces are most capable when all patriots can serve their country, so I protected the right of transgender people to once again serve openly in the military.

But there is more to do, like passing the bipartisan Equality Act, which would strengthen civil rights protections for LGBTQI+ people and families across America. We must also address the disproportionate levels of homelessness, poverty, and unemployment in the LGBTQI+ community and end the crisis of violence against transgender women and girls of color. We must support LGBTQI+ activists around the globe who are standing up for basic human rights and LGBTQI+ survivors of gender-based violence. And we must end the HIV/AIDS epidemic once and for all. Our collective freedoms are inextricably linked: when one group’s dignity and equality are threatened, we all suffer. This month and every month, let us celebrate the pride that powers the movement for LGBTQI+ rights and commit to doing our part to help realize the promise of America, for all Americans.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Pride Month. I call upon the people of the United States to recognize the achievements of the LGBTQI+ community, to celebrate the great diversity of the American people, and to wave their flags of pride high.

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Presidential Documents

Proclamation 10591 of May 31, 2023

National Caribbean-American Heritage Month, 2023

By the President of the United States of America

A Proclamation

During Caribbean-American Heritage Month, we celebrate the achievements and dreams of the millions of people of Caribbean origin now living in the United States while honoring the shared history of joy and perseverance that has united and enriched life across our region for centuries.

There is no single Caribbean American identity. The mix of cultures, languages, and religions alive across the United States and the islands reflects the diversity of spirit that defines the American story. Meanwhile, our countries are bound by common values and a shared history—overcoming the yoke of colonialism, confronting the original sin of slavery, and charting new opportunities across borders and generations.

Since our founding, Caribbean Americans from Alexander Hamilton to Colin Powell have contributed to the United States in the most profound ways. Today, pathbreakers like Supreme Court Justice Sonia Sotomayor continue advancing our work toward a more perfect Union. I am especially proud of the extraordinary leaders of Caribbean heritage now serving in my Administration—from Vice President Kamala Harris to Secretary of Education Miguel Cardona, Secretary of Homeland Security Alejandro Mayorkas, and White House Press Secretary Karine Jean-Pierre. And I take equal pride in the generations of Caribbean Americans who literally built this country—bringing tremendous hope and energy to bear as small business owners, teachers, health care workers, military service members, union organizers, community leaders, and so much more.

For too long, too many have faced systemic barriers to success. As President, I have issued two separate Executive Orders to change that, pushing to advance racial justice across every policy that my Administration pursues. As we have passed historic laws to rebuild our Nation's infrastructure, lower prescription drug costs, create a clean energy economy, and transform American manufacturing to once again lead the world, we have done so with an eye for equity, rebuilding our economy from the middle out and bottom up. As a result, we have created 12.7 million jobs—bringing Black and Latino unemployment to record lows—and we have helped millions to start and grow their own businesses. At the same time, we are using all the tools we have to make our Nation's broken immigration system as orderly, safe, and humane as possible, sending support to the border while expanding lawful pathways for Cubans, Haitians, Nicaraguans, and Venezuelans—among others—to come to the United States without taking the dangerous journey to our southern border. What we really need is for the Congress to finally pass comprehensive immigration reform, including a pathway to citizenship for Dreamers, farm and essential workers, and temporary status holders, many of whom are from the Caribbean. I will not quit pressing the Congress to act.

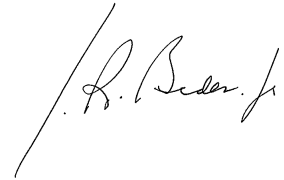
Beyond our borders, we are working with our Caribbean partners to expand opportunity and keep the region safe so more of our neighbors can build lives at home. We partnered with the Caribbean Community (CARICOM) in November 2022 to launch the Crime Gun Intelligence Unit and disrupt firearms trafficking in the region. We are also working to improve access

to development financing and advance clean energy projects across the Caribbean through the United States-Caribbean Partnership to Address the Climate Crisis 2030.

A central promise of this country is the idea that everyone is created equal and deserves to be treated equally throughout their lives. It is a cornerstone of our common heritage in this hemisphere, even as we keep striving to finally make that vision real. Caribbean-American Heritage Month is a chance to celebrate the rich diversity that covenant has brought us and to renew its promise for future generations of Caribbean Americans and for us all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as National Caribbean-American Heritage Month. I encourage all Americans to join in celebrating the history, culture, and achievements of Caribbean Americans with appropriate ceremonies and activities.

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



Presidential Documents

Proclamation 10592 of May 31, 2023

National Homeownership Month, 2023

By the President of the United States of America

A Proclamation

During National Homeownership Month, we recognize the power of owning a home when raising a family, planting roots in a community, building equity, and passing down generational wealth to continue the American Dream for generations to come. We recognize that a place to call home, regardless of owning or renting, is essential to a life of security, dignity, and hope.

That is why my Administration is committed to removing barriers to homeownership. During the COVID-19 pandemic, when mortgage payments became harder to make and rents rose 26 percent nationally, my Administration took action to ensure people could stay in their homes. We extended foreclosure moratoriums for millions of households, provided financial relief for homeowners who had fallen behind on their mortgage payments, delivered nearly 11 million emergency rental assistance payments, developed the first ever national infrastructure to stop eviction, and provided 70,000 emergency housing vouchers. To build on this progress, we recently awarded more than 19,000 new Housing Choice Vouchers—the largest expansion of flexible rental assistance in 20 years.

We are taking additional steps to make housing more affordable. Over the past decades, rising prices have forced people to spend more than 30 percent of their incomes on housing in many places around the country, too often locking Americans out of the prospect of buying a home altogether. In February, the Department of Housing and Urban Development (HUD) made annual mortgage insurance premiums cheaper, saving Americans with Federal Housing Administration (FHA)-insured mortgages an average of \$800 per year. The FHA also made it easier for first-time homebuyers to qualify for mortgage financing by allowing underwriters to take into account positive rental history to determine creditworthiness. And HUD is making it easier for Americans to access resources that help with homeownership, foreclosure avoidance and eviction, financial literacy, financial planning, and more.

At the same time, we are hard at work implementing our Housing Supply Action Plan with a goal of addressing and eliminating the root causes of the affordable housing shortfall by 2027. That includes making it easier to build mixed-income housing using Low-Income Housing Tax Credits. We have helped housing projects build multifamily homes by making more affordable financing options available. And with the historic investments through my Bipartisan Infrastructure Law, we are making low-interest loans available to developers and State, local, Tribal, and territorial governments to build new housing close to public transit locations. The law will also connect communities with vital resources like water and high-speed internet that increase home values and a tax base to fund important things like local schools.

Today, across America, there is a historic number of affordable, multifamily units currently under construction. And my Fiscal Year 2024 Budget calls for \$175 billion to build on this progress. It would provide down payment assistance to first-time, first-generation homebuyers—helping to make a key part of the American Dream a reality. It would create a new tax credit

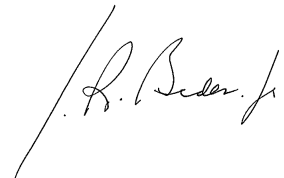
to directly support building or renovating affordable homes for low- or middle-income buyers. It would also help State and local governments fight restrictive zoning laws and other red tape that stalls new construction and drives up housing prices. Further, my Budget includes provisions to prevent evictions and bring us closer to our goal of reducing homelessness by 25 percent by 2025.

These actions go hand-in-hand with our work to combat racial discrimination in housing, including everything from ending the legacy of redlining to addressing the cruel fact that a home owned by a Black family is too often undervalued compared to the same kind of home owned by a white family. The Fair Housing Act bans discrimination against renters or potential buyers on the basis of race, but studies show that many Americans are still denied equal treatment in the housing market. That is why the Department of Justice and HUD are cracking down on discrimination and why my Administration is taking bold action to root out bias in the appraisal process.

I have often said that the middle class is not just a number—it is a value set. It is about the issues that matter to every American family: a good education; economic opportunity; and access to quality, affordable health care. Having a safe, decent, and affordable place to call home is a key part of that.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as National Homeownership Month. I call upon the people of this Nation to safeguard the American Dream by ensuring that everyone has access to an affordable home in a community of their choice.

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



Presidential Documents

Proclamation 10593 of May 31, 2023

National Immigrant Heritage Month, 2023

By the President of the United States of America

A Proclamation

America is more than a place; it is an idea. It is the idea that everyone is created equal and deserves to be treated equally throughout their lives and that everyone should have a fair shot and an equal chance to get ahead. That is what has drawn people to our shores for centuries. It is what makes us who we are. And that very idea of America has been advanced by immigrants from every part of the world—my ancestors and yours. Their dreams built America, and during National Immigrant Heritage Month, we celebrate their courage.

The First Lady and I are proud descendants of immigrants—the Giacoppas, from the northeast corner of Sicily in Italy, and the Finnegans of County Louth and the Blewitts of County Mayo in Ireland. Vice President Harris was born in Oakland, California, to parents who emigrated from India and Jamaica. Like so many who still come here seeking a better future, our parents and great-grandparents could not be sure what life would bring. But they had faith that, for their children and grandchildren, anything would be possible in America. And they were right.

Many families also came to America in search of a better future and the promise of the American Dream, and each wave of newcomers brings energy and new ideas to move our Nation forward. Today, one third of our doctors and nearly three quarters of our farmworkers are immigrants, and so many more are essential workers, first responders, and military service members. Immigrants own approximately one in five businesses, create millions of jobs, pay hundreds of billions in taxes, and spend even more on American goods. Almost half of all Fortune 500 companies were started by immigrants or their kids. Immigrants help strengthen our diplomatic and people-to-people ties around the world. It's simple: immigrants keep our Nation strong and our economy growing.

That truth used to be something most of us agreed on. President Ronald Reagan proudly signed a law giving an opportunity to 2.7 million undocumented people to seek permanent residence. President George W. Bush pushed hard for comprehensive immigration reform. On day one of my Presidency, I sent the Congress my plan that includes a pathway to citizenship for Dreamers, people with temporary status, farmworkers, and essential workers; smarter border solutions, including more equipment and modern infrastructure; and provisions to clear court backlogs, speed up processing, and protect families. Let us come together again in a bipartisan way to fix our broken immigration system for good.

Until the Congress acts, my Administration will keep using every tool we have to make the system more orderly, safe, and humane. We have announced new pathways for nationals of Cuba, Nicaragua, Venezuela, Haiti, and other countries in the region to come here lawfully. And in May, we joined with partners across the Western Hemisphere to launch a plan to open new centers where people can receive help with applying to come to the United States, rather than making the dangerous trek at the mercy of criminal organizations and smugglers. At home, we have expanded whistleblower protections for undocumented workers so they too can call out wage theft or unsafe working conditions, improving things for everyone. And we have strengthened the Deferred Action for Childhood Arrivals (DACA) program that for more than 10 years has allowed 800,000 Dreamers to live and work freely in the only country they know as home. In addition, we have recently proposed a plan to expand DACA recipients' access to health care through the Affordable Care Act and Medicaid.

Immigration has always been essential to America, and this month, we reflect on the strength and spirit of immigrants that have been passed down through families and infused in our Nation. This spring, I had the chance to travel back to Ireland, to walk the ground my ancestors walked, and to celebrate the bonds that connect us still. Over the years, stories of that place have become part of my soul. I stood beside a cathedral built of bricks that my great-great-great-grandfather supplied. I imagined his son bringing his family across the ocean during the famine of 1850, leaving all they had known for hope on a distant shore. I remembered stories of his son—my great-grandfather—who kept those roots alive in Scranton, helping to found the Irish American Association, chairing the St. Patrick's Day Parade, and passing that pride on to his granddaughter—my mom. It is a pride that speaks to the history and the values that bind us: immigrant values of hard work, dignity, and respect that I have tried to pass on to my own children and grandchildren.

Most Americans have their own version of that same story: ancestors who overcame incredible odds to build new lives in this promised land and contribute to the fabric of our Nation. And we see those same values alive at the White House every time we celebrate our proud immigrant communities, whose holidays and rich cultures give new life to our Nation—including Diwali, the Hindu festival of lights; Eid, the feast ending Ramadan; Greek Independence Day, a celebration of freedom and democracy; and the Lunar New Year, a festivity committing to new beginnings. We see that spirit of hope at every naturalization ceremony, when we celebrate the journey completed by millions of people whose courage and commitment have earned them a title that is equal to that of President in our democracy—the title of “citizen.” This month, we honor our ancestors by working to keep the torch of liberty lit and held high.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as National Immigrant Heritage Month. I call upon the people of the United States to learn more about the history of our Nation's diverse and varied immigrant communities and to observe this month with appropriate programming and activities that remind us of the values of diversity, equity, and inclusion.

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

A handwritten signature in black ink, appearing to read "Joe Biden", written in a cursive style.

Presidential Documents

Proclamation 10594 of May 31, 2023

National Ocean Month, 2023

By the President of the United States of America

A Proclamation

The ocean makes life on Earth possible—feeding us, sustaining livelihoods, and connecting economies across the globe. It bonds us as a source of recreation and rejuvenation for our spirits and links us to our heritage through Indigenous communities who have stewarded our marine habitats since time immemorial. Through its rich ecosystems of diverse plants, animals, and other species, it is also central to our fight against the climate crisis and to creating a cleaner, safer, and healthier future. During National Ocean Month, we recommit to protecting and conserving our precious ocean and to harnessing its power to shape a more sustainable planet.

My Administration is acting with urgency and a seriousness of purpose. Around the globe, the climate crisis today is drastically impacting marine life, coastal communities, and the ocean economy. The past eight years have been the warmest on record—and more than 90 percent of excess heat has been absorbed by the ocean. Rising temperatures force marine life to move away from their usual habitats, straining communities and working families who rely on fisheries for a living and for sustenance. Increasing acidity in our seas, along with nutrient and plastic pollution, endangers species and threatens food supplies. Higher sea levels make storm surges even more dangerous for coastal communities.

But we are not powerless in the face of these challenges—and the ocean can be an effective tool to confront them. That is why my Administration has joined together with State, Tribal, territorial, and local partners to implement the first-ever United States Ocean Climate Action Plan. With billions of dollars from our Bipartisan Infrastructure Law and our Inflation Reduction Act—the most significant climate investment in American history—we are advancing new offshore wind projects with an ambitious goal of deploying 30 gigawatts by 2030, enough to power 10 million homes while also protecting biodiversity. We are modernizing America's infrastructure and electrifying equipment at our ports to decrease the carbon footprint of cargo ships and build cleaner supply chains. And as part of our strategy to place environmental justice at the center of our ocean climate action, we are supporting communities that have been smothered by a legacy of pollution.

At the same time, we are protecting ecosystems and supporting the communities who rely on them. Together with our international partners, we are cracking down on illegal, unreported, and unregulated fishing. And we are working to strengthen sustainable fisheries, ensuring hardworking Americans can continue to provide for their families and feed our Nation.

As part of my America the Beautiful Initiative—which set a goal of conserving 30 percent of America's lands and waters by 2030—we are also taking steps toward designating new national marine sanctuaries. Toward that aim, I issued a Presidential Memorandum to consider designating more than 700,000 square miles around the Pacific Remote Islands as a new national marine sanctuary. If completed, this area would be among the largest marine protected areas on the planet. And it would honor the traditional practices and ancestral pathways of Pacific Island voyagers. With input from Tribal partners, my Administration also began the designation process for multiple

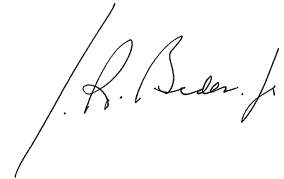
new national marine sanctuaries, including the Hudson Canyon in the Atlantic Ocean and the Chumash Heritage National Marine Sanctuary off the coast of Southern California.

These actions make us safer. Healthy ecosystems like mangroves, seagrasses, and salt marshes take carbon out of the atmosphere while creating natural buffers that help absorb the force of hurricanes, typhoons, and tropical storms before they reach our communities. That is why my Administration is investing more than \$500 million to help fortify these and other, nature-based climate solutions and create good-paying jobs for Americans in the process.

It is hard to imagine just how much of the ocean we have yet to discover and what possibilities for the future of human and planetary health, as well as for our economy, lie beneath its surface. This National Ocean Month, let us honor its beauty and bounty with action and commit to protecting and conserving it for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2023 as National Ocean Month. I call upon Americans to take action to protect, conserve, and restore our ocean and coasts.

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

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

Rules and Regulations

Federal Register

Vol. 88, No. 107

Monday, June 5, 2023

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1045; Project Identifier MCAI–2022–01209–T; Amendment 39–22437; AD 2023–10–01]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–300 and ERJ 190–400 airplanes. This AD was prompted by the excessive operation of certain elevator and rudder surfaces during manufacturing, causing damage and accelerating wear of internal parts of the power control units (PCUs). This AD requires replacement of the left-hand (LH) and right-hand (RH) elevator PCUs and lower and upper rudder PCUs, as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective June 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 20, 2023.

The FAA must receive comments on this AD by July 20, 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](https://www.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](https://www.regulations.gov) under Docket No. FAA–2023–1045; 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 street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For ANAC material incorporated by reference in this AD, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email pac@anac.gov.br; website anac.gov.br/en/. You may find this material on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1045.

FOR FURTHER INFORMATION CONTACT:

Allison Buss, Aerospace Engineer, Americas Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 303–342–1090; email Allison.J.Buss@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–2023–1045; Project Identifier MCAI–2022–01209–T”

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](https://www.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 Allison Buss, Aerospace Engineer, Americas Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 303–342–1090; email Allison.J.Buss@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

ANAC, which is the aviation authority for Brazil, has issued ANAC AD 2022–09–01, effective September 7, 2022 (ANAC AD 2022–09–01) (also referred to as the MCAI), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–300 and ERJ 190–400 airplanes. The MCAI states that during decontamination procedures on the Embraer manufacturing line, the

flight control system (FCS) surfaces were operated to make the hydraulic fluid circulate and send the contaminants to the filter manifolds. The elevator and rudder PCUs of the airplane were operated, when disengaged, during manufacturing line hydraulic decontamination procedures, which may have caused damage and could accelerate wear of internal parts of the PCUs. The accelerated wear in both PCUs of these flight control surfaces may leave them unprotected from aeroelastic phenomena and compromise the airplane's structural integrity under certain operational conditions.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA-2023-1045.

Related Service Information Under 1 CFR Part 51

ANAC AD 2022-09-01 specifies procedures for replacement of the LH and RH elevator PCUs and lower and upper rudder PCUs with airworthy parts having the same part number.

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

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 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 AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in ANAC AD 2022-09-01 described previously, except for any differences identified as exceptions in the regulatory text of this 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, ANAC AD 2022-09-01 is incorporated by reference in this AD. This AD requires compliance with ANAC AD 2022-09-01 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Service information required by ANAC AD 2022-09-01 for compliance will be available at *regulations.gov* under Docket No. FAA-2023-1045 after this AD is published.

FAA's Justification 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 forgoing reason(s), 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 (RFA)

The requirements of the 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 notice and comment, RFA analysis is not required.

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. If an affected airplane is imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product
Up to 6 work-hours × \$85 per hour = \$510	* \$0	Up to \$510.

* The FAA has received no definitive data on which to base the cost estimates for the parts specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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:

2023–10–01 S.A. (Type Certificate Previously Held by Yaborã Indústria Aeronáutica S.A.; Embraer S.A.) Airplanes: Amendment 39–22437; Docket No. FAA–2023–1045; Project Identifier MCAI–2022–01209–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A Model ERJ 190–300, and 190–400 airplanes, certificated in any category, as identified in Agência Nacional de Aviação Civil (ANAC) 2022–09–01, effective September 7, 2022 (ANAC AD 2022–09–01).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the excessive operation of certain elevator and rudder surfaces during manufacturing. The FAA is issuing this AD to address damage to internal parts of these PCUs, which can accelerate their wear. The unsafe condition, if not addressed, could leave the PCUs unprotected from aeroelastic phenomena, which can adversely affect aircraft structural integrity under certain operational conditions and compromise safety of flight.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, ANAC AD 2022–09–01.

(h) Exceptions to ANAC AD 2022–09–01

(1) Where ANAC AD 2022–09–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Alternative methods of compliance (AMOC)” section of ANAC AD 2022–09–01 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

For more information about this AD, contact Allison Buss, Aerospace Engineer, Americas Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 303 342 1090; email Allison.J.Buss@faa.gov.

(k) 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 this AD specifies otherwise.

(i) Agência Nacional de Aviação Civil (ANAC) AD 2022–09–01, effective September 7, 2022.

(ii) [Reserved]

(3) For ANAC AD 2022–09–01, contact National Civil Aviation Agency (ANAC), Aeronautical Products Certification Branch (GGCP), Rua Dr. Orlando Feirabend Filho, 230—Centro Empresarial Aquarius—Torre B—Andares 14 a 18, Parque Residencial Aquarius, CEP 12.246–190—São José dos Campos—SP, Brazil; telephone 55 (12) 3203–6600; email: pac@anac.gov.br; internet anac.gov.br/en/. You may find this ANAC AD on the ANAC website at sistemas.anac.gov.br/certificacao/DA/DAE.asp.

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

Issued on May 10, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–11813 Filed 6–2–23; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2023–0170; Project Identifier MCAI–2022–00974–T; Amendment 39–22431; AD 2023–09–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by a report that certain environmental control system (ECS) pre-cooler clamp assemblies may not conform to specifications. This AD requires an inspection of the pre-cooler clamps and replacement of non-conforming pre-cooler clamps. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 10, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2023–0170; 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 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. It is also available at regulations.gov under Docket No. FAA-2023-0170.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dowling, 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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD-700-2A12 airplanes. The NPRM published in the **Federal Register** on February 24, 2023 (88 FR 11825). The NPRM was prompted by AD CF-2022-

39, dated July 18, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that a disclosure letter from the supplier advised that certain pre-cooler clamp assemblies securing the ducting connection on the ECS pre-cooler inlet assembly may not conform to drawing. If left uncorrected, the clamp may fail and cause excessive leakage at that connection. This could lead to increased operating temperatures in climate-controlled zones, or, in combination with other failures, a complete loss of the ECS.

In the NPRM, the FAA proposed to require an inspection of the pre-cooler clamps and replacement of non-conforming pre-cooler clamps. 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-2023-0170.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of

Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700-36-7504, dated June 27, 2022. This service information specifies procedures for inspecting the pre-cooler clamps for non-conformance to the drawing and replacing non-conforming pre-cooler clamps. The clamp replacement includes a general visual inspection of non-conforming pre-cooler clamps around the silicone bellow for signs of damage, and corrective action including repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 12 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170	\$60	\$230	Up to \$2,760.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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:

2023–09–08 Bombardier, Inc.: Amendment 39–22431; Docket No. FAA–2023–0170; Project Identifier MCAI–2022–00974–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70032, 70047 through 70056 inclusive, 70058 through 70061 inclusive, and 70063 through 70075 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by a report that certain environmental control system (ECS) pre-cooler clamp assemblies may not conform to specifications. The FAA is issuing this AD to address possible excessive leakage caused by clamp failure. The unsafe condition, if not addressed, could result in increased operating temperatures in climate-controlled zones, or, in combination with other failures, a complete loss of the ECS.

(f) Compliance

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

(g) Required Actions

Within 36 months after the effective date of this AD: Identify and replace, as applicable, the ECS pre-cooler clamps in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–36–7504, dated June 27, 2022.

(h) No Reporting Requirement

Although Bombardier Service Bulletin 700–36–7504, dated June 27, 2022, specifies to submit certain information to the manufacturer or discard affected clamps, this AD does not include that requirement.

(i) Additional 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 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. 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 (TC); or Bombardier, Inc.'s TC 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–2022–39, dated July 18, 2022, for related information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0170.

(2) For more information about this AD, contact Elizabeth Dowling, 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 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 Service Bulletin 700–36–7504, dated June 27, 2022.

(ii) [Reserved]

(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](https://www.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 May 8, 2023.

Michael Linegang,

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

[FR Doc. 2023–11819 Filed 6–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0165; Project Identifier MCAI–2022–01003–T; Amendment 39–22434; AD 2023–09–11]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019–24–13, which applied to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–24–13 required repetitive high-frequency eddy current (HFEC) inspections for cracking of a stiffener of a certain lateral window frame, and applicable related investigative and corrective actions. This AD was prompted by a determination that certain inspection times need to be revised. This AD retains the requirements of AD 2019–24–13, with amended compliance times, 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 July 10, 2023.

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

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0165; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at regulations.gov under Docket No. FAA-2023-0165.

FOR FURTHER INFORMATION CONTACT:

Timothy Dowling, Aerospace Engineer, FAA, International Validation Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206-231-3667; email Timothy.P.Dowling@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019-24-13, Amendment 39-21002 (84 FR 71788, December 30, 2019) (AD 2019-24-13). AD 2019-24-13 applied to certain Airbus SAS Model A318 series airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. AD 2019-24-13 required repetitive HFEC inspections for cracking of a stiffener of a certain lateral window frame, and rework, repair, or

replacement of the lateral window frame, as applicable, as specified in EASA AD 2019-0067R1, dated September 11, 2019 (EASA AD 2019-0067R1). The FAA issued AD 2019-24-13 to address cracking of the horizontal upper stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage.

The NPRM published in the **Federal Register** on February 15, 2023 (88 FR 9776). The NPRM was prompted by AD 2022-0151, dated July 26, 2022, issued by EASA (EASA AD 2022-0151) (also referred to as the MCAI). The MCAI states that several occurrences were reported where, during a maintenance check, cracks were found in the horizontal upper stiffener of the lateral window frame at the frame 4 upper attachment. Since EASA AD 2019-0067R1 was issued, it was determined that the embodiment of Airbus production modification (mod) 161229 does not provide any benefit versus the pre-mod 161229 configuration, and Airbus issued revised service information to remove the credit and higher inspection threshold for post-mod 161229 airplanes. In addition, based on new calculations, the inspection interval was increased. The unsafe condition, if not addressed, could reduce the structural integrity of the fuselage.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2023-0165.

In the NPRM, the FAA proposed to retain the requirements of AD 2019-24-13, with amended compliance times, as specified in EASA AD 2022-0151. The FAA is issuing this AD to address cracking of the horizontal upper stiffener of the lateral window frame, which could reduce the structural integrity of the fuselage.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment, from Air Line Pilots Association,

International (ALPA), who supported the NPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022-0151 specifies procedures for repetitive HFEC inspections of the horizontal upper stiffener of the lateral window frame on the right-hand (RH) and left-hand (LH) sides for any cracking and applicable related investigative and corrective actions. Related investigative and corrective actions include repair, replacement, and rework. EASA AD 2022-0151 also specifies reporting to Airbus if any discrepancies (cracking) are found during the inspections. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1,528 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2019-24-13	9 work-hours × \$85 per hour = \$765	\$0	\$765	\$987,615
New proposed actions	6 work-hours × \$85 per hour = \$510	0	510	779,280

The FAA estimates the following costs to do any necessary on-condition rework, replacement, or reporting that

would be required based on the results of any required actions. The FAA has no way of determining the number of

aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 543 work-hours × \$85 per hour = \$46,155	Up to \$107,370 ...	\$153,525

* The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

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 Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:
 Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2019-24-13, Amendment 39-21002 (84 FR 71788, December 30, 2019); and
 - b. Adding the following new AD:
2023-09-11 Airbus SAS: Amendment 39-22434; Docket No. FAA-2023-0165; Project Identifier MCAI-2022-01003-T.

(a) Effective Date

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

(b) Affected ADs

This AD replaces AD 2019-24-13, Amendment 39-21002 (84 FR 71788, December 30, 2019).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022-0151, dated July 26, 2022 (EASA AD 2022-0151).

- (1) Model A318-111, -112, -121, and -122 airplanes.
- (2) Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes.
- (3) Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes.
- (4) Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that during a maintenance check, cracks were found in the horizontal upper stiffener of the lateral window frame at the frame 4 upper attachment, and a determination that certain compliance times need to be revised. The FAA is issuing this AD to address cracking of the horizontal upper stiffener of the lateral window frame. The unsafe condition, if not addressed, could reduce the structural integrity of the fuselage.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022-0151.

(h) Exceptions to EASA AD 2022-0151

- (1) Where EASA AD 2022-0151 refers to its effective date, this AD requires using the effective date of this AD.
- (2) This AD does not adopt the “Remarks” section of EASA AD 2022-0151.
- (3) Paragraph (7) of EASA AD 2022-0151 specifies to report inspection results to Airbus within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.
 - (i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.
 - (ii) If the inspection was done before the effective date of this AD: Submit the report

within 90 days after the effective date of this AD.

(4) Where EASA AD 2022–0151 specifies to perform corrective actions if “discrepancies are detected, as identified in the inspection SB,” for this AD perform corrective actions if cracking is detected.

(5) Instead of complying with paragraph (2) of EASA AD 2022–0151, comply with the following: “If, during any inspection as required by paragraph (1) of EASA AD 2022–0151, for this AD, if any cracking is detected and the stiffener has already been reworked, or if any cracking is not removed after a third rework of the horizontal upper stiffener, the cracking must be repaired before further flight using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.”

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved previously for AD 2019–24–13 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0151 that are required by paragraph (g) of this AD.

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

(3) *Required for Compliance (RC)*: Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Timothy Dowling, Aerospace Engineer, FAA, International Validation Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email Timothy.P.Dowling@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) European Union Aviation Safety Agency (EASA) AD 2022–0151, dated July 26, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0151, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA AD on the EASA website at ad.easa.europa.eu.

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

Issued on May 8, 2023.

Gaetano A. Sciortino,

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

[FR Doc. 2023–11820 Filed 6–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1442; Airspace Docket No. 22–ASW–23]

RIN 2120–AA66

Establishment of Class E Airspace; San Saba, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at San Saba, TX. This action supports the establishment of new public instrument procedures.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51,

subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at www.federalregister.gov.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

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 establishes Class E airspace extending upward from 700 feet above the surface at San Saba County Municipal Airport, San Saba, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA–2022–1142 in the **Federal Register** (87 FR 74052; December 2, 2022) to establish Class E airspace at San Saba, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of San Saba County Municipal Airport, San Saba, TX.

Regulatory Notices and Analyses

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. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, 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.

* * * * *

ASW TX E5 San Saba, TX [Establish]

San Saba County Municipal Airport, TX
(Lat. 31°14′09″ N, long. 98°43′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of San Saba County Municipal Airport.

Issued in Fort Worth, Texas, on May 30, 2023.

Martin A. Skinner,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2023–11816 Filed 6–2–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 230403–0091]

RIN 0605–AA59

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This rulemaking amends the Department of Commerce’s (Department) regulations under the Freedom of Information Act (FOIA) to reflect changes related to the Department’s transition to a new FOIA case management system. The Department is also correcting cross-references to its FOIA regulations and updating the contact information for the Office of Inspector General (OIG).

DATES: The rule is effective June 5, 2023.

FOR FURTHER INFORMATION CONTACT:

Deputy Program Director for Departmental FOIA/PA and Open Government Operations, Office of Privacy and Open Government, Department of Commerce, 1401 Constitution Ave. NW, Mail Stop 61013, Washington, DC 20230, by phone at (202) 482–3842, or by email at eFOIA@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

A. Implementation of New FOIA Case Management System

The Department, including the Office of the Secretary and all of its components except the U.S. Patent and Trademark Office (USPTO), currently accepts FOIA requests and administrative appeals electronically through the FOIAonline multi-agency web-application (www.FOIAOnline.gov). The Department also accepts FOIA requests and administrative appeals via email to designated email addresses or via hard copy mail or via commercial carrier to designated physical addresses for individual components, as specified in *15 CFR Appendix A to Part 4—Freedom of Information Public Inspection Facilities and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act* (Appendix A). Because the U.S. Environmental Protection Agency decided to decommission the *FOIAonline.gov* website effective September 30, 2023, the Department began a process to acquire and implement a successor FOIA case management system. In September 2022, the Department awarded a contract following an open solicitation process. The Department has been working diligently on the implementation of the new FOIA case management system and anticipates that it will be able to receive FOIA requests and FOIA administrative appeals by April 21, 2023, through <https://foia-pal.commerce.gov>. In the interim, requesters may continue to file FOIA requests via U.S. mail, delivery service or by email, or electronically through the *FOIA.gov* website at <https://www.foia.gov/>. FOIA appeals may be submitted via hard copy mail or commercial carrier or by email to the email address specified in Appendix 1 (foiaappeals@doc.gov). The Department maintains a list of contact methods on its website at https://osec.doc.gov/opog/FOIA/FOIA_Requests.html#File.

The first purpose of this rule is to delete the references to FOIAonline from the following parts of the Department’s FOIA regulations (15 CFR. 4.1 et seq.): §§ 4.4, 4.6, 4.7, 4.10, § 4.11, and Appendix A. This will serve to timely inform requesters that they cannot submit FOIA requests or appeals to the Department through the FOIAonline case management system or otherwise access their Departmental FOIA records after 5 p.m. Eastern on March 31, 2023. Beginning on April 21, 2023, new requests and administrative appeals will be accepted using the new link, as well as through the existing email and postal addresses.

B. Correcting Error in FOIA Regulations

On August 10, 2018, the Department published a final rule that revised its existing regulations under the FOIA and Privacy Act. See 83 FR 39588. The second purpose of this rule is to correct two typographical errors appearing in 15 CFR 4.4 regarding the cross-reference of subsections of another regulation (15 CFR 4.7) in the final rule.

C. Updating the Contact Information for FOIA Submissions to the OIG in Appendix A

The OIG has made the following changes to its contact information in Appendix A—updated its phone number and room number and removed the fax number.

Amendments to 15 CFR 4.1–4.11 and Appendix A

The Department amends the following sections by removing the references to “FOIAonline,” and “<http://foiaonline.regulations.gov>” from the following sections: §§ 4.4(a), 4.6(e)(2), 4.7(a), 4.10(b)(1), 4.10(b)(2), 4.11(c)(2)(iv), and Appendix A.

Corrections to 15 CFR 4.4

The Department removes from 15 CFR 4.4(c)(7) the references in the last sentence of this subsection to “§ 4.7(d)” and “§ 4.7(e),” replacing them with the corrected citations to “§§ 4.7(c)(2)” and “4.7(c)(3)” respectively.

Classification

The Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive prior notice and an opportunity for public comment on this action because the amendments removing references to the FOIA case management system that is being replaced and the correcting amendments to cross-referenced sections in the final rule text are minor and non-substantive. Therefore, notice and comment are unnecessary and would be contrary to the public interest

because they would delay the amendment and correction. Because this action makes no substantive changes and makes minor corrections, it does not constitute a substantive rule, and it is not subject to the requirement for a 30-day delay in effective date in 5 U.S.C. 553(d).

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(3)(B) or any other law, a Regulatory Flexibility Act analysis is not required and none has been prepared.

This regulation does not contain a collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

List of Subjects in 15 CFR Part 4

Public Information, Freedom of Information Act, Privacy Act.

Charles R. Cutshall,

Senior Agency Official for Privacy, Chief Privacy Officer and Director of Open Government, Office of Privacy and Open Government.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4—DISCLOSURE OF GOVERNMENT INFORMATION

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 44 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

■ 2. In § 4.4, revise paragraphs (a) and (c)(7) to read as follows:

§ 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically through electronic mail (email). A request for Department records that are not customarily made available to the public as part of the Department’s regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester’s full name and a valid return address. Requesters may also include other contact information, such as an email address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked

“Freedom of Information Act Request.” Requests may be submitted by U.S. mail, delivery service, email, or online case management system. Requests may also be submitted to some components, identified in Appendix A to this part, by facsimile. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department’s website, <http://www.doc.gov>.¹ If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component’s FOIA office, but in any event not later than ten working days after the request is first received by any Department component identified in Appendix A to this part.

* * * * *
(c) * * *

(7) When a requester fails to provide sufficient detail within 30 calendar days after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under § 4.7(c)(2) for which components shall follow the procedures for a denial letter under § 4.7(c)(3).

* * * * *

■ 4. In § 4.6, revise (e)(2) to read as follows:

§ 4.6 Time limits and expedited processing.

* * * * *

(e) * * *

(2) A component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing. A component doing so shall contact the requester by telephone, email, letter, or online FOIA case management system, whichever is the most efficient in each case.

* * * * *

¹ The USPTO, which is established as an agency of the United States within the Department, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

■ 5. In § 4.7, revise paragraph (a) to read as follows:

§ 4.7 Responses to requests.

(a) *Acknowledgment of requests.*
Upon receipt of a request, a component ordinarily shall send an acknowledgement to the requester which shall provide an assigned tracking request number for further reference and, if necessary, confirm whether the requester is willing to pay fees. A component must send this acknowledgment if the request will take longer than ten working days to process. In most cases, the acknowledgment email, generated by the FOIA electronic case management system, that is sent to requesters who provide an email address will suffice for this requirement.

* * * * *

■ 6. In 4.10, revise paragraph (b) to read as follows:

§ 4.10 Appeals from initial determinations or untimely delay.

* * * * *

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Employment, Litigation, and Information (AGC-ELI). Written appeals should be addressed to the Assistant General Counsel for Employment, Litigation, and Information, at the U.S. Department of Commerce, Office of the

General Counsel, Room 5896, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked “Freedom of Information Act Appeal.” Appeals may also be submitted electronically by email to *FOIAAppeals@doc.gov* or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the AGC-ELI ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester’s appeal.

(2) Appeals of initial and untimely determinations by the OIG shall be decided by the Counsel to the Inspector General, except that appeals of records requests that were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office

of the Inspector General, Office of Counsel, Room 7898C, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked “Freedom of Information Act Appeal.” Appeals may also be submitted electronically by email to *FOIA@oig.doc.gov* or through the online case management system. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester’s appeal.

* * * * *

■ 7. In § 4.11, revise paragraph (c)(2)(iv)(B) to read as follows:

§ 4.11 Fees.

* * * * *

- (c) * * *
- (2) * * *
- (iv) * * *

Category	Chargeable fees
* * * * *	* * * * *
(B) Other reproduction (e.g., converting paper into an electronic format (e.g., scanning), computer disk or printout, or other electronically-formatted reproduction (e.g., uploading records made available to the requester)).	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.

* * * * *

■ 8. In appendix A to part 4, revise paragraphs (1) through (12) to read as follows:

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction or Amendment Under the Privacy Act

* * * * *

(1) U.S. Department of Commerce, Office of Privacy and Open Government, Departmental FOIA Office, 14th and Constitution Avenue NW, Room H61025, Washington, DC 20230; Phone: (202) 482-3258; Fax: (202) 482-0827; Email: *eFOIA@doc.gov*. The Department maintains a list of contact methods on its website at https://osec.doc.gov/opog/FOIA/FOIA_Requests.html#File. This component

maintains an online Electronic FOIA Library through the Department’s website, <http://www.doc.gov>. This online Electronic FOIA Library serves the Office of the Secretary, all other components of the Department not identified below, and those components identified below that do not have separate online Electronic FOIA Libraries.

(2) Bureau of the Census, Policy Coordination Office, U.S. Department of Commerce, Room 8H027, 4600 Silver Hill Road, Suitland, Maryland 20233; Phone: (301) 763-6440; Fax: (301) 763-6239 (ATTN.: FOIA Office); Email: *census.foia@census.gov*. This component maintains a separate online Electronic FOIA Library through its website, <http://www.census.gov>.

(3) Bureau of Economic Analysis, Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce, Bureau of Economic Analysis, Communications Division, Mail Stop BE-64, Room 8K114F,

Washington, DC 20230; Phone: 301-278-9798; Email: *FOIA@bea.gov*.

(4) Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room H6622, Washington, DC 20230; Phone: (202) 482-0953; Fax: (202) 482-0326; Email: *efoiarequest@bis.doc.gov*. This component maintains a separate online Electronic FOIA Library through its website, <http://www.bis.doc.gov>.

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 72023, Washington, DC 20230; Phone: (202) 482-3085; Fax: (202) 482-5671. This component maintains a separate online Electronic FOIA Library through its website, <http://www.eda.gov>. The following Regional Economic Development Administration (EDA) offices do not maintain separate online Electronic FOIA Libraries.

(i) Atlanta Regional Office, EDA, U.S. Department of Commerce, 401 West Peachtree Street NW, Suite 1820, Atlanta, Georgia 30308; Phone: (404) 730-3006.

(ii) Austin Regional Office, EDA, U.S. Department of Commerce, 504 Lavaca Street, Suite 1100, Austin, Texas 78701; Phone: (512) 381-8165.

(iii) Chicago Regional Office, EDA, U.S. Department of Commerce, 111 North Canal Street, Suite 855, Chicago, Illinois 60606; Phone: (312) 353-8143.

(iv) Denver Regional Office, EDA, U.S. Department of Commerce, 410 17th Street, Suite 250, Denver, Colorado 80202; Phone: (303) 844-4404.

(v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Robert N.C. Nix Federal Building, 900 Market Street, Room 602, Philadelphia, Pennsylvania 19107, Phone: (215) 597-4603.

(vi) Seattle Regional Office, EDA, U.S. Department of Commerce, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174; Phone: (206) 220-7663.

(6) International Trade Administration, Office of Strategic Resources, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 40003, Washington, DC 20230; Phone: (202) 482-7937; Fax: (202) 482-1584; Email: FOIA@trade.gov. This component does not maintain a separate online Electronic FOIA Library.

(7) Minority Business Development Agency, Office of Administration and Employee Support Services, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 5092, Washington, DC 20230; Phone: (202) 482-2419; Fax: (202) 482-2500; Email: FOIA@mbda.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.mbda.gov>.

(8) National Institute of Standards and Technology, Management and Organization Office, U.S. Department of Commerce, 100 Bureau Drive, Room 1710, Gaithersburg, Maryland 20899-1710; Phone: (301) 975-4054; Fax: (301) 975-5301; Email: FOIA@nist.gov. This component maintains a separate public inspection facility at the Administration Building, Gaithersburg, Maryland. Please call (301) 975-4054 for inspection facility directions and hours. This component does not maintain a separate online Electronic FOIA Library.

(9) National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1315 East-West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910; Phone: (301) 628-5658; Fax: (301) 713-1169; Email: FOIA@noaa.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.noaa.gov>.

(10) National Technical Information Service, Office of the Chief Information Officer, U.S. Department of Commerce, 5301 Shawnee Road, Room 227, Alexandria, Virginia 22312; Phone: (703) 605-6710; Fax: (703) 605-6764. This component maintains a separate online Electronic FOIA Library through its website, <http://www.ntis.gov>.

(11) National Telecommunications and Information Administration, Office of the

Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 4713, Washington, DC 20230; Phone: (202) 482-1816; Fax: (202) 501-8013; Email: eFOIA@NTIA.doc.gov. This component does not maintain a separate online Electronic FOIA Library.

(12) Office of Inspector General, FOIA and Records Management Specialist, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 7898C, Washington, DC 20230; Phone: (202) 794-8066; Email: FOIA@oig.doc.gov. This component maintains a separate online Electronic FOIA Library through its website, <http://www.oig.doc.gov>.

[FR Doc. 2023-07998 Filed 6-2-23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

National Highway Traffic Safety Administration

23 CFR Part 1300

[Docket No. NHTSA-2022-0036]

RIN 2127-AM45

Uniform Procedures for State Highway Safety Grant Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the uniform procedures implementing the State Highway Safety Grant Program to waive, for fiscal year 2024, the requirement that targets for the common performance measures be identical to targets in the State Highway Safety Improvement Plan. This final rule makes a corresponding change to a similar requirement in the Federal Highway Administration's performance management regulation.

DATES: This final rule is effective on June 5, 2023.

ADDRESSES: This document may be viewed online through the Federal eRulemaking portal at www.regulations.gov using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's website at www.federalregister.gov and the

Government Publishing Office's website at: www.GovInfo.gov.

FOR FURTHER INFORMATION CONTACT:

For NHTSA: Program issues: Barbara Sauers, Associate Administrator, Regional Operations and Program Delivery, National Highway Traffic Safety Administration; Telephone number: (202) 366-0144; Email: barbara.sauers@dot.gov. Legal issues: Megan Brown, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone number: (202) 366-1834; Email: megan.brown@dot.gov.

For FHWA: Kelly Morton, Office of Safety, (202) 366-8090 or via email at kelly.morton@dot.gov or Dawn Horan, Office of the Chief Counsel, (202) 366-9615 or via email at dawn.horan@dot.gov. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Waiver of Identical Targets for Common Performance Measures
- III. Waiver of Notice and Comment
- IV. Regulatory Analyses and Notices

I. Background

The National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) share three common performance measures in their highway safety programs—total fatalities, rate of fatalities, and total serious injuries—and have shared these common performance measure for many years. Both NHTSA and FHWA regulations require States to submit identical targets for the three common performance measures—in NHTSA's triennial Highway Safety Plan (HSP) and in FHWA's Highway Safety Improvement Plan (HSIP) annual report. See 23 CFR 1300.11(b)(3)(ii)(C) and 23 CFR 490.209(a)(1), respectively.

On November 15, 2021, the President signed into law the "Infrastructure Investment and Jobs Act" (known also as the Bipartisan Infrastructure Law, or BIL), Public Law 117-58. The BIL provided additional grant funds to States and changed several requirements to support States in their efforts to strengthen their highway safety programs. Among other things, the BIL required that all performance targets submitted to NHTSA in the triennial HSP demonstrate constant or improved performance. 23 U.S.C. 402(d)(4)(A)(ii).

NHTSA published a final rule implementing the Highway Safety Grant Program under the BIL on February 6, 2023, at 88 FR 7780. The rule provides

direction to States on procedures for meeting the statutory requirements governing their highway safety grant programs and applications. Among other things, the rule requires States to submit constant or improved targets for the common performance measures and that these targets be identical to the targets that are reported by the State DOT in the HSIP annual report. See 23 CFR 1300.11(b)(3)(ii)(B). Stakeholders have raised questions about the interplay between NHTSA's and FHWA's current regulations. Additionally, FHWA has not yet completed a new regulation implementing any changes to its performance measures since the passage of the BIL. Therefore, States have not had the opportunity to comment on proposed FHWA requirements that may be affected by the NHTSA regulation's requirement for identical targets. FHWA will soon release a notice of proposed rulemaking concerning its performance measures that will address this issue.¹

II. Waiver of Identical Targets for Common Performance Measures

In this rulemaking, NHTSA amends 23 CFR 1300.11 to insert paragraph (b)(3)(iv), which waives, for fiscal year 2024, the requirement that performance targets submitted for common performance measures be identical to the State DOT targets reported in the HSIP annual report. NHTSA also makes a conforming amendment to 23 CFR 1300.11(b)(3)(ii)(C). FHWA makes a similar change to its regulation. With these changes, State Highway Safety Offices (HSOs) and State DOTs have the flexibility to submit non-identical targets for the common performance measures for fiscal year 2024. However, States must still submit targets for these common performance measures along with the other targets they are required to submit, and all targets submitted to NHTSA for all performance measures must show constant or improved performance compared to the current safety levels, as required by statute. See 23 U.S.C. 402(k)(4)(A)(ii) and 23 CFR 1300.11(b)(3)(ii)(B)(2).

While NHTSA and FHWA are affording States flexibility not to submit identical targets for fiscal year 2024 highway safety programs, HSOs are nevertheless encouraged to continue setting identical targets in collaboration with their colleagues in State Departments of Transportation as they work together to implement a Safe

System Approach and reduce deaths and injuries on our roadways.

III. Waiver of Notice and Comment

NHTSA and FHWA find good cause to issue, without notice and comment, and to make effective immediately, this time-limited waiver of the requirement for identical targets, in accordance with 5 U.S.C. 553(b)(B) and (d)(1). The Administrative Procedure Act provides that when an agency, for good cause, finds that notice and public comment are impractical, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment (5 U.S.C. 553(b)(B)). For the same reason, the rule can become effective immediately. See 5 U.S.C. 553(d)(1). The safety programs of NHTSA and FHWA are governed by different statutory provisions, and FHWA has not completed its notice and comment rulemaking on the National Performance Management Measures since the passage of BIL. NHTSA and FHWA recognize the importance of allowing time for States to provide comments on the FHWA program, but also recognize that HSOs must meet the upcoming statutory July 1 deadline to submit their triennial Highway Safety Plans for the NHTSA program and State DOTs must meet the August 31 deadline to submit their safety performance targets in their HSIP annual reports. States' efforts to develop their triennial Highway Safety Plans are well underway at this time, and it is critical that States be provided certainty about application criteria. With these considerations in mind, NHTSA finds it in the public interest to waive, for fiscal year 2024 Highway Safety Programs, the regulatory requirement in 23 CFR 1300.11(b)(3)(ii)(C) that performance targets submitted for the common performance measures (fatalities, fatality rate, and serious injuries) in the triennial Highway Safety Plan be identical to the targets submitted by the State DOT in the Highway Safety Improvement Program report, and to make this waiver effective immediately. Likewise, FHWA finds it in the public interest to waive the regulatory requirement in 23 CFR 490.209(a)(1) that the State DOT targets shall be identical to the targets established by the State Highway Safety Office for the common performance measures, and to make this waiver effective immediately.

IV. Regulatory Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

NHTSA and FHWA have considered the impact of this rulemaking action under Executive Order 12866 (as amended by Executive Order 14094), Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This action is not expected to impose any costs because it makes limited revisions to the uniform procedures implementing State highway safety grant programs. This rulemaking has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of OMB.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that an action would not have a significant economic impact on a substantial number of small entities.

This final rule makes limited revisions to the uniform procedures implementing State highway safety grant programs, which were previously determined to not have a significant impact on a substantial number of small entities. The grant programs impacted by this rule will affect only State governments, which are not considered to be small entities as that term is defined by the RFA. Therefore, we certify that this action will not have a significant impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA and FHWA to develop an accountable process to ensure "meaningful and timely input by State and local officials

¹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2125-AG06>.

in the development of regulatory policies that have federalism implications.” 64 FR 43255 (August 10, 1999). “Policies that have federalism implications” are defined in the Executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, an agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments in the process of developing the regulation. An agency also may not issue a regulation with federalism implications that preempts a State law without consulting with State and local officials.

The agencies have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. The limited revisions made by this rulemaking provide flexibility to State applicants. The agencies have therefore determined that this final rule would not have sufficient federalism implications as defined in the order to warrant formal consultation with State and local officials or the preparation of a federalism summary impact statement.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 (61 FR 4729 (February 7, 1996)), “Civil Justice Reform,” the agency has considered whether this rule would have any retroactive effect. We conclude that it would not have any retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E. Paperwork Reduction Act

Under the procedures established by 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 Office of Management and Budget (OMB) control number. This rulemaking does not

establish any new information collection requirements.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). This rulemaking would not meet the definition of a Federal mandate because any potential resulting annual State expenditures would not exceed the minimum threshold. The program is voluntary and States that choose to apply and qualify would receive grant funds.

G. National Environmental Policy Act

NHTSA and FHWA have considered the impacts of this rulemaking action for the purposes of the National Environmental Policy Act. The agencies have determined that this rulemaking would not have a significant impact on the quality of the human environment and qualifies for the categorical exclusion at 23 CFR 771.117(c)(20).

H. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) is determined to be economically significant as defined under Executive Order 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not likely to have a significantly adverse effect on the supply of, distribution of, or use of energy. This rulemaking has not been designated as a significant energy action. Accordingly, this rulemaking is not subject to Executive Order 13211.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The agencies have analyzed this rulemaking under Executive Order 13175 and have determined that this action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

J. Privacy Act

Please note that anyone is able to 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.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit DOT’s Privacy Policy website at <https://www.transportation.gov/dot-website-privacy-policy>.

List of Subjects

23 CFR Part 490

Bridges, Highway safety, Highways and roads, Reporting and recordkeeping requirements.

23 CFR Part 1300

Administrative practice and procedure, Alcohol abuse, Drug abuse, Grant programs—transportation, Highway safety, Intergovernmental relations, Motor vehicles—motorcycles, Reporting and recordkeeping requirements.

Issued in Washington, DC, under authority delegated in 49 CFR 1.81, 1.85, and 1.95.

Andrew Rogers,

Deputy Administrator, Federal Highway Administration.

Sophie Shulman,

Deputy Administrator, National Highway Traffic Safety Administration.

In consideration of the foregoing, NHTSA and FHWA amend 23 CFR parts 490 and 1300 as follows:

Title 23—Highways

PART 490—NATIONAL PERFORMANCE MANAGEMENT MEASURES

- 1. The authority citation for part 490 continues to read as follows:

Authority: 23 U.S.C. 134, 135, 148(i) and 150; 49 CFR 1.85.

Subpart B—National Performance Management Measures for the Highway Safety Improvement Program

- 2. Amend § 490.209 by adding a sentence at the end of paragraph (a)(1) to read as follows:

§ 490.209 Establishment of performance targets.

- (a) * * *
- (1) * * * For fiscal year 2024 only, the performance targets submitted under this paragraph are not required to be identical to the targets established by

the State Highway Safety Office for the common performance measures.

* * * * *

PART 1300—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY GRANT PROGRAMS

■ 3. The authority citation for part 1300 continues to read as follows:

Authority: 23 U.S.C. 402; 23 U.S.C. 405; Sec. 1906, Pub. L. 109–59, 119 Stat. 1468, as amended by Sec. 25024, Pub. L. 117–58, 135 Stat. 879; delegation of authority at 49 CFR 1.95.

Subpart B—Triennial Highway Safety Plan and Annual Grant Application

■ 4. Amend § 1300.11 by:

■ a. Adding “Except as provided in paragraph (b)(3)(iv) of this section,” at the beginning of paragraph (b)(3)(ii)(C); and

■ b. Adding paragraph (b)(3)(iv).

The addition reads as follows:

§ 1300.11 Triennial Highway Safety Plan.

* * * * *

(b) * * *

(3) * * *

(iv) For fiscal year 2024 only, the performance targets submitted for common performance measures under paragraph (b)(3)(ii)(C) of this section are not required to be identical to the State DOT targets reported in the HSIP annual report.

* * * * *

[FR Doc. 2023–11758 Filed 6–2–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 13E, 66, 67, and 68

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 13E, 66, 67, and 68, each of which were previously made available on OFAC’s website.

DATES: GLs 13E, 66, 67, and 68 were issued on May 19, 2023. See

SUPPLEMENTARY INFORMATION for additional relevant dates.

FOR FURTHER INFORMATION CONTACT:

OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website: www.treas.gov/ofac.

Background

On May 19, 2023, OFAC issued GLs 13E, 66, 67, and 68 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GLs 13E, 66, and 67 have an expiration date of August 17, 2023; GL 68 has an expiration date of July 18, 2023. Each GL was made available on OFAC’s website (www.treas.gov/ofac) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13E

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*, provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern daylight time, August 17, 2023.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of

the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective May 19, 2023, General License No. 13D, dated February 24, 2023, is replaced and superseded in its entirety by this General License No. 13E.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 19, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 66

Authorizing the Wind Down of Transactions Involving Public Joint Stock Company Polyus

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving Public Joint Stock Company Polyus, or any entity in which Public Joint Stock Company Polyus owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern daylight time, August 17, 2023, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in

paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 19, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 67

Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Polyus

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of Public Joint Stock Company Polyus, or any entity in which Public Joint Stock Company Polyus owns, directly or indirectly, a 50 percent or greater interest, purchased prior to May 19, 2023 (“covered debt or equity”), to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, August 17, 2023.

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity that were placed prior to 4:00 p.m. eastern daylight time, May 19, 2023 are authorized through 12:01 a.m. eastern daylight time, August 17, 2023.

(c) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern daylight time, May 19, 2023 that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, August 17, 2023, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity ordinarily incident and necessary to the divestment or transfer of covered debt or equity as described in paragraph (a) of this general license.

(e) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 19, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 68

Authorizing the Wind Down of Transactions Involving Certain Universities and Institutes

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked persons are authorized through 12:01 a.m. eastern daylight time, July 18, 2023, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) Federal State Budgetary Educational Institution of Higher Education Grozny State Oil Technical University Named After Academician M.D. Millionshchikov;

(2) Federal State Budget Educational Institution of Higher Education Saint Petersburg Mining University;

(3) Federal State Budgetary Educational Institution of Higher Education Sergo Ordzhonikidze Russian State University for Geological Prospecting;

(4) Federal State Budgetary Educational Institution of Higher Vocational Education Gubkin Russian State University of Oil and Gas;

(5) State Budgetary Educational Institution of Higher Education Almeteyevsk State Oil Institute; or

(6) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

(1) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions*;

(2) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation*; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: May 19, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023-11979 Filed 6-2-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2023-0376]

Safety Zone; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a Safety Zone for the Boldt Castle Independence Day Fireworks on July 4, 2023, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Ninth Coast Guard District identifies the regulated area for this event in Alexandria Bay, NY. During the enforcement period, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.939 will be enforced for the Boldt Castle 4th of July Fireworks regulated area listed in item b.13 in the table to § 165.939 from 9 p.m. through 10:30 p.m. on July 4, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST1 Julio Maldonado, Waterways Management Division Representative, U.S. Coast Guard MSD Massena; telephone 315-322-8168, email SMB-MSDMassena-WaterwaysManagement@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in 33 CFR 165.939 for the Boldt Castle 4th of July Fireworks regulated area from 9 p.m. through 10:30 p.m. on July 4, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Ninth Coast Guard District, § 165.939, specifies the location of the regulated area for the Boldt Castle 4th of July Fireworks which encompasses portions of the St. Lawrence River. During the enforcement period as reflected in § 165.939, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Broadcast Notice to Mariners.

Dated: May 26, 2023.

J.B. Bybee,

Commander, U.S. Coast Guard, Captain of the Port Buffalo, By direction.

[FR Doc. 2023-11879 Filed 6-2-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0353]

RIN 1625-AA00

Safety Zone; Kanawha River, Charleston, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone June 30, 2023, through July 4, 2023, on the Kanawha River, Charleston, WV, for events associated with the Charleston Sternwheel Regatta. The safety zone will cover all navigable waters between mile marker 58 and 59. This action is necessary to protect regatta participants, the public, and the marine environment from potential hazards created by a regatta, as well as fireworks. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 9 p.m. on June 30, 2023, through 9:45 p.m. on July 4, 2023. This rule will be enforced: 9 p.m. through 11 p.m. on June 30, 2023; 11:30 a.m. through 2:30 p.m. on July 2, 2023; and 9 p.m. through 10 p.m. on July 4, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2023-0353 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 about this proposed rulemaking, call or email MST1 Chelsea Zimmerman, Marine Safety Unit Huntington, U.S. Coast Guard; (304) 733-0198, Chelsea.M.Zimmerman@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and

opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable and contrary to the public interest to do so. We must establish the safety zone by June 30, 2023, in order to protect the public from potential hazards associated with the planned events and we lack sufficient time to request public comments and respond to these comments before the safety zone must be established. Potential hazards could be falling debris from firework displays launched over the river, or marine casualties while transiting the safety zone during sternwheel races.

For those same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the Charleston Sternwheel Regatta taking place on the Kanawha River, Charleston, WV.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Ohio Valley (COTP) has determined that potential hazards associated with the Charleston Sternwheel Regatta will be a safety concern for anyone between mile marker 58 and 59 on the Kanawha River, Charleston, WV, starting June 30, 2023. This rule is needed to protect participants, vessels, and the marine environment in these navigable waters for the duration of the event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. on June 30, 2023, until 10 p.m. on July 4, 2023. The safety zone will be enforced: 9 p.m. through 11 p.m. on June 30, 2023; 11:30 a.m. through 2:30 p.m. on July 2, 2023; and 9 p.m. through 10 p.m. on July 4, 2023. The safety zone will cover all navigable waters between mile marker 58 and 59 on the Kanawha River, Charleston, WV. The duration of enforcement of the

safety zones are intended to protect participants, vessels, and the marine environment from potential hazards associated with firework events and a regatta.

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 size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small, designated area of the Kanawha River for 3 hours or less where vessel traffic is normally light. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves 3a safety zone that will be enforced on three separate occasions, each occasion lasting 3 hours or less that will prohibit vessels from all navigable water between mile marker 58 and 59 on the Kanawha River, Charleston, WV. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0353 to read as follows:

§ 165.T08–0353 Safety Zone; Kanawha River, Charleston, WV.

(a) *Location.* The following area is a safety zone: all navigable waters between mile marker 58 and 59 on the Kanawha River, Charleston, WV.

(b) *Definitions. Designated representative* means a Coast Guard Patrol Commander (PATCOM), including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Ohio Valley (COTP) in the enforcement of the regulations in this section.

Participant means any person or vessel registered with the event sponsor as a participant in the race.

Spectator vessel means any vessel not registered with the event sponsor as a participant in the race or assigned as an official patrol vessel.

(c) *Regulations.* The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM.”

(1) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(2) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(3) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(4) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) Any spectator vessel may anchor outside the regulated area specified above, but may not anchor in, block, or loiter in a navigable channel.

(6) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(7) To seek permission to enter, contact the COTP or the COTP’s representative by VHF–FM marine radio channel 16 or phone at 1–800–253–7465. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(8) The COTP will provide notice of the regulated area through advanced notice via local notice to mariners and broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement periods.* This safety zone will be enforced: 9 p.m. through 11 p.m. on June 30, 2023; from 11:30 a.m. through 2:30 p.m. on July 2, 2023; and from 9 p.m. through 10 p.m. on July 4, 2023.

Dated: May 26, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2023–11848 Filed 6–2–23; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0059; FRL–10645–02–R9]

Air Plan Limited Approval and Limited Disapproval; California; Eastern Kern Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a limited approval and limited disapproval of a revision to the Eastern Kern Air Pollution Control District (EKAPCD or “District”) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from Portland Cement Kilns. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources

and directs California to correct rule deficiencies. We are finalizing a limited approval of a local rule that regulates these emission sources because the rule would strengthen the current SIP-approved version of EKAPCD’s Portland cement kiln rule. We are finalizing a limited disapproval of this revision due to the presence of exemptions for periods of startup, shutdown, and malfunction (breakdown), which are inconsistent with CAA requirements.

DATES: This rule is effective July 5, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2023–0059. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3158 or by email at gordon.elijah@epa.gov.

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

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

I. Proposed Action

On February 15, 2023 (88 FR 9816), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
EKAPCD	Rule 425.3	Portland Cement Kilns (Oxides of Nitrogen)	03/08/2018	08/22/2018

As mentioned in our proposed action, submitted Rule 425.3 establishes more stringent emission limits for NO_x than the previously SIP-approved version and strengthens monitoring, recordkeeping, and reporting requirements. As a result, we proposed a limited approval because we determined that this rule strengthens the SIP and is largely consistent with relevant CAA requirements. However, we simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of title I of the Act. These provisions include the following:

1. Section (IV)(A) of the rule contains an exemption to an otherwise applicable emission limitation for periods of startup and shutdown, stating that “the requirements of Section V of this Rule shall not apply [. . .] to startup and shutdown as defined” in Sections (III)(J) and (III)(K). An emission limitation or requirement that exempts a period of source operation, such as startup or shutdown, cannot be considered continuous and is not consistent with CAA requirements. Although the rule revision contains individual startup (48 hours) and shutdown (36 hours) time limits in Sections (III)(J) and (III)(K), along with SSM recordkeeping requirements in Section (VI)(B)(4), these provisions are not sufficient to establish an emission limit that could be considered adequate for CAA purposes. Elimination of the existing startup and shutdown exemption to address the concerns raised in the EPA’s evaluation is necessary for full approval of the rule into the SIP.

2. Section (IV)(B) contains an exemption during breakdown conditions from the emission limit, emission monitoring, and production monitoring requirements found in Section (V). Similar to the first deficiency noted above, an emission limitation or requirement that exempts a period of source operation cannot be considered adequate for CAA purposes. Removal of this exemption for breakdown conditions is necessary for full approval of the rule into the SIP.

Our proposed action and Technical Support Document contain more information on the basis for this final rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

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

III. EPA Action

No comments were submitted. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This final action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule.

As a result of our limited disapproval, the EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies identified above within 24 months. In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months from the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadlines.

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 of EKAPCD Rule 425.3, “Portland Cement Kilns (Oxides of Nitrogen),” amended on March 8, 2018, which regulates NO_x emissions from the operation of cement kilns, as described in Sections I and III. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be

found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose

substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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.”

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this final action is finalizing a limited approval and limited disapproval of state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

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

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: May 26, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends Part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(202)(i)(B)(3) and (c)(520)(i)(B)(2) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(202) * * *

(i) * * *

(B) * * *

(3) Previously approved on July 20, 1999, in paragraph (c)(202)(i)(B)(1) of this section and now deleted with replacement in (c)(520)(i)(B)(2): Rule 425.3, adopted on October 13, 1994.

* * * * *

(520) * * *

(i) * * *

(B) * * *

(2) Rule 425.3, “Portland Cement Kilns (Oxides of Nitrogen),” amended on March 8, 2018.

* * * * *

[FR Doc. 2023–11850 Filed 6–2–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2022–0321, FRL–10144–02–R2]

Approval and Promulgation of Implementation Plans; New York; Particulate Matter Control Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New York State Implementation Plan (SIP) for the purposes of implementing controls of air pollution by particulate matter (PM). The SIP revision consists of amendments to existing regulations outlined within

New York's Codes, Rules, and Regulations (NYCRR) that impose control measures for sources of PM. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This final rule is effective July 5, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2022-0321. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION: The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. What is the background for these actions?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. What is the background for these actions?

On September 20, 2022, the EPA published a Notice of Proposed Rulemaking that proposed to approve revisions to the New York SIP submitted by the State of New York on March 26, 2021. *See* 87 FR 57429. This SIP revision includes revisions to an existing regulation, Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Subpart 227-1, "Stationary Combustion Installations," with a State effective date of February 25, 2021. These revisions are applicable statewide and establish PM emission standards for existing and new stationary combustion installations.¹

New York's revisions to Subpart 227-1 include additional control strategies that will reduce PM emissions from

major sources throughout the State. The EPA is approving New York's SIP submittal which applies to major sources of PM, as a SIP-strengthening measure for New York's SIP.

The specific details of New York's SIP submittals and rationale for the EPA's proposed approval are explained in the EPA's proposed rulemaking and are not restated in this final action. For this detailed information, the reader is referred to the EPA's September 20, 2022, proposed rulemaking. *See* 87 FR 57429.

II. What comments were received in response to the EPA's proposed action?

In response to EPA's September 20, 2022, proposed rulemaking on New York's SIP revisions, the EPA received four comments during the 30-day public comment period. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2022-0321 on the <https://www.regulations.gov> website. The first two comments, received on October 17, 2022, and October 19, 2022, were supportive of EPA's proposed action to approve New York's revisions of NYCRR Subpart 227-1, "Stationary Combustion Installations," into New York's SIP. A summary of the remaining two comments and the EPA's response are provided in this section.

Comment 3: The third comment, received on October 20, 2022, was submitted by an anonymous commenter from the University of Washington School of Law. The commenter voices support by stating that ". . . the EPA proposal to approve revisions to the New York State Implementation Plan (SIP) is tailored enough in this situation . . . under the SIP, we see a careful and deliberate plan of limiting PM emissions for oil and solid fuel fired stationary combustion installations." The commenter also provides suggestions to New York's SIP, like including a list of all the stationary combustion installations that will be applicable to this regulation. The commenter is also supportive of EPA's proposal to incorporate by reference the revisions made to 6 NYCRR Subpart 227-1 into New York's SIP by stating that ". . . materials like Stationary Combustion Installations available online and through [regulations.gov](http://www.regulations.gov) website will continue to ensure that these proposed rules will be seen by the public." The commenter also mentions that it is important for EPA in future actions to note whether a rule that is finalized will not have a direct cost on tribal governments or preempt tribal law.

Response 3: The EPA acknowledges the commenter's support of the EPA's proposed rule. To address the

commenter's suggestion to have New York's SIP include a list of all stationary combustion installations applicable, the EPA reviewed NYSDEC's SIP revision to examine if similar comments were addressed during the Department's assessment of public comments received on the proposal of Subpart 227-1. During the assessment period, representatives from private businesses also submitted a comment requesting NYSDEC to provide an estimate of the number of sites the revised regulation would likely impact. NYSDEC responded to the comment by stating that the Department has issued permits or registrations to 51 facilities throughout New York State that employ 76 wood fired emission sources. New York also states that these sources range in size from 1.4 mmBTU/HR heat input to 855 mmBTU/HR heat input; they burn wood chips, hogged wood fuel, and wood pellets. The Department also provides the following breakdown in their response: (1) 5 facilities with 8 emission sources were issued Title V permits, (2) 15 facilities with 31 emission sources were issued State Facility permits, and (3) 31 facilities with 37 emission sources were issued registrations. NYSDEC affirms that the Regulatory Impact Statement (RIS) and the Regulatory Flexibility Analysis for Small Business and Local Governments (RFASBLG) will also include these emission source data. Also, NYSDEC is not able to accurately predict the number of future installations that may be impacted by this regulation until that facility applies for a permit or registration from the Department. Therefore, containing a list of applicable sources under Subpart 227-1 may not be accurate over time once facilities retire these emission sources or apply for new permits. The EPA plans to ensure that the incorporation by reference materials for New York's SIP revision of 6 NYCRR Subpart 227-1, "Stationary Combustion Installations," will be available through <http://www.regulations.gov> and physically at the EPA Region 2 Office.

Comment 4: The fourth public comment, received on October 19, 2022, was submitted by a New Jersey resident and Rutgers University Human Ecology undergraduate. The commenter acknowledges the prospective benefits from the EPA's intervention in New York's SIP. However, the commenter voices concern over Sections 227-1.3 and Section 227-1.4 of New York's revision to 6 NYCRR Subpart 227-1. Regarding Section 227-1.3, the commenter mentions that ". . . there should be more maintenance

¹ The attendant revisions to 6 NYCRR Part 200, "General Provisions," section 200.9, "Referenced material," Table 1, for 6 NYCRR Subpart 227-1 has been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022.

requirements besides providing an annual tune-up of equipment. Bi-annual or quarterly checks would be a stronger form of preventative maintenance that could lead to less repair costs from continuous use of stationary combustion installation.” Thus, the commenter requests that EPA considers issuing a Federal Implementation Plan (FIP) to “. . . execute more stringent regulations concerning monitoring practices in applicable sites.”

Regarding Section 227–1.4, the commenter mentions that “. . . even with the inclusion of Continuous Opacity Monitoring Systems (COMS), 27% opacity limit for 6 minutes per hour is not a feasible attainment plan when considering the proximity of non-attainment industries that contribute to PM emissions in New York . . . the compounding impacts of multiple industries operating at this increased level can have substantial effects on primary and secondary standards over time.” The commenter also mentions that EPA should consider researching what the additional reductions in emission there would be if there were no 27% opacity limits for a 6-minute period every hour.

Response 4: In this action, EPA is approving New York’s SIP submission that revises existing provisions in rules the State’s statewide SIP as a SIP-strengthening measure. In this action, EPA is not determining whether these provisions satisfy specific nonattainment planning obligations under the CAA for purposes of the PM_{2.5} NAAQS. Rather, EPA is approving these New York regulations into the SIP pursuant to CAA section 110(k)(3), which states that EPA “shall approve [a SIP] submittal as a whole if it meets all the applicable requirements of this chapter.” Because this SIP revision relates to emission controls for criteria pollutants and strengthens the preexisting requirements in the New York SIP, EPA has determined it is appropriate to approve the SIP revision.

The EPA does not agree with the commenter that more maintenance requirements besides providing an annual tune-up of equipment are necessary. In its own response to comments, NYSDEC noted that the manufacturer specifications outline that boilers require an annual inspection and periodic maintenance, regardless of how frequently those boilers are monitored. The Department concluded that the annual tune-up requirement will satisfy the manufacturer’s recommended annual inspection and maintenance procedures and ensure that those procedures are followed and performed by the owner or operators of these

impacted units. Therefore, the EPA finds no basis to disapprove New York’s SIP submittal solely on grounds that boilers should have more maintenance requirements besides annual tune-up of equipment.

The EPA also reviewed NYSDEC’s SIP revision of 6 NYCRR Subpart 227–1, “Stationary Combustion Installations,” to examine if similar comments regarding the commenter’s opacity concerns arose during the Department’s assessment of public comments. Following that review, the EPA identified that no other comments were submitted that urged the Department to incorporate more stringent opacity limits than those adopted within the revision. Within New York’s SIP submittal, the Department indicated that the purpose of this SIP revision is to impose stringent particulate matter emission limits on existing and new stationary combustion installations that either predate, or are not subject to, a federal New Source Performance Standard (NSPS) and/or National Emission Standards for Hazardous Air Pollutants (NESHAP). Essentially, the purpose of this revision to Subpart 227–1 is to impose particulate matter and opacity standards on a larger universe of stationary combustion installations that are not currently subject to any federal NSPS or NESHAP. To address the commenter’s concern regarding the opacity limits adopted in this rule, the EPA reviewed the opacity requirements listed within various NSPS and NESHAPs that also applied to stationary combustion installation sources applicable to New York’s rule. The EPA reviewed these federal opacity standards and compared them with the opacity limits outlined within Subpart 227–1 to determine if the opacity requirements included in this SIP would meet or exceed those already enforced on a federal standard.

In EPA’s review, existing federal NSPS impose similar opacity requirements for Electric Utility Steam Generating Units and for Industrial-Commercial-Institutional Steam Generating Units.² New York’s revised Subpart 227–1 contains a lower applicability threshold and thus imposes the opacity and PM standards on a larger universe of sources. The lower applicability threshold will

² Owners or operators of affected units subject to either 40 CFR part 60 subpart Da and Db shall not cause to be discharged into the atmosphere any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity. See <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-60/subpart-Da> and <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-60/subpart-Db>.

impose the PM limits on more stationary combustion installations than previous versions of the regulation. The EPA is approving New York’s revisions to Subpart 227–1 as a SIP-strengthening measure, since this revision extends the applicability of these opacity and PM standards to more existing and new stationary combustion installations than previous iterations of the rule. On May 22, 2001, the EPA finalized approval of additional administrative changes that New York made to Subpart 227–1. In this action, the EPA incorporated by reference those administrative changes, which included similar opacity limits as for the purpose of enforcing New York’s SIP. See 66 FR 28059.

Since 1972, New York has developed and submitted SIP provisions that have allowed the New York-N. New Jersey-Long Island, NY-NJ-CT area to demonstrate attainment of the primary and secondary PM_{2.5} National Ambient Air Quality Standards (NAAQS). See 80 FR 2206. New York’s revision to Subpart 227–1 will continue to ensure that stringent PM emission limits and monitoring requirements apply to owners or operators of stationary combustion installations to further reduce emissions of the precursors of PM_{2.5}, to help New York State continue to maintain the current 24-hour and Annual PM_{2.5} NAAQS.

This concludes our response to the comments received. No changes have been made to the proposed rule as a result of the comments received.

III. What action is the EPA taking?

The EPA is approving New York’s SIP revision submission, dated March 26, 2021, making revisions 6 NYCRR Subpart 227–1, “Stationary Combustion Installations,” as SIP-strengthening. This approval of the revisions will extend the requirements of 6 NYCRR Subpart 227–1 to a broader universe of sources by changing the applicability criteria of the existing SIP emission limits. EPA has already addressed related revisions New York made to 6 NYCRR Part 200, “General Provisions,” section 200.9, “Referenced material,” Table 1, for 6 NYCRR Subpart 227–1 in a separate rulemaking (see 87 FR 52337, effective September 26, 2022). These revisions include changes to the applicability threshold and PM emission limits that will reduce PM_{2.5} emissions statewide and provide support for New York State to continue to maintain the current 24-hour and Annual PM_{2.5} NAAQS. The EPA finds that this submission strengthens New York’s existing SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 6 NYCRR Subpart 227–1, “Stationary Combustion Installations”, the regulation described in the amendments to 40 CFR part 52 as discussed in Section I. and III. of this preamble. The EPA has made and will continue to make these materials generally available through <http://regulations.gov> and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in New York’s SIP, have been incorporated by reference by EPA into that SIP, and are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.³

V. Statutory and Executive Order Reviews

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

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 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 this action does not involve technical standards.

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

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

The NYSDEC did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for

people of color, low-income populations, and Indigenous peoples.

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 August 4, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Incorporation by Reference, Particulate matter, Reporting and recordkeeping requirements.

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

Lisa Garcia,
Regional Administrator, Region 2.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart HH—New York

- 2. In § 52.1670 the table in paragraph (c) is amended by revising the entry “Title 6, Part 227, Subpart 227–1” to read as follows:

³ 62 FR 27968 (May 22, 1997).

§ 52.1670 Identification of plan.

(c) * * *

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EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS

State citation	Title/subject	State effective date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Title 6, Part 227, Subpart 227-1	Stationary Combustion Installations.	2/25/2021	6/5/2023	• EPA approved finalized at [insert Federal Register citation].
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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[FR Doc. 2023-11684 Filed 6-2-23; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 416, 418, 441, 460, 482, 483, 484, 485, 486, 491, and 494

[CMS-3415-F, CMS-3414-F, CMS-3401-F]

RIN 0938-AU75, 0938-AU57, 0938-AU33

Medicare and Medicaid Programs; Policy and Regulatory Changes to the Omnibus COVID-19 Health Care Staff Vaccination Requirements; Additional Policy and Regulatory Changes to the Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals With Intellectual Disabilities (ICFs-IID) To Provide COVID-19 Vaccine Education and Offer Vaccinations to Residents, Clients, and Staff; Policy and Regulatory Changes to the Long Term Care Facility COVID-19 Testing Requirements

AGENCY: Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule removes expired language addressing staff and patient COVID-19 testing requirements for LTC Facilities issued in the interim final rule with comment “Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency” published in the September 2, 2020 **Federal Register**. The rule also finalizes requirements for these facilities to provide education about COVID-19 vaccines and to offer

COVID-19 vaccines to residents, clients, and staff. In addition, the rule withdraws the regulations in the interim final rule with comment (IFC) “Omnibus COVID-19 Health Care Staff Vaccination” published in the November 5, 2021 **Federal Register**, and finalizes certain provisions of the “COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) Residents, Clients, and Staff” IFC, published in the May 13, 2021 **Federal Register**.

DATES: The regulations in this final rule are effective on August 4, 2023.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: CMS Office of Communications, Department of Health and Human Services, *press@cms.hhs.gov*.

For technical inquiries: CMS Center for Clinical Standards and Quality, Department of Health and Human Services, (410)786-6633.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization (WHO) declared the “coronavirus disease 2019” (COVID-19) outbreak caused by “severe acute respiratory syndrome coronavirus 2” (SARS-CoV-2) a “Public Health Emergency of International Concern.” On January 31, 2020, pursuant to section 319 of the Public Health Service Act (PHSA) (42 U.S.C. 247d), the Secretary of the Department of Health and Human Services (Secretary) determined that a public health emergency (PHE) exists for the United States. On March 11, 2020, the WHO publicly declared COVID-19 a pandemic. The President of the United States declared the COVID-19 pandemic a national emergency on March 13, 2020. Pursuant to section 319 of the

PHSA, the determination that a PHE continues to exist may be renewed at the end of each 90-day period.¹ The initial determination that a PHE for COVID-19 exists and had existed since January 27, 2020, lasted for 90 days, and was renewed by the Secretary on April 21, 2020; July 23, 2020; October 2, 2020; January 7, 2021; April 15, 2021; July 19, 2021; October 15, 2021; January 14, 2022; April 12, 2022; July 15, 2022; October 13, 2022; January 11, 2023; and February 9, 2023.² The COVID-19 PHE expired on May 11, 2023.

COVID-19 has had significant negative health effects on individuals, communities, and the nation as a whole. Over a year ago, in September 2021, COVID-19 overtook the 1918 influenza pandemic as the deadliest disease in American history.³ According to the Centers for Disease Control and Prevention (CDC), just over 6 million patients admitted to hospitals in the United States have been confirmed positive with COVID-19 infection since August 1, 2020, and approximately 1.1 million COVID-19 deaths have been reported in the United States as of April 14, 2023. In light of our responsibility to protect the health and safety of individuals receiving care and services from Medicare- and Medicaid-certified providers and suppliers, and CMS’ statutory authority, as outlined in section I.E. of this final rule, to establish health and safety regulations, we have been compelled to act throughout the COVID-19 pandemic. While a comprehensive discussion of CMS’ regulatory responses during the PHE is outside the scope and purpose of this final rule, we note that CMS issued several interim final rules with comment periods (IFCs) during the COVID-19 PHE to help minimize the

¹ <https://aspr.hhs.gov/legal/PHE/Pages/Public-Health-Emergency-Declaration.aspx>.

² <https://aspr.hhs.gov/legal/PHE/Pages/default.aspx>.

³ <https://www.statnews.com/2021/09/20/covid-19-set-to-overtake-1918-spanish-flu-as-deadliest-disease-in-american-history/>.

spread and impact of SARS-CoV-2. Some of these IFCs established new health and safety standards, known as the Conditions of Participation (CoPs), Conditions for Coverage (CfCs), or Requirements for Participation, for providers and suppliers who participate in the Medicare and Medicaid programs. Several of the policies in these IFCs have been further addressed in final rules and through the COVID-19 vaccination quality measures which have been proposed for adoption in multiple CMS quality reporting and payment programs (for example, the “Measures Under Consideration” (MUC) List issued by CMS on December 1, 2022). These IFCs, final rules, and quality reporting and payment programs reflect the scaled progression of CMS’ response during the COVID-19 PHE as both the science and epidemiology pertaining to COVID-19 evolved.

On September 2, 2020, we issued an IFC titled “Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency” (85 FR 54820), otherwise known as the “LTC facility testing IFC.” This IFC revised regulations to strengthen CMS’ ability to enforce compliance with Medicare and Medicaid long-term care facility requirements for reporting information related to COVID-19, established a new requirement for hospitals and critical access hospitals (CAHs) to track the incidence and impact of COVID-19, and established a new requirement for LTC facilities to test residents and staff for COVID-19 applicable for the duration of the PHE. We subsequently finalized provisions addressing the hospital and CAH COVID-19 reporting requirements in the final rule “Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2023 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Costs Incurred for Qualified and Non-Qualified Deferred Compensation Plans; and Changes to Hospital and Critical Access Hospital Conditions of Participation” on August 10, 2022 (87 FR 48780) (“FY 2023 Hospital Inpatient Prospective Payment System final rule”).

On May 13, 2021, we issued an IFC titled “Medicare and Medicaid Programs; COVID-19 Vaccine Requirements for Long-Term Care (LTC) Facilities and Intermediate Care

Facilities for Individuals with Intellectual Disabilities (ICFs–IID) Residents, Clients, and Staff” (86 FR 26306), otherwise known as the “educate and offer IFC.” This IFC revised the requirements for LTC facilities and CoPs for ICFs–IID to require the provision of COVID-19 vaccination education and to offer vaccines to residents, clients, and staff. The IFC also revised the infection control requirements for LTC facilities to include COVID-19 data reporting. We subsequently finalized data reporting requirements for LTC facilities with revisions in the final rule “Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID-19 Reporting Requirements for Long-Term Care Facilities,” published in the November 9, 2021 **Federal Register** (86 FR 62240, 62421) (“calendar year (CY) 2022 Home Health final rule”). These revisions established a sunset date for most COVID-19 reporting requirements for LTC facilities. Specifically, LTC facilities must report all required data until December 31, 2024, as determined by the Secretary.

On November 5, 2021, we issued the interim final rule “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination” (86 FR 61555), otherwise known as the “staff vaccination IFC.” This IFC revised the requirements that most Medicare- and Medicaid-certified providers and suppliers must meet to participate in the Medicare and Medicaid programs to include requirements regarding development and implementation of policies and procedures to ensure COVID-19 vaccination of staff.

Throughout the COVID-19 PHE, we implemented and revised regulations to reflect lessons learned and emerging data and knowledge to protect the health and safety of individuals that receive care and services from Medicare- and Medicaid-certified providers and suppliers. For example, the educate and offer IFC-required LTC facilities and ICFs–IID that furnish care and services to populations identified at increased risk for severe health outcomes due to COVID-19 infection, to provide COVID-19 vaccination education and to offer vaccines to residents, clients, and staff. These requirements are generally referred to as

the “educate and offer” provisions. Nonetheless, evidence continued to demonstrate that unvaccinated health care staff presented risks to patient safety across health care settings, and that too few health care staff were getting vaccinated. At the same time, the advent of a more contagious and severe variant (Delta)—and the recognition that additional variants were likely to emerge and, together with seasonal respiratory illnesses, increased the pressure on the health care system—indicated a need for CMS to take additional action.

Accordingly, we issued the staff vaccination IFC, which required most Medicare- and Medicaid-certified providers and suppliers to ensure health care staff completed their COVID-19 primary vaccine series. As discussed in the educate and offer IFC and the staff vaccination IFCs, COVID-19 vaccination is one of the most important tools in the multi-pronged approach for reducing health system burden, safeguarding health care workers and the people they serve, and mitigating the overall impact of the COVID-19 pandemic. Food and Drug Administration (FDA)-approved and FDA-authorized COVID-19 vaccines in use in the United States are both safe and highly effective at protecting vaccinated people against severe COVID-19.^{4,5}

As conditions and circumstances of the COVID-19 PHE have evolved, so too has CMS’ response. At this point in time, we believe that the risks targeted by the staff vaccination IFC have been largely addressed, so we are now aligning our approach with those for other infectious diseases, specifically influenza. Accordingly, CMS intends to encourage ongoing COVID-19 vaccination through its quality reporting and value-based incentive programs in the near future. The statute requires that the Secretary establish a pre-rulemaking process for the selection of certain quality measures for use by HHS.⁶ The pre-rulemaking process requires that HHS make publicly available, not later than December 1 annually, a list of quality and efficiency measures HHS is considering to adopt, through the rulemaking process, for use in certain Medicare quality programs and for use in publicly reported performance information in any Medicare program. This list is known as the Measures

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety.html>.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/index.html>.

⁶ See section 1890A(a) of the Act (42 U.S.C. 1395aaa–1(a)) and section 1890(b)(7)(B) of the Act (42 U.S.C. 1395aaa(b)(7)(B)).

Under Consideration (MUC) List. Table 1 shows the COVID-19 vaccination measures under consideration, as published on December 1, 2022, for patients and health care personnel, including measure title, measure description, and applicable quality programs. We note that on April 18, 2023, FDA revised the Emergency Use Authorizations (EUAs) for the Pfizer and Moderna mRNA vaccines to make several changes to the authorized dosing regimen and schedule.⁷ Among other changes, the revised EUAs for the

mRNA vaccines no longer refer to “primary series” and “booster” doses. In addition, previously unvaccinated individuals 6 years through 64 years of age (other than those with certain immunocompromising conditions) are only authorized to receive a single dose of a COVID-19 vaccine. They will not receive an mRNA “series.” These measures may be revised from their initial design but we include the MUCs here as an illustration of CMS’s interest in pursuing implementation of measures that encourage uptake of COVID-19

vaccines. The use of such quality measures may ultimately affect ratings on the various “Compare” (such as “Hospital Compare”) websites and may affect payment in various “value-based purchasing” programs, but would not affect the ability of the provider or supplier to participate in the Medicare program. Information about the MUC List is available on the CMS Measures Management System (MMS) website at <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

TABLE 1—COVID-19 VACCINATION MUC FOR USE IN CERTAIN MEDICARE QUALITY PROGRAMS AS PUBLISHED DECEMBER 1, 2022

Measure	Description	Quality programs
Adult COVID-19 Vaccination Status	Percentage of patients aged 18 years and older seen for a visit during the performance period who have ever completed or reported having ever completed a COVID-19 vaccination series and one booster dose.	Merit-based Incentive Payment System (MIPS).
COVID-19 Vaccination Coverage Among Healthcare Personnel (HCP) (2022 revision).	Percentage of healthcare personnel who are considered up-to-date on their COVID-19 vaccinations per the CDC’s latest guidance.	Ambulatory Surgical Center Quality Reporting Program (ASCQR). Hospital Inpatient Quality Reporting Program (Hospital IQR Program). Hospital Outpatient Quality Reporting Program (Hospital OQR Program). Hospital Value-Based Purchasing Program (HVBP). Hospital-Acquired Condition Reduction Program (HACRP). Inpatient Psychiatric Facility Quality Reporting Program (IPFQR). Inpatient Rehabilitation Facility Quality Reporting Program (IRFQR). Long-Term Care Hospital Quality Reporting Program (LTCHQR). Prospective Payment System-Exempt Cancer Hospital Quality Reporting Program (PCHQR). Skilled Nursing Facility Quality Reporting Program (SNFQR). End-Stage Renal Disease Quality Incentive Program (ESRD QIP). Home Health Quality Reporting Program (Home Health QR). SNFQR. IRFQR. LTCHQR.
COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date.	Percentage of patients who are considered up-to-date on their COVID-19 vaccinations per the CDC’s latest guidance.	

Quality measures would provide a means to monitor COVID-19 vaccination rates among patients and health care personnel in multiple entities across the health system, including inpatient, outpatient, congregate care, and home-based care settings. Moreover, public reporting of quality measures increases the involvement of leadership in quality improvement, creates a sense of accountability, helps to focus organizational priorities, supports transparency, and provides a means of delivering important information to consumers.⁸

As discussed further in section I.E. of this final rule, section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires that the publication of Medicare final

regulations shall not exceed 3 years after publication of the preceding proposed or interim final regulation, except under exceptional circumstances. Thus, consistent with section 902 of the MMA, the requirements of the IFCs discussed in this rule would have expired if not finalized within 3 years of publication.

As the COVID-19 pandemic has continued to evolve and circumstances have normalized, we have continued to evaluate the evolving clinical and epidemiological circumstances of the COVID-19 pandemic and the requirements issued in the IFCs, particularly those requirements that have not been finalized to date, for the purpose of determining the appropriate disposition of those requirements. The central consideration in our evaluation and determination is helping to protect the health and safety of individuals that

receive care and services from Medicare- and Medicaid-certified providers and suppliers.

This final rule addresses the disposition of regulations issued through three IFCs, specifically: the health care staff vaccination requirements issued in the staff vaccination IFC; the education and vaccine offering requirements issued in the educate and offer IFC; and the LTC testing IFC. Due to the broad scope and scale of the Omnibus COVID-19 Health Care Staff Vaccination IFC (staff vaccination IFC), we discuss it as the primary focus for policies addressed in this rule. Thus, throughout this document, we address the staff vaccination IFC first followed by the educate and offer IFC and the LTC testing IFC.

⁷ <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda->

[authorizes-changes-simplify-use-bivalent-mrna-covid-19-vaccines.](https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-)

⁸ <https://qualitynet.cms.gov/inpatient/public-reporting/public-reporting>.

B. Omnibus COVID-19 Health Care Staff Vaccination

On November 5, 2021, we published the staff vaccination IFC, which revised the health and safety requirements that most providers and suppliers must meet to participate in the Medicare and Medicaid programs. The revisions established requirements regarding COVID-19 staff vaccination for the Medicare- and Medicaid-certified providers and suppliers included in the IFC. The following providers and suppliers were regulated by the staff vaccination IFC, listed in the numerical order of the relevant Code of Federal Regulations (CFR) sections:

- Ambulatory Surgical Centers (ASCs)—§ 416.51(c).
- Hospices—§ 418.60(d).
- Psychiatric Residential Treatment Facilities (PRTFs)—§ 441.151(c).
- Programs of All-Inclusive Care for the Elderly (PACE) Organizations—§ 460.74(d).
- Hospitals (acute care hospitals, psychiatric hospitals, hospital swing beds, long term care hospitals, children's hospitals, transplant centers, cancer hospitals, and rehabilitation hospitals/inpatient rehabilitation facilities)—§ 482.42(g).
- LTC Facilities, including skilled nursing facilities (SNFs) and nursing facilities (NFs), generally referred to as nursing homes—§ 483.80(i).
- ICFs—IID—§ 483.430(f).
- Home Health Agencies (HHAs)—§ 484.70(d).
- Comprehensive Outpatient Rehabilitation Facilities (CORFs)—§ 485.70(n).
- Critical Access Hospitals (CAHs)—§ 485.640(f).
- Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-language Pathology Services (Organizations)—§ 485.725(f).
- Community Mental Health Centers (CMHCs)—§ 485.904(c).
- Home Infusion Therapy (HIT) Suppliers—§ 486.525(c).
- Rural Health Clinics (RHCs) and Medicare Federally Qualified Health Centers (FQHCs)—§ 491.8(d).
- End-Stage Renal Disease (ESRD) Facilities—§ 494.30(b).

We discuss the specific requirements of the staff vaccination IFC in section II.A. of this rule. In section III.A. of this final rule, we address the public comments submitted to CMS regarding the staff vaccination IFC. We then discuss the withdrawal of regulations pertaining to the staff vaccination IFC in section IV.A. of this rule.

While the requirements established by the staff vaccination IFC were necessary

to protect the health and safety of residents, clients, patients, and PACE Organization participants at the time of publication, circumstances of the COVID-19 pandemic have evolved, as has CMS' response, as discussed throughout this rule. As mentioned above, based on an evaluation of the evolving clinical and epidemiological circumstances of the COVID-19 pandemic, increased vaccine uptake, declining infection and death rates, decreasing severity of disease, increased instances of infection-induced immunity, public comments submitted to CMS, and the addition of COVID-19 vaccination quality measures to quality improvement and reporting programs, we believe regulations regarding COVID-19 vaccination of health care staff are no longer necessary. Therefore, in this rule, we are withdrawing language on COVID-19 health care staff vaccination requirements issued in the staff vaccination IFC. COVID-19 vaccination policies and procedures for health care staff will no longer be required under the CoPs, CfCs, and requirements.

C. COVID-19 Vaccine "Educate and Offer" Requirements for LTC Facilities and ICFs—IID

On May 13, 2021, CMS issued the educate and offer IFC, which revised the health and safety requirements that LTC facilities and ICFs—IID must meet to participate in the Medicare and Medicaid programs. The IFC established requirements that these facilities provide COVID-19 vaccination education to residents, clients, and staff, and to offer COVID-19 vaccines to these populations, referred to as the "educate and offer" provisions. The IFC also established additional infection control requirements for LTC facilities, as well as requirements to report certain COVID-19 data: these requirements have already been finalized through previous rulemaking (86 FR 62240).⁹ We discuss these educate and offer provisions of the IFC in section II.B. of this rule. In section III.B. of this final rule, we address the public comments submitted to CMS regarding the educate and offer provisions. We then discuss the final regulatory changes pertaining to the educate and offer provisions in section IV.B. of this final rule.

Individuals living in congregate care settings, such as LTC facilities and ICFs—IID, are at greater risk than the general population for contracting

SARS-CoV-2 and developing severe health outcomes due to COVID-19,^{10 11} and they rely on facility staff to provide for their daily needs, including access to health care services such as vaccination. As discussed in section III.B. of this rule, public commenters acknowledge these risks. Consistent with our approach to staff vaccinations for COVID-19, we are moving to align our approach with existing regulations addressing other infectious diseases, such as influenza and pneumococcal disease. Therefore, we are finalizing the educate and offer requirements on a permanent basis. This complements the proposed adoption of the "COVID-19 Vaccine: Percent of Patients/Residents Who are Up to Date (Patient/Resident COVID-19 Vaccine) measure" and the "COVID-19 Vaccination Coverage among Healthcare Personnel (HCP COVID-19 Vaccine) measure" as issued in the "Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities (SNF); Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2024" proposed rule (88 FR 21316) ("2024 SNF Prospective Payment System proposed rule"). Given that the educate and offer provisions are existing requirements for LTC facilities and ICFs—IID, the requirements will remain effective after the publication date of this final rule.

D. COVID-19 Testing Requirement for LTC Facilities

On September 2, 2020, CMS published the LTC facility testing IFC, which revised the infection control requirements that LTC facilities must meet to participate in the Medicare and Medicaid programs. This IFC established requirements applicable for the duration of the PHE for LTC facilities to test their staff and residents for COVID-19 based on parameters set forth by the Secretary in a manner consistent with current professional standards of practice. This IFC also established COVID-19 reporting requirements for hospitals and CAHs which have been finalized through previous rulemaking (87 FR 48780). As previously discussed, LTC facility residents are more susceptible to contracting COVID-19 and developing severe symptoms. This highlights the

¹⁰ https://www.cdc.gov/coronavirus/2019-ncov/your-health/understanding-risk.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Findex.html.

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/community-congregate-living-settings.html>.

⁹ <https://www.federalregister.gov/documents/2021/11/09/2021-23993/medicare-and-medicaid-programs-cy-2022-home-health-prospective-payment-system-rate-update-home>.

importance of practicing preventative measures in order to mitigate the risk of transmission and control the spread of COVID-19 among residents and staff of LTC facilities. At the time of publication, these provisions were necessary to protect the health and safety of both residents and health care personnel of LTC facilities, as there were limited treatments for COVID-19 and vaccines were not yet available. As the COVID-19 PHE has concluded, we are deleting expired text related to the LTC facility testing requirements effective the publication date of this final rule.

CMS continues to emphasize the importance of practicing preventative measures in order to reduce the transmission of COVID-19. Moving forward, CMS aims to use quality reporting and value-based incentive programs to encourage health care facilities to practice preventative measures against COVID-19. We discuss

the LTC facility testing requirements of the IFC in section II.C. of this rule. In section III.C. of this final rule, we address the public comments submitted to CMS regarding the LTC facility testing requirements. We then discuss the final regulatory changes pertaining to the educate and offer provisions in section IV.C. of this final rule.

E. Statutory Authority

Various sections of the Social Security Act (the Act) define the types of providers and suppliers that may participate in Medicare and Medicaid programs and list the requirements that each provider and supplier must meet to be eligible for participation. Statutory provisions applicable to each provider or supplier type either authorize the Secretary to establish other requirements as necessary to protect the health and safety of patients or, in some cases, to establish such additional criteria as the Secretary may require.

Although the wording of such authority differs slightly between provider and supplier types, we have interpreted all of these provisions as at minimum permitting the Secretary to establish mandatory requirements to enhance the health and safety of patients. In addition, parallel Medicaid statutes provide authority to establish requirements to protect the health and safety of patients. Such requirements include the CoPs for providers, CfCs for suppliers, and requirements for LTC facilities. The CoPs, CfCs, and requirements are intended to protect public health and safety and promote high-quality care for all persons. Furthermore, the PHSA sets forth additional regulatory requirements that certain Medicare providers and suppliers are required to meet in order to participate. Table 2 lists the statutory authority by provider and supplier type for which we are issuing the requirements in this final rule:

TABLE 2—STATUTORY AUTHORITY BY PROVIDER AND SUPPLIER TYPE

Provider and supplier type	Statutory authority
Ambulatory Surgical Centers (ASCs)	Sections 1832(a)(2)(F)(i), and 1833 (i)(1)(A) of the Act.
Hospices	Section 1861(dd) of the Act.
Psychiatric Residential Treatment Facilities (PRTFs)	Section 1905(h)(1) of the Act.
Programs of All-Inclusive Care for the Elderly (PACE) Organizations	Sections 1894(f), and 1934(f) of the Act.
Hospitals	Section 1861(e)(9) of the Act.
Long Term Care (LTC) Facilities	Sections 1819(d)(4)(B), 1819(f)(1), and 1919(d)(4)(B) and (f)(1) of the Act.
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID).	Section 1905(d)(1) of the Act.
Home Health Agencies (HHAs)	Sections 1861(m), 1861(o), and 1891 of the Act.
Comprehensive Outpatient Rehabilitation Facilities (CORFs)	Section 1861(cc)(2)(J) of the Act.
Critical Access Hospitals (CAHs)	Section 1820(e) of the Act.
Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services (Organizations).	Section 1861(p)(4)(A)(v) of the Act.
Community Mental Health Centers (CMHCs)	Sections 1861(ff)(3)(b)(iv), 1832(a)(2)(J), and 1866(e)(2) of the Act.
Home Infusion Therapy (HIT) Suppliers	Section 1861(iii)(3)(D)(i)(IV) of the Act.
Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs).	Sections 1861(aa) and 1905(l)(2)(B) of the Act.
End-Stage Renal Disease (ESRD) Facilities	Section 1881(b)(1)(A) of the Act.

We note that the appropriate term for an individual receiving care and services differs depending upon the provider or supplier type. For example, for hospitals and CAHs, the appropriate term is “patient,” but for ICFs-IID, it is “client.” Further, LTC facilities have “residents” and PACE Organizations have “participants.” In this final rule, the appropriate terms are used when discussing one or two provider or supplier types; however, when we are discussing three or more provider and supplier types, we use the general term “patient.” Similarly, despite the different terms used for specific provider and supplier entities (such as campus, center, clinic, facility,

organization, or program), when we are discussing three or more provider and supplier types, we use the general term “facility.”

F. Requirements for Issuance of Regulations

Section 902 of the MMA amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may

vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule withdraws the regulatory provisions set forth on November 5, 2021, in the Omnibus COVID-19 Health Care Staff Vaccination IFC and deletes expired provisions set forth on May 13, 2021, in the LTC facility testing IFC. Also, this final rule finalizes the “educate and offer” provisions set forth on May 13, 2021, in the COVID-19 Vaccine Requirements for LTC Facilities and ICFs-IID Residents, Clients, and Staff IFC. This final rule has been published

within the 3-year time limit imposed by section 902 of the MMA.

G. Enforcement of Staff Vaccination Provisions

Federal rules generally become effective 60 days after publication; however, the COVID-19 PHE expired on May 11, 2023. Our decision to terminate the omnibus facility staff vaccination requirements in this final rule reflect our determination that the emergency circumstances which occasioned these vaccination provisions no longer exist. Since facilities are no longer operating under PHE circumstances, and considering the lower policy priority of enforcement within the remaining time, we will not be enforcing the staff vaccination provisions between now and August 4, 2023.

II. Provisions of the Interim Final Regulations

In this section, we review the requirements issued in the staff vaccination IFC, the educate and offer IFC, and the LTC facility testing IFC. In section II.A. of this rule, we summarize and discuss the requirements of the staff vaccination IFC. We then summarize and discuss the educate and offer provisions in the educate and offer IFC in section II.B. of this final rule. Lastly, we summarize and discuss the LTC testing IFC in section II.C. of this final rule.

A. Omnibus COVID-19 Health Care Staff Vaccination

As discussed in section I. of this rule, we established COVID-19 staff vaccination requirements for most Medicare- and Medicaid-certified providers and suppliers in an IFC published in November 2021. Those provisions reflected a common set of requirements with no substantive regulatory differences across facility types, added to the CoPs, CfCs, and requirements, as applicable, under the relevant CFR section as listed in section I.B. of this final rule. Next, we briefly discuss these common provisions. We then discuss any additional revisions for specific provider and supplier types issued by CMS in the staff vaccination IFC due to unique circumstances.

1. Common Requirements in the Staff Vaccination IFC

The IFC requires each applicable facility to develop and implement policies and procedures under which staff complete a primary COVID-19 vaccine series. Those vaccination policies and procedures must apply to current and new staff, to include volunteers and individuals under

contract or arrangement, that provide any care, treatment, or other services for the facility or its patients, regardless of clinical responsibility or degree of anticipated patient contact. Vaccination is required for all staff that interact with other staff or patients in any location, such as clinics, homes, or other sites of care and services.

As discussed in the IFC, some staff are not subject to the vaccination requirements, including but not limited to those who provide services 100 percent remotely and “one-off” vendors, volunteers, and professionals who infrequently provide ad hoc non-health care services, such as annual elevator inspection, delivery, and repair personnel. When determining whether to require COVID-19 vaccination of an individual who does not clearly fall within the classification of staff, we encouraged facilities to consider frequency of presence, services provided, and proximity to patients and staff. We also strongly encouraged facilities to facilitate the vaccination of all individuals who provide services infrequently and are not otherwise subject to the requirements in the IFC to the extent opportunity exists and resources allow.

In the IFC, we required facilities to ensure that staff are “fully vaccinated” for COVID-19, defined as 2 weeks or more since completion of a primary vaccination series. We also required facilities to have a process for tracking and securely documenting the COVID-19 vaccination status of staff who obtain any booster doses as recommended by the CDC. For those staff who are not “fully vaccinated” for COVID-19, we required facilities to establish and implement a process that provides additional precautions to minimize the spread of COVID-19.

The IFC required facilities to track and securely document the vaccination status of each staff member. All medical records, including vaccine documentation, were to be kept confidential and stored separately from an employer’s personnel files, pursuant to the Americans with Disabilities Act (ADA) and the Rehabilitation Act.

We described these documentation requirements in the IFC as an ongoing process due to the onboarding of new staff, and we provided examples of: (1) appropriate places for vaccine documentation, such as an immunization record, health information files, or other relevant documents; and (2) acceptable forms of proof of vaccination, such as a CDC COVID-19 vaccination record card (or a legible photo of the card) or documentation of vaccination from a

health care provider, electronic health record, State immunization information system record, or a reasonable equivalent for those individuals vaccinated outside of the United States.

Further, through the IFC, we required facilities to establish and implement a process by which staff may request an exemption from the COVID-19 vaccination requirement based on: (1) an applicable Federal law, such as the ADA, section 504 of the Rehabilitation Act, section 1557 of the Affordable Care Act (ACA), and Title VII of the Civil Rights Act that prohibit discrimination based on race, color, national origin, religion, disability, and sex, including pregnancy; and (2) recognized clinical contraindications to receipt of a COVID-19 vaccine. Facilities had to have a process for collecting and evaluating exemption requests, including tracking and securely documenting the required information.

We acknowledged in the IFC that certain allergies or medical conditions may be clinical contraindications to receiving a COVID-19 vaccine, and we referred facilities to the CDC page “Use of COVID-19 Vaccines in the United States: Interim Clinical Considerations” which can be accessed at <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>. The IFC required facilities to make contingency plans in consideration of staff who are not “fully vaccinated” to ensure that those staff will soon be vaccinated and will not provide care, treatment, or other services for the facility or its patients until such time as those staff complete a primary vaccination series for COVID-19 and are considered “fully vaccinated.” This planning must also address the safe provision of care and services by staff who request an exemption from vaccination that is under consideration and by staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical reasons.

We discussed in the IFC that contingency planning may extend beyond the specific requirements of the rule, to address topics such as staffing agencies that can supply vaccinated staff if some of a facility’s staff are unable to work. We also discussed special precautions to be taken in the event of, for example, a regional or local emergency declaration, such as for a hurricane or flooding, which necessitated the temporary utilization of unvaccinated staff, in order to assure the health and safety of patients. We also acknowledged in the IFC that facilities may already have contingency plans that meet the requirements in their

existing emergency preparedness policies and procedures.

2. Additional Requirements in the Staff Vaccination IFC for Specific Provider and Supplier Types

In addition to the common set of provisions issued in the staff vaccination IFC for all applicable facility types, we varied specific provisions of the regulations, where applicable, for specific provider and supplier types. These various provisions for specific provider and supplier types were necessary due to the unique content of regulations in place at the time the staff vaccination IFC was published, for Psychiatric Residential Treatment Facilities (PRTFs), HIT suppliers, RHCs/FQHCs; LTC facilities and ICFs–IID; and CORFs.

As discussed in the staff vaccination IFC, PRTFs, HIT Suppliers, and RHCs/FQHCs did not have specific infection control and prevention regulations at the time the IFC was published. Therefore, for PRTFs at § 441.151(c)(3)(iii), HIT suppliers at § 486.525(c)(3)(iii), and RHCs/FQHCs at § 491.8(d)(3)(iii), we required a process for ensuring adherence to nationally recognized infection prevention and control guidelines intended to mitigate the transmission and spread of COVID–19. This process included the implementation of additional precautions for all staff who were not fully vaccinated for COVID–19.

At the time the staff vaccination IFC was published, LTC facilities had existing regulations at § 483.80(d)(3)(v) that required facilities to educate all residents and staff about the COVID–19 vaccines and to offer the vaccines, when available. Likewise, at the time the IFC was published, ICFs–IID had existing regulations at § 483.460(a)(4)(v) that required facilities to educate all clients and staff about the COVID–19 vaccines and to offer the vaccine, when available. As discussed in section I. of this final rule, those requirements were established by the educate and offer IFC. In the staff vaccination IFC, we revised these requirements by removing language that could have been interpreted as a path by which staff members in LTC facilities and ICFs–IID could bypass the facility’s vaccination policies and procedures. This change was necessary because retaining that language originally established by the educate and offer IFC would have been inconsistent with the goals of the staff vaccination IFC. In this final rule, we are finalizing the education and offering provisions of the educate and offer IFC, as amended by the staff vaccination IFC, and we refer readers to sections I., II.B.,

III.B., IV.B., V.B, and VI.B. of this final rule for additional information.

Regulations in place at the time that the staff vaccination IFC was published for CORFs at 42 CFR 485.70(a) through (m) identified the qualifications required for personnel, including facility physician, licensed practical nurse, occupational therapist, occupational therapist assistant, orthotist, physical therapist, physical therapist assistant, prosthetist, psychologist, registered nurse, rehabilitation counselor, respiratory therapist, respiratory therapy technician, social worker, and speech-language pathologist. In addition, regulations at § 485.58(d)(4) stated that personnel who do not meet the qualifications specified in § 485.70 may be used by the facility in assisting qualified staff. In the staff vaccination IFC, we added § 485.70(n) which requires CORFs to develop and implement policies and procedures to ensure COVID–19 vaccination of all facility staff. As discussed in the IFC, we recognize that assisting personnel are used by CORFs, and we established our requirements at § 485.70(a) through (m) to provide a role for personnel that might not meet our education and experience qualifications. However, we did not believe this exception for employees who did not meet our professional requirements should have prohibited us from issuing staff qualifications referencing infection prevention, which we intended to apply to all personnel. Therefore, in the staff vaccination IFC, we revised § 485.58(d)(4) to state that personnel who did not meet the qualifications specified in § 485.70(a) through (m) may be used by the facility in assisting qualified staff.

As noted previously in this rule, we are withdrawing the provisions of the staff vaccination IFC.

B. COVID–19 Vaccine “Educate and Offer” Requirements for LTC Facilities and ICFs–IID Residents, Clients, and Staff

As discussed in section I. of this final rule, on May 13, 2021, CMS issued the educate and offer IFC. This IFC revised the requirements for LTC facilities and CoPs for ICFs–IID to provide COVID–19 vaccination education and to offer vaccines to residents, clients, and staff, otherwise known as the “educate and offer” provisions. This IFC also established requirements for COVID–19 data reporting in LTC facilities.

Subsequently, in the “Medicare and Medicaid Programs; CY 2022 Home Health Prospective Payment System Rate Update; Home Health Value-Based

Purchasing Model Requirements and Model Expansion; Home Health and Other Quality Reporting Program Requirements; Home Infusion Therapy Services Requirements; Survey and Enforcement Requirements for Hospice Programs; Medicare Provider Enrollment Requirements; and COVID–19 Reporting Requirements for Long-Term Care Facilities” final rule (86 FR 62240), we finalized the LTC facility reporting requirements from the educate and offer IFC at § 483.80(g)(1) through (3) with some minor modifications.¹² Given that this final rule addresses only the “educate and offer” provisions of the IFC, this section provides a summary of those specific requirements.

1. LTC Facilities

For LTC facilities, the educate and offer IFC established 42 CFR 483.80(d)(3) COVID–19 immunizations, under which facilities must develop and implement policies and procedures to ensure that all of the requirements set forth in that section are followed. Before offering a COVID–19 vaccine, all residents, resident representatives, and staff members are provided with education regarding the benefits, risks, and potential side effects associated with the vaccine. When a COVID–19 vaccine is available to the facility, each resident and staff member is offered a COVID–19 vaccine unless the immunization is medically contraindicated or the resident or staff member has already been immunized. In situations where COVID–19 vaccination requires multiple doses, the resident, resident representative, or staff member is provided with current information regarding those additional doses, including any changes in the benefits or risks and potential side effects associated with the COVID–19 vaccine, before requesting consent for administration of any additional doses.

The regulation states that the resident or resident representative has the opportunity to accept or refuse a COVID–19 vaccine and change their decision. The original regulatory provisions as issued by the educate and offer IFC also permitted staff members to refuse vaccination. However, as discussed in section II.A. of this final rule, the reference to staff members in the refusal provision at § 483.80(d)(3)(v) was removed by the staff vaccination IFC published November 5, 2021. The resident’s medical record is documented to reflect, at a minimum, that the

¹² <https://www.federalregister.gov/documents/2021/11/09/2021-23993/medicare-and-medicicaid-programs-cy-2022-home-health-prospective-payment-system-rate-update-home>.

resident or resident representative was provided education regarding the benefits and potential risks associated with COVID-19 vaccine; each dose of COVID-19 vaccine administered to the resident; or, if the resident did not receive a COVID-19 vaccine due to medical contraindications or refusal. For staff members, the facility maintains documentation related to COVID-19 vaccination that includes, at a minimum, that staff were provided education regarding the benefits and potential risks associated with COVID-19 vaccines; were offered a COVID-19 vaccine or information on obtaining a COVID-19 vaccine; and the COVID-19 vaccine status of staff and related information as indicated by the CDC's National Healthcare Safety Network (NHSN).

In this final rule, we are finalizing the infection control requirements that LTC facilities must meet to participate in the Medicare and Medicaid programs as issued in the educate and offer IFC and amended by the staff vaccination IFC. By doing so, LTC facilities must continue to educate residents, resident representatives, and staff about COVID-19 vaccines and offer a COVID-19 vaccine to residents, resident representatives, and staff, as well as complete the appropriate documentation for these activities. This aligns with the newly-proposed resident and patient vaccination measures as proposed in the 2024 SNF Prospective Payment System proposed rule.¹³

Since the COVID-19 pandemic began, many States have passed laws regarding COVID-19 vaccination.¹⁴ Some States have required various individuals to take the vaccine while other States have prohibited the requirement of COVID-19 vaccination. Since LTC facility staff may be required to take a COVID-19 vaccine in some States, or by some employers, we believe it is inappropriate to include explicit permission to refuse in the regulations. In addition, as we noted in the staff vaccination IFC, retaining this language would be contrary to the goals of that IFC, which included protecting the health and safety of residents, clients, and staff. Hence, we are finalizing the provision as amended by the staff vaccination IFC, which provides, at § 483.80(d)(3)(vii) that the facility

¹³ <https://www.cms.gov/newsroom/fact-sheets/fiscal-year-fy-2024-skilled-nursing-facility-prospective-payment-system-proposed-rule-cms-1779-p>.

¹⁴ Pekruhn, D and Abbasi, E. "Vaccine Mandates by State: Who is, Who isn't, and How?" Leading Age. <https://leadingage.org/workforce-vaccine-mandates-state-who-who-isnt-and-how/>. Published on January 19, 2022. Accessed on January 17, 2023.

maintains documentation related to staff COVID-19 vaccination. The documentation must include, at a minimum, evidence that staff were informed about the risks and benefits of the COVID-19 vaccine. The facility must also document that staff were either offered the COVID-19 vaccine or provided with information on acquiring the COVID-19 vaccine. Lastly, the staff's COVID-19 vaccine statuses and any associated information must be documented and reported to the NHSN as indicated by CDC.

2. ICFs-IID

For ICFs-IID, the educate and offer IFC established § 483.430(f), "COVID-19 Vaccination of facility staff," and § 483.460(a)(4), the educate and offer provisions. Section 483.430(f) requires that each ICF-IID maintain documentation related to its staff that includes, at a minimum, documentation that the staff were provided education regarding the benefits and risks and potential side effects associated with the COVID-19 vaccine and were offered a COVID-19 vaccine or information on obtaining the COVID-19 vaccine. Section 483.460(a)(4) requires each ICF-IID to develop and implement policies and procedures to ensure that when a COVID-19 vaccine is available to the facility; each client and staff member is offered the COVID-19 vaccine unless the immunization is medically contraindicated or the client or staff member has already been immunized. Before offering a COVID-19 vaccine, all staff members, clients, and client representatives must be provided with education regarding the benefits and risks and potential side effects associated with the vaccine. In situations where COVID-19 vaccination requires multiple doses, the client, client's representative, or staff member must be provided with current information regarding each additional dose, including any changes in the benefits or risks and potential side effects associated with a COVID-19 vaccine, before requesting consent for administration of each additional doses. The regulation states that the client or client's representative has the opportunity to accept or refuse a COVID-19 vaccine and change their decision. The original regulatory provisions as issued by the educate and offer IFC also permitted staff members to refuse vaccination. However, as discussed in section II.A. of this final rule, the reference to staff members in the refusal provision at § 483.8460(a)(4)(v) was removed by the staff vaccination IFC published November 5, 2021. The ICF-IID must

also ensure that the client's medical record is documented with, at a minimum, that the client or client's representative was provided education regarding the benefits and risks and potential side effects of COVID-19 vaccine and each dose of a COVID-19 vaccine administered to the client. The ICF-IID must also document if the client did not receive a COVID-19 vaccine due to medical contraindications or refusal.

In this final rule, we are finalizing the requirements for COVID-19 vaccination of facility staff and "educate and offer" process that ICFs-IID must meet to participate in the Medicare and Medicaid programs, as first set out in the educate and offer IFC and amended by the staff vaccination IFC. By doing so, ICFs-IID must continue to educate clients, client representatives, and staff about COVID-19 vaccines and offer a COVID-19 vaccine to residents and staff, as well as document these activities.

Since the COVID-19 pandemic began, and as noted above for LTC facilities, many States have passed laws regarding COVID-19 vaccination.¹⁵ Some States have required various individuals to take the vaccine while other States have prohibited requiring COVID-19 vaccination. Since ICF-IID staff may be required to take a COVID-19 vaccine in some States, or by some employers, we believe it is inappropriate to include explicit permission to refuse in the regulations. As we stated above in section II.B.1. of this final rule, reinstating language that directly allows staff to refuse a COVID-19 vaccine would be contrary to the goals of these IFCs, to protect the health and safety of clients and staff in ICFs-IID. One's ability to be exempt from a vaccination requirement per another statute (such as the ADA) is outside the scope and authority of this rulemaking. Hence, we are finalizing the refusal provision as amended by the staff vaccination IFC.

C. COVID-19 Testing Requirement for LTC Facilities

In the LTC facility testing IFC, we revised the LTC facility infection control requirements applicable for the duration of the PHE at § 483.80 to establish a new, term-limited requirement that LTC facilities to test their facility residents and staff for COVID-19, including individuals providing services under arrangement and volunteers. We required that resident and staff testing in LTC

¹⁵ Pekruhn, D and Abbasi, E. "Vaccine Mandates by State: Who is, Who isn't, and How?" Leading Age. <https://leadingage.org/workforce-vaccine-mandates-state-who-who-isnt-and-how/>. Published on January 19, 2022. Accessed on January 17, 2023.

facilities for COVID-19 be conducted based on parameters set forth by the Secretary, applicable during the COVID-19 PHE. These requirements were established in accordance with CDC guidelines titled, Testing Guidelines for Nursing Homes, which explains the high risk of infection, illness, and death for LTC residents and the importance of testing in order to prevent COVID-19 from entering LTC facilities and preventing transmission.¹⁶ Under this requirement, “staff” are considered any individuals employed by the facility, any individuals that have arrangements to provide services for the facility, and any individuals volunteering at the facility. We explained that we only expected individuals who were physically working on-site at the facility to be required to be tested for COVID-19.

At § 483.80(h)(1), we required that resident and staff testing for COVID-19 be conducted based on parameters set forth by the Secretary. These parameters may have included but were not limited to: testing frequency; the identification of any facility resident or staff diagnosed with COVID-19 in the facility; the identification of any facility resident or staff with symptoms consistent with COVID-19 or with known or suspected exposure to COVID-19; the criteria for conducting testing of asymptomatic individuals specified in this paragraph, such as the positivity rate of COVID-19 in a county; the response time for results; and other factors specified by the Secretary that help identify and prevent the transmission of COVID-19. At § 483.80(h)(2), we required that all residents and staff testing be conducted in a manner consistent with current professional standards of practice for conducting COVID-19 tests. This referred to those professional standards that apply at the time that the care or service is delivered, which we acknowledge have evolved and changed over the course of the COVID-19 pandemic. At § 483.80(h)(3)(i), we required that for each instance of resident or staff COVID-19 testing, which included testing of individuals providing services under arrangement and volunteers, the facility document that testing was completed and the results of each staff test. This documentation would have been located in the staff personnel record or the record or file that the facility maintains

for individuals who are providing services under arrangement at the facility. Consistent with the documentation requirements we established for LTC facility staff, we required at § 483.80(h)(3)(ii) that the facility document in the resident’s medical record that testing was offered, completed (as appropriate to the resident’s testing status), and the results of each test. Due to the high transmission rate of COVID-19, we required at § 483.80(h)(4) that the facility take actions to prevent the transmission of COVID-19 when a resident or staff member, including individuals providing services under arrangement and volunteers, presented with symptoms consistent with COVID-19 or who tested positive for COVID-19. We expected facilities to restrict the access to the facility for any staff member—including individuals providing services under arrangement and volunteers—who presented with symptoms consistent with COVID-19 or who tested positive for COVID-19 until they were deemed to be safe to return to work. We expected facilities to take measures, including resident cohorting, to mitigate the transmission of the virus within the facility when facility residents presented with symptoms consistent with COVID-19 or who tested positive for COVID-19.

We acknowledge that residents and staff may not have consented to being tested for COVID-19. Therefore, at § 483.80(h)(5) we required that the facility have procedures for addressing residents and staff, including individuals providing services under arrangement and volunteers, who refused or were unable to test for the virus. We required at § 483.80(h)(6) that the LTC facility coordinate with state and local health departments and Tribal representatives regarding the availability and obtaining of testing supplies and processing test results when necessary. Facilities may also have coordinated with their local certified laboratories covered under Clinical Laboratory Improvement Amendments (CLIA) on the availability of and obtaining of testing supplies and the processing of test results. Access to adequate testing supplies and arrangements for acquiring testing supplies must have been addressed by the facility’s infection prevention and control plan. The testing plan must have included any arrangements that were necessary to conduct, process, and receive test results prior to the administration of the required tests. Since the conclusion of the PHE on May

11, 2023, these requirements are no longer applicable.

III. Analysis of and Responses to Public Comments

In this section, CMS discusses the public comments received for the COVID-19 testing requirement for LTC facilities, the staff vaccination IFC, and the “educate and offer” provisions of the COVID-19 Vaccine Requirements for LTC Facilities and ICFs—IID Residents, Clients, and Staff IFC (educate and offer IFC), published September 2, 2020, November 5, 2021, and May 21, 2021, respectively. We received public comments in response to all three IFCs, which we summarize and discuss in this section.

In this final rule, we are withdrawing the health care staff COVID-19 vaccination provisions issued in the staff vaccination IFC and deleting the expired COVID-19 testing provisions of the LTC testing IFC. We are also finalizing the COVID-19 “educate and offer” provisions established in the educate and offer IFC. In this section we provide a summary of the public comments received and responses to them, and the policies we are finalizing. In section III.A. of this final rule, we discuss the comments and responses pertaining to the COVID-19 health care staff vaccination requirements. In section III.B. of this final rule, we discuss the comments and responses regarding the requirements for LTC facilities and ICFs—IID to educate residents, clients, and staff about COVID-19 vaccines and to offer COVID-19 vaccines when available. Lastly, in section III.C. of this final rule, we discuss the comments and responses concerning the COVID-19 testing requirements for LTC facilities. Due to the high volume of public comments, we have grouped them by themes and similarities for analysis and response.

A. Omnibus COVID-19 Health Care Staff Vaccination (§§ 416.51(c), 418.60(d), 441.151(c), 460.74(d), 482.421(g), 483.80(d)(3)(v) and (i), 483.430(f), 483.460(v), 484.70(d), 485.58(d)(4), 485.70(n), 485.640(f), 485.725(f), 485.904(c), 486.525(c), 491.8(d), 494.30(b))

In response to this IFC, we received approximately 10,102 timely public comments. Of these, roughly 2/3 were virtually identical letters from individuals from around the country urging CMS to retract the rule. Of the remaining 3,175 unique comments, the majority were from individuals, while over 500 of those unique comments were from industry groups or individual commenters who were commenting as

¹⁶ https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Flong-term-care.html.

representatives of organizations, companies, and other entities. About 2,000 of these unique comments opposed the regulation, while the remainder of the commenters supported the regulation, some offering suggestions as to how CMS could improve the requirements. A summary of the major themes addressed by commenters and our responses follow.

Comment: A significant minority of commenters agreed with our goal to ensure patient health and safety by establishing a COVID-19 health care staff vaccination requirement. Commenters stated that COVID-19 vaccination is evidence-based, safe, and the best way to prevent serious illness, hospitalization, death, and spread of infection. They indicated that vaccination of health care staff will provide much-needed workforce stability to the health care industry while decreasing demands associated with providing care to health care workers who contract COVID-19. Some of these commenters stated that patients who had delayed receiving care due to concerns of contracting COVID-19 during the provision of their care would now be able to obtain the care they needed. Some of these commenters recommended expanding the scope of the COVID-19 vaccination regulation to include other settings in which health care is provided, such as physician offices and others. Other commenters recommended that in addition to the primary vaccination series, the regulation should require boosters, which provide ongoing protection against COVID-19.

Response: We appreciate the support from commenters and agree that a requirement for COVID-19 vaccination of health care staff was necessary to ensure timely access to care for patients. We also agree that the COVID-19 PHE placed unprecedented, challenging circumstances on the health care industry, and vaccination of health care staff lessened disruptions to care and operations. We commend health care facilities and their staff for their efforts throughout the COVID-19 pandemic, and we share a common commitment to assuring high-quality and safe care for patients, residents, clients, and participants.

As noted in the IFC, the regulation applied only to those Medicare- and Medicaid-certified providers and suppliers listed. The IFC did not directly apply to other health care entities, such as physician offices, because those settings are not regulated by CMS. Most States have separate licensing requirements for health care staff and health care providers that

would be applicable to physician office staff and other staff in small health care entities that were not subject to the vaccination requirements in the IFC. We also noted that health care and other entities providing services under contract for a Medicare- and Medicaid-certified provider and supplier listed in the IFC were indirectly subject to the requirements of the rule. Moreover, we noted that entities not covered by the IFC may have been subject to other vaccination requirements, such as those issued by State governments for certain types of workplaces.

We thank commenters for recognizing the importance of staying up-to-date with COVID-19 vaccines and boosters. Boosters have been an important part of protecting people from getting seriously ill or dying from COVID-19.¹⁷ Additionally, the newer bivalent vaccines contain an Omicron component to offer better protection against COVID-19 caused by the Omicron variant and its subvariants than the earlier, monovalent vaccines. In April 2023, the EUAs for the bivalent vaccines were revised to simplify the vaccination schedule for most individuals, which included authorizing the current bivalent vaccines for all doses administered to individuals 6 months of age and older, including for an additional dose or doses for certain populations.^{18 19} All individuals aged >6 months are recommended to receive at least one dose of bivalent vaccine for COVID-19 under current recommendations.²⁰ Additional information regarding vaccine guidance can be found at <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html>.

At the time the IFC was issued, the CDC did not include boosters in their definition of “fully vaccinated.” Instead, a person was considered to be fully vaccinated 2 weeks after receiving the last dose of a primary vaccine series.²¹ Since the IFC was issued, CDC shifted to using the terminology “up to date”. Individuals 6 years of age and older are considered “up to date” when they have

¹⁷ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>.

¹⁸ <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-authorizes-changes-simplify-use-bivalent-mrna-covid-19-vaccines>.

¹⁹ <https://www.yalemedicine.org/news/covid-19-variants-of-concern-omicron#:~:text=Omicron%20and%20its%20subvariants,and%20multiply%20in%20other%20countries>.

²⁰ <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html> (accessed May 1, 2023).

²¹ <https://www.cdc.gov/media/releases/2021/p0308-vaccinated-guidelines.html>.

received one updated Pfizer-BioNTech or Moderna COVID-19 vaccine.²² As of May 2, 2023, the CDC recommends that individuals 6 months of age and older receive a dose of updated (bivalent) vaccine. Certain individuals, depending on age and level of immunocompromise, may receive additional doses.^{23 24}

We agree with commenters that vaccines continue to be one of the most effective preventative practices against severe COVID-19; however, the effectiveness of the “original” or monovalent vaccines to prevent severe COVID-19 hospitalization and death has remained high, effectiveness to prevent less severe disease has diminished. As previously noted, for reasons discussed throughout this preamble, including declining infection rates and deaths, declining severity, and significant vaccination uptake, we are withdrawing the health care staff COVID-19 vaccination provisions of the IFC. In lieu of regulatory requirements and as previously noted, CMS intends to continue support and encouragement for health care staff vaccinations through other mechanisms, including quality programs. We encourage individuals to stay up-to-date with their COVID-19 vaccines in accordance with CDC recommendations (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html#recommendations>).

Comment: While many commenters supported the COVID-19 vaccination requirements, the majority of commenters stated that CMS did not have the statutory authority to infringe on the personal rights of health care staff to choose vaccination or not. These commenters described the requirements as an overreach of CMS authority and a violation of personal freedoms and bodily autonomy. Several individual commenters expressed concerns that the vaccination requirements may run afoul of certain fundamental medical ethics doctrines around informed consent and freedom from coercion.

Response: We appreciate the feedback from commenters. Although we are withdrawing the health care staff COVID-19 vaccination provisions of the IFC for the reasons discussed throughout this preamble, we disagree with the comments regarding CMS’ statutory authority to issue the rule. In *Biden v. Missouri*, the Supreme Court stayed injunctions prohibiting the rule

²² <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>.

²³ <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

²⁴ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay-up-to-date.html>.

from going into effect, holding that “the Secretary’s rule falls within the authorities that Congress has conferred upon him.”^{25 26} Since that ruling, two plaintiff States voluntarily dismissed challenges to the rule, and Federal courts have dismissed two other cases.^{27 28} We also note that the staff vaccination IFC permitted individual exemptions consistent with applicable Federal laws.

We acknowledge the difficulties that health care workers have faced and continue to face throughout the COVID–19 pandemic. CMS has great appreciation for health care workers and other frontline workers across the world as they have dealt with limited resources and extraordinary demand for their time and services. Due to the changing circumstances of the pandemic previously discussed in this final rule, we are withdrawing the health care staff COVID–19 vaccination provisions of the IFC. In lieu of regulatory requirements and as previously noted, CMS intends to continue supporting and encouraging for health care staff vaccinations through other mechanisms, including its quality programs.

Comment: Many commenters stated that the requirements would contribute to and exacerbate staffing shortages, particularly in rural areas, negatively impacting care and access to care. These commenters expressed concern that the staff vaccination requirements would cause a mass flight of unvaccinated health care workers from the industry. This was of particular concern for entities that provide long-term care services, specifically those facilities located in rural, frontier, and Tribal communities. Some individual commenters who identified themselves as licensed professionals, including but not limited to nurses, stated their intent to resign rather than comply, or that they had coworkers who intended to resign instead of comply. Additionally, some commenters noted that CMS was establishing overly burdensome expectations for already put-upon health care workers. For example, they noted that they were asked to wear personal protective equipment (PPE) if they were not vaccinated even though there were insufficient supplies,

resulting in reuse, and emphasized how they had been directed to continue working to care for patients while ill with COVID–19 themselves due to staffing shortages. Some commenters suggested additional flexibilities in the vaccination requirements, such as the ability to opt-out for philosophical reasons and additional funding in order to help with these potential issues.

Response: We thank commenters and health care workers for their continued dedication throughout the COVID–19 pandemic. Adequate staffing was a concern prior to the pandemic, and we recognize that the COVID–19 PHE simultaneously exacerbated and accelerated those trends. While these trends reflect a confluence of factors, including unprecedented stress, trauma, overwhelming loss associated with death of coworkers and patients (particularly for nurses who typically witness decline and death), and self-isolation or quarantine from families, we also understand commenters’ concern that the requirements in the staff vaccination IFC would further add to those shortages.

Available evidence continues to support the notion that staff vaccination requirements have not adversely affected health care staffing.²⁹ Using National Healthcare Safety Network (NHSN) data from June 6, 2021–November 14, 2021, one study showed that State-level COVID–19 vaccine requirements implemented prior to the publication of the IFC did not negatively impact health care staffing levels in those States.³⁰ Specifically, staffing shortages peaked nationally during the Omicron wave, with nearly one in three facilities reporting a shortage in January 2022. Staffing shortage rates have fallen since then, and remained relatively stable through March 2022, even after the implementation of the staff vaccination IFC.³¹ Further, data and analysis, including internal CMS analyses of facility payroll data postdating the implementation of the staff vaccination IFC, suggest that the rule did not have a negative impact on health care staffing.

We acknowledge that staffing concerns remain throughout the health care system; however, we do not anticipate that the withdrawal of the

health care staff COVID–19 vaccination requirements will meaningfully affect current challenges in staff recruitment and retention.

Comment: Many commenters shared their belief that vaccines are unsafe and that they contain dangerous or potentially dangerous chemicals. These commenters also expressed concerns that Emergency Use Authorizations (EUAs) issued by the Food and Drug Administration (FDA) do not assure safety, because of the minimal length of development time. Some commenters noted that CMS or the employer should be liable for adverse effects of vaccination and that this should include lost wages in event of illness or death. Some commenters referenced the Vaccine Adverse Effect Response System (VAERS), noting that there have been nearly one million reported cases of adverse reactions to the various COVID–19 vaccines. These commenters expressed their disagreement with COVID–19 vaccination requirements based on these VAERS reports. Some commenters also referenced the Nuremberg Code, which prohibits adherents from performing medical experimentation in unwilling patients. These commenters stated a belief that the vaccines are truly experimental.

Response: While we are withdrawing the staff vaccination requirements given changes in public-health conditions described throughout this preamble, we emphasize that COVID–19 vaccines have consistently been shown to be safe and effective. As of March 2023, more than 672 million doses of COVID–19 vaccine have been given in the United States under the most intense safety monitoring in US history. That monitoring by CDC, FDA, and other Federal agencies continues to demonstrate that COVID–19 vaccines are safe and effective.³² Moreover, efforts to speed the vaccine development process have not sacrificed scientific standards, integrity of the vaccine review process, or safety.³³ Prior to issuance of an EUA, the original COVID–19 vaccines were evaluated in tens of thousands of study participants to generate the scientific data and other information needed to determine the vaccine’s safety and effectiveness.

²⁵ https://www.supremecourt.gov/opinions/21pdf/21a240_d18e.pdf.

²⁶ <https://www.cms.gov/newsroom/press-releases/statement-cms-administrator-chiquita-brookslasure-us-supreme-courts-decision-vaccine-requirements>.

²⁷ *State of Louisiana v. Becerra*, No. 3:21–cv–3970 (W.D. La. Dec. 2, 2022).

²⁸ *Griner v. Biden* 2:22CV149 DAK–DBP (D. Utah Oct. 13, 2022).

²⁹ See *Biden v. Missouri*, https://www.supremecourt.gov/opinions/21pdf/21a240_d18e.pdf.

³⁰ https://jamanetwork.com/journals/jama-health-forum/fullarticle/2794727?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=072922.

³¹ <https://www.kff.org/coronavirus-covid-19/issue-brief/nursing-facility-staff-vaccinations-boosters-and-shortages-after-vaccination-deadlines-passed/>.

³² <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html#:~:text=COVID%2D19%20vaccines%20are%20safe,safety%20monitoring%20in%20US%20history>.

³³ <https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained#:~:text=Under%20an%20EUA%2C%20FDA%20may,are%20no%20adequate%2C%20approved%2C%20and>.

Comments regarding liability for adverse effects of vaccination or lost wages are outside the scope of this rule. We refer readers to the Department of Labor for issues regarding workplace injury and compensation.³⁴ We also refer readers to the Countermeasures Injury Compensation Program, which provides compensation for covered serious injuries or deaths that occur as the result of the administration or use of certain countermeasures and the National Vaccine Injury Compensation Program, which provides compensation to people found to be injured by certain vaccines.^{35 36 37}

Comment: Many commenters stated a belief that vaccines are ineffective. They shared how the incidence of COVID-19 infections among vaccinated individuals is high. These commenters also noted that this rule would be ineffective, because it did not apply to patients and visitors.

Response: We acknowledge that COVID-19 vaccines will not prevent symptomatic infection in all vaccinated individuals; however, COVID-19 vaccines are highly effective in preventing serious illness, hospitalization, and death.

As we discussed in the staff vaccination IFC, we believe it would be overly burdensome to require that facilities ensure COVID-19 vaccination for all individuals who enter (patients, visitors, mail carriers, etc.). However, while facilities are not required to ensure vaccination status of every individual, they may choose to extend COVID-19 vaccination requirements beyond those persons that we consider to be “staff” as defined in IFC. We did not prohibit such extensions and encouraged facilities to require COVID-19 vaccination for these individuals as reasonably feasible. We strongly encourage facilities, when the opportunity exists and resources allow, to facilitate the vaccination of all individuals who provide services infrequently or provide educational opportunities about vaccination for those individuals. Further, as previously discussed, CMS intends to continue support and encouragement for health care staff vaccinations through quality measurement programs.

³⁴ <https://www.fiercehealthcare.com/hospitals/supreme-court-vaccine-covid-19-healthcare-upholds-hhs-vaccine-requirement-for-healthcare#:~:text=Supreme%20Court%20upholds%20HHS%20vaccine,large%20employer%20mandate%20%7C%20Fierce%20Healthcare.>

³⁵ <https://www.hrsa.gov/cicp.>

³⁶ <https://www.benefits.gov/benefit/641.>

³⁷ <https://www.hrsa.gov/vaccine-compensation/about.>

Comment: Some commenters stated that vaccines contain fetal stem cells, the use of which conflicts with their religious beliefs. Other commenters indicated that contracted physicians with privileges are not covered under Title VII or ADA; therefore, they are unable to request religious exemptions. Industry, civil society groups, and individual commenters sought clarification regarding religious, medical, and administrative exceptions to the vaccination requirements. Some commenters stated that it would be helpful for CMS to create a standard on exemption requirements that would be broadly applicable nationwide. Some commenters asked for clarification on exemption requirements and recommended that CMS promulgate guidance. Other commenters noted that we should consider referencing the Equal Employment Opportunity Commission or similar nondiscrimination guidance (such as the Americans with Disabilities Act) in order to address these public concerns.

Response: While we are withdrawing the staff vaccination requirements in this final rule, we note that the IFC required facilities to have policies and procedures regarding exemptions as required by civil rights and disability laws.

Comment: Some commenters suggested that alternatives to vaccination be added to the requirements. These commenters emphasized that routine testing of staff for SARS-CoV-2 and use of PPE should be permitted in lieu of vaccination. Some commenters noted the ongoing mitigation efforts involving COVID-19 testing and PPE use, as well as required source controls which have improved over the course of the PHE. Some commenters suggested that CMS provide for additional flexibility by “grandfathering in” some of the vaccination requirements already in place among certain health systems. Some commenters suggested additional educational outreach, especially among communities with lower trust in the health care system, as well as an understanding of the logistical issues preventing prompt implementation of the requirements in the staff vaccination IFC at certain facilities. Other commenters supported additional educational outreach, time-limited testing options, and flexibility for “good-faith” efforts for facilities as they work toward compliance with the rule.

Response: We thank commenters for their continued efforts in practicing complementary mitigation measures, especially at times when resources have

been limited and as the pandemic continues to evolve.

Our intention in issuing the staff vaccination IFC was to establish a set of requirements for all applicable facility types consistent with CDC recommendations in place at the time to assure patient health and safety. Since the onset of the PHE, the context in which people apply these preventive layers has changed. As the immediate impacts of the COVID-19 pandemic continue to evolve, so too does informed guidance, recommendations, and regulation. In the fall of 2021, circumstances required that CMS issue the IFC to protect the health and safety of patients. Current circumstances show that the IFC was effective in increasing rates of COVID-19 vaccination among health care staff and indicate that the need for such regulatory requirements has passed. We continue to explore different approaches to support and incentivize the use of effective combinations of preventive layers in particular circumstances and the best, most flexible way to support their application.

CMS and other HHS agencies continue to engage in infection prevention and control and vaccine education efforts. Additionally, CMS continues to host stakeholder engagement calls to address ongoing concerns and questions.³⁸ CMS also continues to engage with key stakeholders in order to develop culturally-competent and person-centered guidance and resources to ensure that populations with unique needs or concerns are addressed and mitigated. Lastly, enforcement discretion is not within the scope of these regulations and is rather addressed in subregulatory guidance, which CMS continues to publish and release.³⁹ We encourage individuals to continue to follow CDC recommendations pertaining to infection prevention and control practices, and we note that while this final rule ends CMS’s requirements regarding staff vaccination, it does not prohibit employers or states from initiating or maintaining their own vaccination requirements for health care staff. We also continue to support health care staff vaccinations through quality measurement programs.

Comment: Some commenters stated that individuals with a prior COVID-19 infection should be exempt due to natural immunity. Many of these

³⁸ <https://www.cms.gov/outreach-education/partner-resources/coronavirus-covid-19-partner-resources.>

³⁹ <https://www.cms.gov/covidvax.>

commenters claimed that they still had high levels of antibodies against COVID-19 in their most recent blood tests, and they questioned the necessity of vaccination, at least for as long as their antibody levels remain comparable to those who are vaccinated.

Response: We acknowledge that previous COVID-19 infection may also contribute to protection against subsequent infection and associated severe, critical, or fatal COVID-19.⁴⁰ However, this does not mean infection-induced immunity can or should be substituted for vaccination. Exceptions based on infection-induced immunity are also challenging to apply and enforce fairly, as verification of a health care worker's prior infection or antibody levels may not be possible in all cases. Vaccination remains the safest option for acquiring immunity to COVID-19, particularly when the risks associated with vaccination are compared with well-known significant short and long-term consequences of COVID-19, which can include organ damage affecting the heart, kidneys, skin, and brain, as well as fatigue, shortness of breath, loss of smell, and muscle aches.^{41 42 43}

Additionally, people who have had COVID-19 are more likely to develop new health conditions such as diabetes, heart conditions, blood clots, or neurological conditions compared with people who have not had COVID-19.⁴⁴

Comment: Some commenters stated that COVID-19 is not a public health emergency and that the data upon which guidelines are issued are flawed, alleging inaccurate and inflated death counts. Commenters also pointed out that the overwhelming majority of infected individuals recover, unvaccinated individuals do not all become severely ill, and there are treatments available that should be encouraged and available for use (for example, some commenters stated beliefs that Ivermectin or Vitamin D and other pharmaceutical and nonpharmaceutical products are effective treatments for COVID-19).

Response: While rates of infection, illness, and hospitalization have significantly declined, COVID-19

remains a public health challenge throughout the world. As discussed in section I. of this final rule, the WHO declared the COVID-19 outbreak an international public health emergency in January 2020 and a pandemic in March 2020. Likewise, a COVID-19 PHE declaration for the United States was made by the Secretary in January 2020, the President of the United States declared COVID-19 a pandemic in March 2020, and the Secretary has sustained a PHE declaration since January 2020 with the final renewal occurring on February 9, 2023.⁴⁵ In September 2021, COVID-19 related deaths in the U.S. surpassed the number of deaths from the 1918 influenza pandemic.⁴⁶ According to the CDC COVID Data Tracker, over 1.1 million COVID-19 deaths have been reported in the United States to date, whereas it is estimated that 675,000 American deaths occurred during the 1918 influenza pandemic.^{47 48}

Research also suggests that reported deaths associated with COVID-19 in the United States have been undercounted, not overcounted, since the start of the pandemic. These undercounts may be attributed to several factors, including that testing availability and criteria may have caused many cases to go unrecognized; COVID-19 may affect many body systems, and thus may not always be recognized as a cause of death; and COVID-19 may amplify pre-existing health conditions leading to death, but not be recognized as the cause of death by the medical certifier.⁴⁹

We acknowledge that most individuals are fortunate enough to recover from COVID-19. However, many individuals are not fortunate enough to recover and many individuals die or experience symptoms of long COVID, with older adults facing the highest risk of becoming very sick from COVID-19.

We are also grateful for the development of effective antiviral treatments, including Remdesivir (Veklury), nirmatrelvir co-packaged with ritonavir (Paxlovid), and molnupiravir (Lagevrio).^{50 51} These

drugs have also undergone rigorous testing. We note that the evolution of COVID-19 continues to present challenges to the development of both preventative drugs, including vaccines, and therapeutic treatments. It is important that more individuals be educated about these drugs in order for them to make informed decisions about their health and treatment options.

Some medications mentioned by commenters, such as Ivermectin and vitamin D, are not evidence-based treatments for COVID-19. The FDA has not authorized or approved Ivermectin for use in preventing or treating COVID-19 in humans or animals. Ivermectin is approved for human use to treat infections caused by some parasitic worms and head lice and skin conditions like rosacea. Currently available data do not show that Ivermectin is effective against COVID-19 and taking large doses of Ivermectin is dangerous.⁵² There is also insufficient evidence for the use of vitamin D for the prevention or treatment of COVID-19.⁵³ Individuals who are considering taking these medications as a treatment for COVID-19 should consult with their care team.

Comment: Some commenters shared their belief that it is unprecedented to mandate COVID-19 vaccines when there are other existing vaccines that are more effective that are not mandated (that is, Hepatitis B, influenza, pneumococcal).

Response: We thank commenters for recognizing the efficacy of certain vaccines, like the Hepatitis B, influenza, and pneumococcal vaccines. While we do not want to minimize the severity of these diseases, they were not the cause of the PHE declared at the time CMS issued the IFC. We also note that the regulation is not a government vaccine mandate placed on individuals but rather a Medicare and Medicaid funding condition for certain health care facilities that participate in either or both of those programs. As discussed in section H. of the staff vaccination IFC, many health care workers must already comply with employer or State government vaccination requirements (influenza, hepatitis B) or OSHA guidelines and are also required to complete screening procedures, such as tuberculosis screening. Additionally, many of these individuals met State and local vaccination requirements in order

⁴⁰ <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>.

⁴¹ [https://www.thelancet.com/journals/lanam/article/PIIS2667-193X\(22\)00059-X/fulltext](https://www.thelancet.com/journals/lanam/article/PIIS2667-193X(22)00059-X/fulltext).

⁴² <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-long-term-effects/art-20490351#:~:text=Why%20does%20COVID%2D19%20cause,immune%20system%20can%20also%20happen.>

⁴³ <https://www.nhs.uk/conditions/coronavirus-covid-19/long-term-effects-of-coronavirus-long-covid/>.

⁴⁴ <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html>.

⁴⁵ <https://aspr.hhs.gov/legal/PHE/Pages/default.aspx>.

⁴⁶ <https://www.smithsonianmag.com/smart-news/the-covid-19-pandemic-is-considered-the-deadliest-in-american-history-as-death-toll-surpasses-1918-estimates-180978748/>.

⁴⁷ <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

⁴⁸ <https://www.cdc.gov/flu/pandemic-resources/1918-commemoration/1918-pandemic-history.htm>.

⁴⁹ <https://www.cdc.gov/nchs/covid19/faq.htm>.

⁵⁰ <https://www.covid19treatmentguidelines.nih.gov/therapies/antivirals-including-antibody-products/summary-recommendations/>.

⁵¹ <https://www.fda.gov/media/155049/download>.

⁵² <https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-covid-19>.

⁵³ <https://www.covid19treatmentguidelines.nih.gov/therapies/supplements/vitamin-d/>.

to attend school to complete the necessary education to be eligible for health care positions. While historically CMS has not required any health care staff vaccinations, we have established, maintained, and updated extensive health and safety requirements as part of the Conditions of Participation and Conditions for Coverage for Medicare- and Medicaid-certified providers and suppliers. These requirements largely focus on infection prevention and control standards, as we aim to protect the health and safety of patients, residents, clients, and participants.

The transition CMS is making now, to make COVID-19 policies more like those for other communicable diseases, reflects the ongoing evolution of epidemiological and clinical circumstances; it does not imply that our issuance of the staff vaccination IFC was invalid or that CMS could not take such steps again in the future, if circumstances warrant. While we are withdrawing the provisions of the staff vaccination IFC, as previously noted, we intend to continue to support and encourage COVID-19 vaccination through our quality reporting and value-based incentive programs. CMS collaborated with the CDC to develop quality measures for both patient and health care vaccination to be used in appropriate quality programs. CMS included patient and health care personnel vaccination quality measures on the Measures Under Consideration (MUC) List issued on December 1, 2022.^{54 55}

Comment: Some commenters mistakenly believed this IFC was OSHA's rule, "COVID-19 Vaccination and Testing; Emergency Temporary Standard" (86 FR 61402) (also published November 5, 2021), which intended to require vaccination for employers with 100+ employees and addressed the emergency temporary standard (ETS) in comments submitted to CMS.⁵⁶

Response: The requirements in the staff vaccination IFC apply to only the Medicare- and Medicaid-certified providers and suppliers listed in the IFC. The IFC does not directly apply to other employers or entities, including other health care entities, such as physician offices, which are not regulated by CMS. Most States have separate licensing requirements for

health care staff and health care providers that would be applicable to physician office staff and other staff in small health care entities that are not subject to vaccination requirements under this IFC. Within the IFC, we briefly discussed the OSHA IFC, "Occupational Exposure to COVID-19; Emergency Temporary Standard" (86 FR 32376, June 21, 2021), that was applicable to health care settings at the time of publication, including but not limited to the providers and suppliers who must comply with the staff vaccination IFC, because the OSHA ETS and the IFC had complementary requirements.⁵⁷ Of note, OSHA did withdraw the vaccination and testing ETS, effective January 26, 2022.^{58 59} For questions about OSHA laws, regulations, or rulemaking activities, we refer commenters to OSHA.⁶⁰

Comment: A few commenters noted that this rule was promulgated prior to consultation with Tribal entities, which they asserted is a violation of Executive Order (E.O.) 13175. Several organizations noted that Tribes believed that their treaty rights may have been violated by the promulgation of the rule. One commenter noted that they understand that the rule may be appropriate for non-Indian health providers but indicated that the Tribes they represent believe that it is not currently clear how the regulation would apply to those facilities that provide health care services to the American Indian and Alaska Native population. These commenters stated that CMS failed to consult with Tribes in accordance with the usual Indian consultation guidance. The commenters suggested that CMS extend the comment period and improve the consultative relationship between Tribal entities and CMS so that the perceived disregard for Tribal sovereignty does not happen again.

Response: We thank the Tribes for their continued partnership with CMS. We recognize that American Indians and Alaska Natives (AI/AN) face unique health care needs and have been disproportionately impacted by COVID-19.^{61 62} These commenters are incorrect

in their assumption of a violation of E.O. 13175. That E.O. only applies to actions that "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." The staff vaccination IFC, like almost all CMS rules, has none of these effects. This IFC applied only to certain health care providers and suppliers who voluntarily enrolled in the Medicare and Medicaid programs. Its provisions made no distinctions as to ownership status of any facility, whether owned or administered by a private organization, State or local government, or tribe. Furthermore, the commenters identified no specific government-to-government effects from the rulemaking that would adversely affect tribes. CMS continues to engage with external stakeholders and strives towards providing, supporting, and fostering culturally-competent and person-centered care for these populations.

Comment: Some provider groups asked for clarification or additional guidance on what would or would not be acceptable in terms of employer enforcement so that they could stay within the bounds of State privacy laws. For example, a large medical center noted concerns about their ability to comply with both the IFC and a State law that explicitly prevented employers from requiring COVID-19 vaccinations as a condition of employment.

Response: As discussed in the staff vaccination IFC, we understand that some States and localities have established laws that would seem to prevent Medicare- and Medicaid-certified providers and suppliers from complying with the requirements of this IFC. While the requirements outlined in the staff vaccination IFC remain in force, we intend, consistent with the Supremacy Clause of the United States Constitution, that this nationwide regulation preempts all conflicting State and local laws as applied to Medicare- and Medicaid-certified providers and suppliers. However, as previously noted, we are withdrawing the health care staff COVID-19 vaccination provisions.

Comment: Some commenters noted that the COVID-19 staff vaccination requirements placed an undue burden on facilities. These commenters stated that it would be overly burdensome to manage individual requests for exemption either due to religious beliefs or clinical contraindications to receiving the vaccine. They also noted that it would be resource-intensive to comply

⁵⁴ <https://mmshub.cms.gov/sites/default/files/2022-MUC-List-Overview.pdf>.

⁵⁵ <https://mmshub.cms.gov/measure-lifecycle/measure-implementation/pre-rulemaking/lists-and-reports>.

⁵⁶ <https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard>.

⁵⁷ <https://www.federalregister.gov/documents/2021/06/21/2021-12428/occupational-exposure-to-covid-19-emergency-temporary-standard>.

⁵⁸ <https://www.osha.gov/coronavirus/ets2>.

⁵⁹ 87 FR 3928, January 26, 2022 (<https://www.federalregister.gov/documents/2022/01/26/2022-01532/covid-19-vaccination-and-testing-emergency-temporary-standard>).

⁶⁰ <https://www.osha.gov/laws-regs>.

⁶¹ <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-cases-and-deaths-by-race-ethnicity-current-data-and-changes-over-time/>.

⁶² <https://www.cdc.gov/mmwr/volumes/71/wr/mm7122a2.htm>.

with the vaccination requirements that included contracted staff.

Response: As noted in the preamble of the IFC, we made efforts to mitigate the burden on providers by not requiring that each provider and supplier ensure COVID-19 vaccination for all individuals who entered the facility or setting of care, because we believed such a requirement would be overly burdensome. Moreover, CMS did not require that staff who functioned in a fully remote capacity be vaccinated for COVID-19 if they did not physically enter the building or interact with patients or other staff. Experience since the publication of the staff vaccination IFC shows that facilities could, indeed, meet these requirements. When implementing these requirements, CMS ensured there was a reasonable balance between burden and the need for celerity to realize health and safety benefits.

Comment: Many commenters noted that the IFC's definition of "fully vaccinated" was confusing and questioned whether booster doses would or should be included in the definition and required going forward. Some of these commenters shared that there was confusion in the messaging coming from CMS regarding boosters and potential discrepancies between the IFC and contemporary information aids coming from other parts of the executive branch. Likewise, some commenters noted that the CDC did not include boosters in its definition of "fully vaccinated" at the time that the rule was issued. Other commenters recommended that CMS recognize the importance of booster shots and consider including boosters in the definition of "fully vaccinated" once the CDC updates its guidance. Some commenters also pointed to research that suggests the importance of boosters in maintaining immunity over time. Several individual commenters stated that the need for boosters would make the rule impracticable or that it proved the ineffectiveness of the vaccines.

Response: Like the SARS-COV-2 virus itself, the science of preventing and treating COVID-19 and the tools available to prevent and treat it continue to evolve. Thus, the recommendations and guidance have similarly changed as well. Currently, CDC recommends that people ages 6 months and older receive at least 1 bivalent mRNA COVID-19 vaccine. The number of recommended bivalent doses varies by age, vaccine, previous COVID-19 vaccines received, and the presence of moderate or severe immune compromise. As discussed elsewhere in this rule, CMS now believes that other levers available to us

(for example, quality measures) offer the most effective means to balance a need for flexibility, encourage HCP vaccination, and protect patient safety in the post-PHE phase of COVID-19. In addition, as of March 30, 2023, 90.5 percent of counties, districts, or territories in the United States had a low community level of COVID-19. Further, as of March 29, 2023, the current 7-day average of weekly new cases decreased 9.2 percent compared with the previous 7-day average.⁶³ Therefore, we are withdrawing the health care staff COVID-19 vaccination provisions.

Comment: Many commenters requested clarification as to which facility types the rule applies. Individuals associated with Emergency Medical Services (EMS) and ambulance services requested additional guidance on how they fit within the rule, because they were not among the facility types listed in the rule. Other groups, particularly in long-term care, asked whether contractors (a one-off or incidental plumber, or a fully remote administrative staff worker, for example) would be required to be vaccinated in order for the facility to be considered in compliance. Some commenters recommended that CMS align the definition of "staff" with previous LTC facility testing rules as a means of reducing confusion and as a means of helping those facilities align their current vaccine requirements with those required under the rule.

Response: We are withdrawing the health care staff COVID-19 vaccination provisions. We strongly encourage facilities, when the opportunity exists and resources allow, to facilitate the vaccination and education of all individuals who provide services infrequently or frequently.

Comment: Some commenters suggested that new anti-viral treatments may become more important as tools once they become commercially available. They asked that CMS include guidance in this rule, or issue another rule which would clarify some of the different payment aspects of these treatments and more.

Response: We recognize and acknowledge the important role of new treatment therapies that have recently become available, as previously discussed in this rule. However, payment for these treatments is outside the scope of this rule. We emphasize the importance of vaccination, as access to these new therapies may vary. Further,

these therapies do not replace the preventive benefits of vaccination.

Final Decision: After inspection of public comments on the health care staff vaccination requirements and in consideration of the factors discussed throughout this rule, we are withdrawing the health care staff COVID-19 vaccination provisions. This final rule addresses CMS' statutory responsibility to implement regulations necessary to protect the health and safety of patients while demonstrating our commitment to approaches that reflect evolving information.

B. COVID-19 Vaccine "Educate and Offer" Requirements for LTC Facilities and ICFs—IID Residents, Clients, and Staff (§§ 483.80(d), 483.430(f), 483.460(a)(4))

In response to the educate and offer IFC, we received 68 public comments. Twenty-six of these comments addressed the "educate and offer" provisions, sharing support for these requirements due to the increased risk of infection and complications for LTC residents and ICF-IID clients due to their medical conditions and residence in congregate care settings. Public commenters also addressed the reporting requirements, which we addressed in the CY 2022 Home Health Prospective Payment System final rule (86 FR 62240, 62392).

Comment: The majority of commenters emphasized that residents of LTC facilities and clients of ICFs—IID are among the most susceptible to negative outcomes related to COVID-19 due to their medical conditions. These commenters noted that the residents and clients were at high risk for exposure, infection, complication, and death.

Response: We thank commenters for recognizing the gravity of the COVID-19 pandemic and their appreciation for resident and client health and safety. We believe that all LTC Facility residents, ICF-IID clients, and the staff who care for them, should be provided with ongoing education about, and access to, vaccination against COVID-19. Further, we believe that entities responsible for the care of residents and clients of LTC facilities and ICF-IIDs must proactively pursue access to COVID-19 vaccination on behalf of their residents and clients, who often face challenges to independently accessing the vaccine, including mobility limitations, cognitive impairments, and other conditions. To support ongoing access to vaccinations for COVID-19, we are finalizing the provisions at §§ 483.80(d)(3), 483.430(f), and

⁶³ https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/033123.html#:~:text=COVID%2D19%20Community%20Levels*,with%20a%20low%20Community%20Level.

483.460(a)(4) for LTC facilities and ICF-IIDs.

Comment: Some commenters stated that communicating the pros, cons, and side effects of vaccination in a meaningful way to LTC facility residents was challenging and recommended that CMS provide additional guidance and standardized education materials for use.

Response: We acknowledge that it can be challenging to convey this information clearly as the COVID-19 pandemic continues to evolve and new treatments and vaccines become available. Vaccination remains one of the most important methods to help prevent severe COVID-19, especially as individuals living and working in congregate living settings may have challenges with physical distancing and other preventive measures such as mask use. While it can be challenging to convey vaccine information clearly, this is especially important, as many ICF-IID clients have multiple chronic conditions and psychiatric conditions in addition to their intellectual disability, and many LTC Facility residents experience impaired mental status, which can impact a client's and resident's understanding or acceptance of the need for vaccination. Vaccine education allows for residents, clients, and their caregivers to be informed participants in their care and allows them to make the most appropriate decisions for themselves. Furthermore, CDC and FDA have developed a variety of clinical educational and training resources for health care professionals related to COVID-19 vaccines, and CMS recommends that nurses and other clinicians work with their LTC Facility's or ICF-IID's Medical Director and use CDC and FDA resources as sources of information for their vaccination education initiatives.⁶⁴ We acknowledge and thank the many CMS-certified ICF-IIDs and LTC facilities that are educating staff, residents, and clients, and are attempting to participate in vaccination programs. However, participation in these efforts is not universal, and we are concerned that many individuals are not receiving these important preventative care services. Because resident and client safety are of the utmost importance, we are finalizing the education requirements for LTC facilities at § 483.80(d)(3) and ICF-IIDs at §§ 483.430(f) and 483.460(a)(4).

Comment: Several commenters expressed burden concerns due to high

staff turnover rates, which have increased the amount of time needed to provide education and to offer the vaccine to staff.

Response: We thank the staff for their hard work in complying with these requirements. We recognize that health care organizations have historically experienced staffing shortages and that this has been exacerbated by the pandemic, as discussed in section I. of the staff vaccination IFC. In addition to the previously mentioned resources available from CDC and FDA, CMS funds a network of Quality Improvement Organizations (QIOs),⁶⁵ which aim to improve the quality of care delivered to people with Medicare. Specifically, QIOs may provide assistance to Medicare beneficiaries by targeting small, low-performing, and rural Medicare-certified facilities most in need of assistance, and those that have low COVID-19 vaccination rates; disseminating accurate information related to access to COVID-19 vaccines to facilities; educating residents and staff on the benefits and risks of COVID-19 vaccination; understanding nursing home leadership perspectives and assist them in developing a plan to increase COVID-19 vaccination rates among residents and staff.

Ensuring that all LTC Facility residents, ICF-IID clients, and the staff who care for them are provided with ongoing opportunities to receive vaccination against COVID-19 is critical to ensuring that populations at higher risk of infection continue to be prioritized and receive timely preventive care during the COVID-19 pandemic. In the interest of health and safety for LTC facility residents and ICF-IID clients, and of staff in these settings, we are finalizing the provisions at § 483.80(d)(3) for LTC facilities and §§ 483.430(f) and 483.460(a)(4) for ICF-IIDs.

Comment: Some commenters reported that it was difficult to identify the individuals that met the definition of "staff," and therefore, were subject to the requirements.

Response: The "educate and offer" provisions were written in a manner that allows for flexibility by covering a broad set of residential care entities. Additionally, since this IFC was initially published, CMS and other agencies across HHS have released additional guidance in an effort to address some of these questions and concerns about how to comply with

these requirements.⁶⁶ Furthermore, CMS uses existing lines of communication with stakeholders in an effort to address some of these questions and concerns. Currently, CMS considers LTC facility and ICF-IID staff (regardless of whether there is a so-called "W-2" relationship) to be those who work in the facility on a regular basis (that is, at least once a week). We note that this includes those individuals who may not be physically in the LTC facility for a period of time due to illness, disability, or scheduled time off, but who are expected to return to work. LTC facilities and ICF-IIDs are not required to educate and offer vaccination to individuals who provide services less frequently, but they may choose to extend such efforts to them. We strongly encourage facilities, when the opportunity exists and resources allow, to provide education and vaccination to all individuals who provide services less frequently. A better understanding of the value of vaccination may allow staff to appropriately educate residents and their family members about the benefits of accepting the vaccine. Therefore, we are finalizing the requirements at §§ 483.80(d)(3), 483.430(f), and 483.460(a)(4).

Comment: A few commenters suggested that CMS add provisions for paid time off for staff to receive the vaccine and recover from side effects.

Response: We recognize commenters' concerns; however, CMS does not have the statutory authority to regulate paid time off for health care employees, and this falls outside the scope of this final rule.

Final Decision: After consideration of the public comments we received on the educate and offer requirements, we are finalizing the requirements at § 483.80(d)(3) for LTC facilities and at §§ 483.430(f) and 483.460(a)(4) for ICF-IIDs, as established by the educate and offer IFC and amended by the staff vaccination IFC. The "educate and offer" requirements support our responsibility to protect and ensure the health and safety of residents and clients by enforcing the standards required to help each resident and client attain or maintain their highest level of well-being. Sections 1819(d)(3)(B) and 1919(d)(3) of the Act require that a facility must establish an infection control program that is designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the

⁶⁴ <https://www.cdc.gov/vaccines/covid-19/long-term-care/pharmacy-partnerships/administrators-managers.html>.

⁶⁵ <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/QualityImprovementOrgs>.

⁶⁶ <https://www.cms.gov/outreach-education/partner-resources/coronavirus-covid-19-partner-resources>.

general public. We believe that the educate and offer requirements comply with these statutory requirements. We believe that this action strengthens our response to the COVID-19 pandemic and protects the health and safety of nursing home residents, ICF-IID clients, and their staff.

C. COVID-19 Testing Requirement for LTC Facilities § 483.80(h)

In response to this IFC we received approximately 169 comments, of which about 150 addressed the COVID-19 testing requirements for LTC facilities' staff and residents.

Comment: Some comments acknowledged that testing for COVID-19 is important for preventing the disease from entering nursing homes, detecting cases quickly, and stopping the transmission to additional residents and staff.

Response: We thank commenters for sharing their understanding of the importance of testing for COVID-19. While many new treatments and vaccines are now available, and we are deleting the expired testing requirements, we continue to emphasize the importance of practicing preventative measures in order to mitigate the spread of COVID-19.

Comment: Many commenters discussed the need for accurate data for contact tracing and in order to understand the future trajectory of the COVID-19 virus. However, most comments expressed belief that the community infection rate is not an accurate method for calculating how often COVID-19 testing should be conducted. Several of these commenters explained that a high community rate may be skewed by isolated populations, such as incarcerated individuals or college and university students. Commenters noted that higher infection rates in these populations resulted in being required to test staff and residents twice weekly, which they believed did not yield additional information. A few of these commenters also noted that many of the LTC staff do not reside in the same county as the facility and thus are not living in a county with a similarly high community infection rate; therefore, they should not be subject to more frequent testing requirements.

Response: We thank commenters for recognizing the importance of collecting accurate data and its use for informing an appropriate pandemic response. It is important for data to be measured and reported in a standardized manner. This allows for public health officials to compare disease occurrence across different populations in order to make informed policy decisions and to better

understand the virus and its impact on health outcomes. We recognize that some locations, like prisons or college and university campuses, may represent "hot spots." However, these populations are not truly isolated, and one may not presume that the SARS-CoV-2 virus will not spread to other populations or locations.

Further, frequent testing for COVID-19 remains an important tool for mitigating the transmission of the virus. In some instances, an individual may test when the viral load is not high enough to be found on a test and the test result is negative. But this same individual may test again in the same week and receive a positive test result. Additionally, some people may test negative on an antigen test but positive on a PCR test. This means that they do have COVID-19, but their viral load is too low to result in a positive antigen test.⁶⁷ We recognize that many staff do not reside in the same county as the LTC facility at which they are employed. However, this does not negate the value of testing. While these individuals may be less likely to be exposed to the virus in the county in which they reside, the risk of exposure is not eliminated. In addition, because of the highly contagious nature of the SARS-CoV-2 virus, the transmission levels in the county in which they reside may increase significantly, subsequently increasing their risk of exposure.

Comment: The majority of comments stressed how these new testing requirements are diverting resources and adding an additional burden to the staff, who are already strained by the staffing shortage. These comments also discussed how it is challenging to comply with the requirements due to limited availability of PPE. Most of these comments emphasize that the frequent testing takes away valuable time from resident care and socialization, which is critical at a time when residents are not able to see their families. Many commenters also reported that the time frame to report test results was too limited and requested a 72-hour window to report test results. These comments discussed how it is challenging to comply with this requirement due to the increased turnaround time to receive results and the limited number of staff members.

Response: We share sympathy for residents and their family members who were not able to gather in person. We

also thank LTC facility staff and health care workers for their continued commitment to providing care for residents. Testing for COVID-19 helps to mitigate the transmission of the virus and thus improves patient outcomes and opportunities for socialization. As discussed in the LTC facility testing IFC, we note that there are many different tests available, and facilities have the flexibility and discretion to select the test that best suits their needs so long as the tests are conducted in accordance with nationally recognized standards and meet the response time for the test results as specified by the Secretary. In addition, the CDC has continued to update its guidance regarding infection control at https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Flong-term-care.html. Further, the CDC has published guidance on how to optimize PPE at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html>.

Comment: Several commenters expressed gratitude for the ability to access point-of-care (POC) testing supplies and equipment, but most of these commenters found it to be unreliable and shared that it frequently produced false positive results. These commenters expressed that this blanket approach may not be appropriate for all LTC facilities and suggested that the testing of staff should be reduced in order to appropriately allocate limited and costly testing supplies and resources. A few comments appealed for permission to utilize pool testing methods for the routine testing of all staff and to focus routine staff testing on those who have the greatest risk of exposure and transmission, such as those who have direct contact with patients. For example, commenters found it unreasonable for a staff member that works in the billing office—who has no face-to-face contact with residents or with staff who provide direct care to residents—to be tested weekly.

Response: We acknowledge that at the time of publication of this IFC, PPE and COVID-19 tests were limited, and we commend staff and health care workers for their diligence working through these challenges. We also recognize the challenges of conducting testing and discuss in the LTC testing IFC that because COVID-19 was newly discovered, the standards of practice for testing for the virus may continue to change or evolve. Additionally, the CDC provides guidance on proper specimen collection at <https://www.cdc.gov/>

⁶⁷ <https://publichealthmdc.com/blog/did-you-test-negative-when-sick-or-exposed-to-covid-heres-what-it-means#:-:text=If%20you%20test%20negative%20soon,be%20found%20on%20a%20test.>

coronavirus/2019-ncov/lab/guidelines-clinical-specimens.html and *https://www.cdc.gov/coronavirus/2019-ncov/lab/lab-biosafety-guidelines.html*. This rule does not address the manner in which tests are conducted, so long as they are conducted in a manner that is consistent with current professional standards of practice. As such, this comment regarding pool testing methods is not within the scope of the rule. Readers may find more information regarding pooled testing at *https://www.cdc.gov/coronavirus/2019-ncov/lab/pooling-procedures.html#anchor_1625241118971*.

Comment: The majority of commenters discussed the financial burden of the COVID-19 testing requirements and noted that this burden was unsustainable considering the staffing shortages and economic impacts of the PHE. Some comments highlighted that PCR tests cost about \$130 and that testing costs accumulate quickly. For example, several commenters shared that they were spending upwards of \$28,000 per month on testing, in addition to their fixed costs. Due to the financial burden, a significant number of comments indicated that the testing requirements should be accompanied by additional funding and bureaucratic support. Other comments suggested streamlining funding to LTC facilities in areas with greater prevalence of COVID-19.

Response: We recognize that the COVID-19 pandemic has strained the economy and created many challenges. Additional funding and bureaucratic support are not within the scope of this final rule. The CDC has also released guidance for health care facilities that are expecting or experience staffing shortages due to COVID-19 and provides recommendations on mitigation strategies and contingency strategies at *https://www.cdc.gov/coronavirus/2019-ncov/hcp/mitigating-staff-shortages.html*.

Final Decision: After evaluation of public comments on the COVID-19 testing requirements for residents and staff of LTC facilities, and in light of

their applicability ending with the end of the COVID-19 PHE, we are revising the CFR at § 483.80(h) to remove the expired text. As previously discussed, CMS encourages ongoing COVID-19 mitigation measures through its quality reporting and value-based incentive programs in the near future.

IV. Provisions of the Final Regulation

In this section, CMS discusses the requirements in this final rule. In section IV.A. of this final rule, we discuss the withdrawal of regulations pertaining to COVID-19 vaccination of health care staff. We then discuss final regulations for LTC facilities and ICFs-IID to provide COVID-19 vaccine education and offer vaccination to residents, clients, and staff in section IV.B. of this final rule. Finally, we discuss the deletion of the expired COVID-19 testing requirements of staff and residents for LTC facilities.

A. Omnibus COVID-19 Health Care Staff Vaccination

COVID-19 is a novel disease caused by an unpredictable and nimble virus, SARS-CoV-2. CMS implemented the staff vaccination requirements in the IFC to assure health and safety during a PHE declaration. However, circumstances surrounding COVID-19 continue to evolve and CMS has evaluated its policies pertaining to COVID-19 on an ongoing basis. CMS continues to recognize that vaccines are important for preventing severe illnesses and promoting public health and that the incidence of severe COVID-19 has declined significantly since the IFC was issued. We believe that using quality programs to promote vaccination is an approach more consistent with the current nature of SARS-CoV-2 (that is, frequent mutation, potentially necessitating new vaccines), and that it can now be treated more like other harmful but not necessarily emergent respiratory viruses like influenza. Accordingly, we are withdrawing from the CFR the requirements regarding COVID-19 vaccination of health care staff as established under the staff

vaccination IFC. As discussed in section I.B. of this final rule, CMS intends to encourage ongoing COVID-19 vaccination through other mechanisms, including its quality reporting and value-based incentive programs. CMS continues to develop and refine quality measures for both patient and health care personnel vaccination to be used in appropriate quality programs and included patient and health care personnel vaccination quality measures, such as those seen on the MUC list issued on December 1, 2022. In addition to quality measurement, CMS continues to provide assistance and education through CMS-funded entities (including QIOs, Hospital Quality Initiatives (HQICs), and ESRD Networks), as well as to work with Federal, State, local, and industry partners who can also provide education and technical support.

The withdrawal of the COVID-19 staff vaccination requirements from the CoPs, CFCs, and requirements should not be construed as a diminution of CMS support for vaccination or for facilities to require staff vaccination. Moreover, withdrawal of the requirements from the CoPs, CFCs, and requirements for LTC facilities does not prohibit facilities from requiring staff vaccinations, and we encourage health care employers to maintain evidence-based policies regarding staff vaccination for COVID-19 and other communicable diseases for which vaccination is available and recommended. Health systems and health care employers may continue to require that workers stay up to date on COVID-19 vaccinations, consistent with other Federal, State, and local laws. Moreover, some States may require COVID-19 vaccination of health care staff. Facilities must maintain compliance with applicable State and local laws pertaining to vaccination.

In this final rule, the substantive provisions of the staff vaccination IFC are withdrawn. Table 3 lists the regulatory locations from which staff vaccination regulations are addressed in this final rule by provider and supplier type.

TABLE 3—WITHDRAWN REGULATIONS BY PROVIDER AND SUPPLIER TYPE

Provider and supplier type	Revised regulation
Ambulatory Surgical Centers (ASCs)	§ 416.51(c)
Hospices	§ 418.60(d)
Psychiatric Residential Treatment Facilities (PRTFs)	§ 441.151(c)
Programs of All-Inclusive Care for the Elderly (PACE) Organizations	§ 460.74(d)
Hospitals	§ 482.42(g)
Long Term Care (LTC) Facilities	§ 483.80(i)
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID)	§ 483.430(f)
Home Health Agencies (HHAs)	§ 484.70(d)

TABLE 3—WITHDRAWN REGULATIONS BY PROVIDER AND SUPPLIER TYPE—Continued

Provider and supplier type	Revised regulation
Comprehensive Outpatient Rehabilitation Facilities (CORFs)	§ 485.70(n)
Critical Access Hospitals (CAHs)	§ 485.640(f)
Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-language Pathology Services (Organizations)	§ 485.725(f)
Community Mental Health Centers (CMHCs)	§ 485.904(c)
Home Infusion Therapy (HIT) Suppliers	§ 486.525(c)
Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs)	§ 491.8(d)
End-Stage Renal Disease (ESRD) Facilities	§ 494.30(b)

B. COVID-19 Vaccine “Educate and Offer” Requirements for LTC Facilities and ICFs—IID Residents, Clients, and Staff

While the COVID-19 pandemic continues to evolve, effective vaccines and therapies have also been developed. Vaccination still remains as one of the most important methods to help reduce severity of COVID-19. However, some individuals may face additional barriers accessing COVID-19 vaccines. As previously discussed, many of the residents and clients of LTC facilities and ICF-IIDs are not able to independently travel offsite in order to receive a vaccine due to several factors including but not limited to disability, cognitive impairment, low health literacy, and/or functional reasons. Because some of these individuals may have a low health literacy, education on COVID-19 vaccines is particularly important. Vaccine education allows for residents, clients, and their caregivers to be informed participants in their care and allows them to make the most appropriate decisions for themselves. Therefore, it is important that we maintain the educate and offer provisions for both LTC facilities and ICF-IIDs.

In this final rule, we are finalizing the infection control requirements at § 483.80(d) that LTC facilities must meet to participate in the Medicare and Medicaid programs. By doing so, LTC facilities must continue to educate and offer the COVID-19 vaccine to residents, resident representatives, and staff, as well as perform the appropriate documentation for these activities. All of the requirements of the educate and offer IFC are being finalized, except for the language referring to LTC facility staff refusing the COVID-19 vaccine originally set forth at § 483.80(d)(3)(v). We are finalizing this language as amended by the staff vaccination IFC.

We are also finalizing the COVID-19 facility staffing and health care services requirements at §§ 483.430(f) and 483.460 that ICFs—IID must meet to participate in the Medicare and

Medicaid programs. By doing so, ICFs—IID must continue to educate clients, client representatives, and staff and offer the COVID-19 vaccine to clients and staff, as well as perform the appropriate documentation for these activities. All of the requirements of the educate and offer IFC are being finalized, except for the language referring to the ICFs—IID staff refusing the COVID-19 vaccine. We are finalizing this requirement as amended by the staff vaccination IFC.

C. COVID-19 Reporting Requirements for LTC Facilities

As previously discussed, CMS continues to evaluate and revise its policies pertaining to COVID-19 on an ongoing basis, and in light of the conclusion of the COVID-19 PHE, we are deleting the expired COVID-19 testing requirement for LTC facilities. We continue to emphasize the importance of practicing infection control measures in order to mitigate the spread of COVID-19 and other communicable respiratory diseases.

V. Severability

As described in further detail in the previous sections of this rule, this final rule relates to three separate IFCs: This final rule (1) withdraws requirements of the November 2021 IFC regarding staff vaccination; (2) deletes expired requirements of the September 2020 IFC regarding COVID-19 testing in LTC Facilities, and (3) finalizes requirements of the May 2021 IFC requiring facilities to provide education about COVID-19 vaccines and to offer COVID-19 vaccines to residents, clients, and staff. As reflected by the fact that they these three categories of requirements appeared in three separate IFCs, the provisions of this final rule that relate to each of these three categories operate independently, and the agency intends that they be treated as severable. If any one of these categories of regulatory changes were stayed or invalidated by a reviewing court, the remaining categories would continue to effectuate

the agency’s intent to align its regulations with current public health conditions and would be independently administrable. Likewise, the agency intends that the provisions within each of these categories of regulatory changes be treated as severable. For example, were a court to stay or invalidate withdrawal of the staff vaccination requirement for one type of health care facility, the agency intends that the withdrawal of the requirement for other types of facilities would remain in effect. Accordingly, the agency considers each of the provisions adopted in this final rule to be severable; in the event of a stay or invalidation of any part of the rule, or of any provision as it applies to certain facilities or in certain factual circumstances, the agency’s intent is to otherwise preserve the rule to the fullest possible extent.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the staff vaccination IFC published November 5, 2021, the educate and offer IFC published May 13, 2021, and the LTC facility testing IFC published September 2, 2020, we solicited public

comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs). However, we did not receive any comments on these ICRs.

The following analysis covers the ICRs for the Staff Vaccination, Educate and Offer, and LTC testing requirements. As in the preamble above, we will first analyze the ICRs for the Staff Vaccination requirements first.

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This rule contains no new requirements and would sunset those promulgated by the staff vaccination IFC and the LTC testing IFC. The original estimates for the staff vaccination IFC were 1,555,487 burden hours and \$136,088,221 for both the initial and subsequent years. The dollar estimates were based on hourly wage data from the Bureau of Labor Statistics for 2020. The original estimates for the LTC testing IFC were \$48,158,193 over the estimated course of the PHE. The dollar estimates were based on an estimated labor requirement of 2 minutes per test and hourly wage data from the Bureau of Labor Statistics for 2019. Based on the termination of the COVID-19 PHE and withdrawal of the vaccination and testing requirements, these estimates are reduced to zero in all succeeding months and years.⁶⁸

The original estimates for the educate and offer IFC were that first-year costs would be 1,277,874 burden hours and \$91,250,874. Subsequent year costs were estimated at 866,580 burden hours and \$55,177,044. The dollar estimates

were based on hourly wage data from the Bureau of Labor Statistics for 2019. These estimates remain unchanged in this final rule, which makes no substantive changes to the regulations issued in that interim final rule.

VII. Regulatory Impact Analysis

A. Statement of Need

The COVID-19 pandemic precipitated the greatest health crisis in the U.S. since the 1918 Influenza pandemic. The population of older adults, and LTC facility residents in particular, were hard hit by the impacts of the pandemic. Among those infected, the death rate for older adults age 65 or higher was hundreds of times higher than for those in their 20s during 2020. Of the 1.1 million deaths through April 2023, only about 6,912 were for ages 18–29, compared to 850,000 for those age 65 or higher.⁶⁹ Moreover, of the approximately 1,130,662 Americans estimated to have died from COVID-19 through May 2, 2023, about 15 percent were estimated to have died during or after a LTC facility stay,⁷⁰ a percentage that has decreased substantially from earlier levels as vaccination rates increased for both residents and staff and as the availability and use of effective medications to reduce the rates of hospitalization and death have rapidly grown.⁷¹ The proportion of the unvaccinated who have contracted the virus has also contributed to reducing the rate of future infections and their severity. As a result of all these factors, the Biden Administration allowed the public health emergency declaration under section 319 of the Public Health Service Act related to the COVID-19 pandemic to end on May 11, 2023.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 on Modernizing Regulatory Review (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism

(August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$200 million or more in any 1 year (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President’s priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for “significant regulatory actions” as defined in E.O. 12866 as amended by E.O. 14094. Based on our estimates, OMB’s Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) of E.O. 12866 as measured by the threshold of \$200 million or more in any 1 year, and hence also a rule qualifying under the definition in 5 U.S.C. 804(2) (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act).

Accordingly, we have prepared an RIA that, taken together with the collection of information (COI) analysis and other sections of this preamble, presents to the best of our ability the costs and benefits of the rulemaking. It is important to understand, as explained previously in this final rule, that this

⁶⁸ See “Statement of Administration Policy”, Executive Office of the President, January 30, 2023, at <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>.

⁶⁹ <https://www.cdc.gov/nchs/nvss/vsrr/covid-weekly/index.htm>.

⁷⁰ <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

⁷¹ <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>.

rule is terminating only one of the IFCs that were issued by CMS in response to the COVID-19 pandemic. The requirements for COVID-19 testing of LTC facility staff have already expired. The educate and offer IFC is being made permanent, substantively unchanged. Hence, the staff vaccination IFC is the only one substantively affected by this rule. Relative to a hypothetical future in which this and the educate and offer IFC continue unchanged, this rule reduces costs through the withdrawal of the omnibus staff vaccination requirements. It is economically significant under section 3(f)(1) of E.O. 12866 because the costs eliminated exceed \$200 million annually.

Due to the success of all three IFCs in encouraging both staff and patient vaccination in health care settings, the evolution of SARS-CoV-2 toward variants whose adverse health impacts are on average less severe, and improved medications and reduced stresses on hospitals and other health care facilities, rates of severe illness and of death have both radically decreased since the staff vaccination IFC was issued. Of particular importance, the interactive effect of both staff and patient COVID-19 vaccination rates reaching or approaching 90 percent has helped each group protect the other. Vaccinating staff protects both staff and patients, as does vaccinating patients.⁷² In this regard, we emphasize that our current and planned use of data on both staff and patient vaccination rates will maintain consistent pressure on the health care providers and suppliers regulated by CMS to maintain and improve current success rates.

As displayed in detail in Tables 5 and 6 of the staff vaccination IFC, there are about 76,000 provider and supplier entities regulated by CMS, and these facilities have about 13 million staff during each year.⁷³ But large as these numbers are, they are dwarfed by the number of patients served. In total across all provider and supplier types, but excluding hospital outpatient and emergency caseloads, CMS-certified providers and suppliers serve over 100 million patients a year. Including patients served as hospital emergency cases or as outpatient cases, the total number of patients served is more than 300 million based on number of

⁷² We note that there is additional protection because many and very likely most of the remaining unvaccinated staff and patients previously have been infected by one or more COVID-19 variants, and therefore are less likely to experience severe COVID-19 in the near future. There are, however, no good data on the numbers or effects of these infections.

⁷³ See 86 FR 61603 and 61606, November 5, 2021.

encounters, but likely to be much lower—about 250 million—based on number of different individuals. Thus, existing “educate and offer” requirements focus on both nursing home staff and patients.

The original staff vaccination IFC and this final rule present substantial difficulties in estimating both costs and benefits due to the high degree to which all current provider and supplier staff have already received information about the benefits and safety of COVID-19 vaccination and about the rare serious risks associated with vaccination. What is still uncertain is how staff or patient compliance with recommended vaccinations may change further over time. Moreover, we do not know how many persons in each of these groups has become ill with COVID-19, and how many of these more than once, before coming into close contact. Nor do we know how these numbers are likely to change in the next few years, whether a new variant of the SARS-CoV-2 virus may emerge, or what new vaccines or treatment options may become common and with what effectiveness in preventing infection, hospitalization, or death. With all these unknown variables, we cannot predict with confidence future COVID-19 morbidity or mortality levels either with or without better vaccination compliance. However, we can estimate with some confidence a range of conditions in a hypothetical future in which the staff vaccination and educate-and-offer IFCs remain unchanged (assuming no new SARS-CoV-2 variant with higher or lower health effects becoming dominant, no new vaccine with higher protection against the existing variant, no major changes in vaccination practices, and no major changes in treatments), simply by using current data and projecting no major changes in these variables.⁷⁴

C. Anticipated Benefits and Costs

Relative to a hypothetical future in which the staff vaccination and educate-and-offer IFCs remain in their current form—which is one of multiple relevant analytic baselines—This rule imposes no new costs (other than the costs of reading and acting on this final rule). Instead, it reduces regulatory costs to health care providers and suppliers by withdrawing the requirements imposed by the staff vaccination IFC issued in November 2021. This final rule’s effect

⁷⁴ For a list and discussion of past and present COVID variants, one useful and current source is Kathy Katella, “Omicron, Delta, Alpha and More: What To Know About the Coronavirus Variants,” February 3, 2023, at <https://www.yalemedicine.org/news/covid-19-variants-of-concern-omicron>.

on numbers of lives lost of either health care staff or health care patients is limited by the scope of such outcomes in the analytic baseline (that is, the future trajectory in this rule’s absence). While the number of health care staff (whether called employees, workers, or staff) dying from COVID-19 infections was already decreasing when the staff vaccination IFC was issued, it has for the last year decreased to very low levels, often zero, for weeks at a time.⁷⁵ An unknown fraction of these deaths may have been vaccinated persons. Nor is there reason to believe that the relatively few recently recorded deaths from COVID-19 were due to workplace exposures, considering all the other locations at which workers might be exposed to the virus.⁷⁶ That said, we still do not know how much of this massive decrease in the mortality rate of infected populations was due to the policy effects of the IFC itself, but with the educate and offer rule now permanent, the fraction of staff and patients unvaccinated close to single digits (and never likely to have been much closer to zero given the various legally available exemptions), there is no plausible basis for estimating a resurgence of deaths among either group absent some new and more virulent COVID variant.

Perhaps the simplest way to understand these effects is to consider that in the roughly 18 months since the staff vaccination IFC rule was issued, much and perhaps most of the originally estimated costs (implementation) and benefits (lives saved) have already been realized. However, the many uncertainties that still affect projections into the future led us to restrict our cost horizons in the staff vaccination rule to one year and to eschew any mortality reduction estimate. In retrospect, it appears that while our cost estimates may have been reasonably robust, any estimate of lives saved would have

⁷⁵ The CDC Data Tracker for Covid, “Cases and Deaths among Healthcare Personnel,” estimates the total number of COVID-caused deaths among healthcare workers since the pandemic began is about 2,500, of which only about 200 have occurred in the last year (February to February). Data at https://covid.cdc.gov/covid-data-tracker/#health-care-personnel_healthcare-deaths.

⁷⁶ The Bureau of Labor Statistics estimates that there were about 5,000 annual fatal workplace injuries to workers in recent years. Accidents at work are only one of many causes of worker fatalities (for example, automobile injuries outside of the workplace, non-occupational illnesses of all kinds, and heart attacks while at work). In comparison, roughly 200 healthcare worker deaths occurred from COVID-19, much and perhaps most contracted outside the workplace. See CDC healthcare personnel data cited in preceding footnote, in comparison “to “National Census of Fatal Occupational Injuries in 2021” at <https://www.bls.gov/news.release/pdf/cfoi.pdf>.

likely been far too high. In particular, the reduced lethality of the Omicron variant of the virus and the available treatments for those ill from the virus were the largest life savers by far.⁷⁷

Compliance Cost Reduction. In the staff vaccination IFC we estimated compliance and vaccination costs to be about \$1.382 billion in the first year and declined to estimate costs in succeeding years (see Table 7 in that rule).⁷⁸ This estimate attributed all implementation costs to that rule, with no offsetting assumption about spending that would otherwise have occurred. Thus, it attributed the vaccine costs for healthcare workers paid by the Federal Government to be a result of that rule. It omitted, however, potential increases in recruitment costs and a variety of potential business disruption costs for facilities that may have had difficulties hiring vaccinated workers. We estimated with these omissions because we had no reliable way to estimate how much of these costs might be due to independent employer decisions, to other Federal standards, to State and local mandates, or to individual personal choices. In retrospect, this was a reasonable estimate because we still have no basis for “correcting” the original assumption. Moreover, if such costs were not paid by the government directly, both public and private insurance would have covered most of these costs in future years (and likely will cover them for voluntary vaccinations). Regardless, a substantial fraction of those costs would have been expected to recur each year, if for no other reason than turnover among health care staff. However, since the first year included primary series vaccination of all existing staff, succeeding years would have been lower in cost because the number of required vaccinations would largely be incurred only for new workers, and only some of these would not have been previously vaccinated through other sources. Furthermore, only in the first year would one-time costs (such as reading the rule and creating policies and procedures to implement the rule) have been incurred. We therefore now estimate that to maintain that rule only about one-half of the first-year estimate

would have been needed to comply in future years.

For purposes of estimating benefits from eliminating the implementation costs of the staff vaccination IFC, we therefore estimate that the second- and third-year costs of the November 2021 staff vaccination IFC (if continued unchanged) would have been \$691 million ($0.5 \times 1,382$). Had we estimated fourth and fifth (or later) years on the same basis, costs near those levels would presumably have continued. Subtracting an additional \$4 million for the one-time costs of reading and acting on this final rule, the next year of benefits of this rule in costs reduced from the estimated annual level in the November 2021 interim final rule would be \$687 million, followed by future years at \$691 million (until something unforeseen changed).

We note that these cost (now benefit) estimates apply only to the mandatory nature of the rule addressing staff vaccination. As discussed in the next section of this RIA, we believe it very likely that many and probably most health care providers and suppliers will continue to require or strongly urge staff vaccination and that staff vaccination rates will rise over time as new generations of workers who received past vaccinations will be hired. The precise evolution of these trends will depend on the many uncertainties already discussed, and the result may be higher or lower changes in costs than those anticipated at the time the interim final rule was issued (and thus higher or lower savings than what is estimated now). Given experiences to date, however, we believe that the future benefits (lives saved) of continuing the staff vaccination requirements would have been low at the time of our estimate and very low if made in the light of recent experience. We continue to believe, however, that reliable forecasts of morbidity and mortality over any time horizon more than a few months cannot yet be made.

We again note that the LTC testing requirements expired before publication of this final rule. This rule was not a factor in that expiration and we accordingly do not address the estimated costs and benefits of that change.

The preceding discussion applies to the staff vaccination IFC. The May 2021 educate-and-offer IFC is not being changed, and the original compliance cost estimates in that rule included future year projections.⁷⁹ These projections showed lower estimates for

future years than upfront, in large part because the need for development of policies, procedures, and educational materials would be greatly reduced over time. Those future year estimates were then and remain uncertain for most of the same reasons already discussed with respect to the staff vaccination IFC. We have no basis for changing the overall estimated total future year compliance costs from the estimates made at that time.

Changes in Worker Lives Saved or Lost. Ending the staff vaccination IFC could arguably reduce vaccination levels among health care staff. However, the direct effect of this regulatory change is not necessarily to reduce the level of vaccination among health care staff, but to eliminate the government requirements for facilities to track and manage vaccination. We believe it possible, in fact, that provider and staff self-interest will persuade current or future vaccine-hesitant or newly hired staff, or both, about the safety and effectiveness of current vaccines. This opportunity is particularly large for booster shots, since only about 22 percent of nursing home staff, and presumably a similar percentage for other provider types, have even obtained the first booster.⁸⁰ Another positive factor may be the influence of educational institutions that train future care personnel in persuading or requiring their students to accept vaccination while in school, before taking jobs in the health care sector. Finally, the willingness of health care employers to simply require vaccination (in the vast majority of States where this is allowed) is a significant and potentially highly positive factor.⁸¹

The most influential variables in predicting future lives saved or lost are likely to be the new SARS-CoV-2 variants that make the initial vaccines less effective in preventing COVID-19. However, the new variants have generally been less harmful for most of those who have received vaccinations. Additional doses of COVID-19 vaccines provide protection against COVID-19 but immunity declines over time. These are all variables that interact, and their understanding by healthcare personnel depends substantially on the effectiveness of education and offering

⁸⁰ <https://www.cdc.gov/nhsn/covid19/ltc-vaccination-dashboard.html>.

⁸¹ The CDC has collected data on State laws either prohibiting (often with exceptions) or mandating (often with exceptions) employer- or local government-mandated COVID-19 vaccination or testing. Few States and none of the larger States have created by law prohibitions that would apply to healthcare or long-term care employers. The statutes mainly address compulsion by lower levels of government, such as cities or counties.

⁷⁷ See W. Adjei et al., “Risk Among Patients Hospitalized Primarily for COVID-19 During the Omicron and Delta Variant Pandemic Periods,” *Morbidity and Mortality Weekly Report (MMWR)*, September 16, 2022; at <https://www.cdc.gov/mmwr/volumes/71/wr/mm7137a4.htm>. This report showed a two thirds reduction in mortality from the Delta period to the Omicron period.

⁷⁸ 86 FR 61609, November 5, 2021.

⁷⁹ See Table 6 in that rule, at 86 FR 26330, May 13, 2021.

efforts by applicable health care providers. Further, many Americans have been infected with COVID-19 and may have developed some level of infection-induced immunity, which provides some protections as well. Since the educate and offer requirements are being retained and will be reinforced by new quality measures, as well as the extent to which future patients respond to high and low scores on these measures, we believe that any overall change in morbidity and mortality from the repeal of the provisions of the staff vaccination IFC would be smaller than what would result from repeal occurring (hypothetically) without the continuation of education-and-offering requirements.

Quite apart from changes in vaccination levels from those either originally estimated or currently in place, the morbidity and mortality of COVID-19 have changed substantially since 2021. In particular, the currently dominant strain of the virus results in much lower levels of severity, thereby lowering both hospitalizations and death. Current treatment options reduce severity levels even further.⁸² Assuming no further change in vaccination levels, treatment options, or in COVID-caused severity of illness, currently available information can be used to create rough estimates of conditions in a hypothetical future in which the IFCs remain in their current form. Most importantly, COVID-caused deaths have fallen substantially since the levels measured in or before 2021. According to CDC estimates, the number of deaths caused by COVID-19 among healthcare workers has fallen from dozens per week to close to zero.⁸³ Specifically, in the last year (beginning of February 2022 through end of January 2023) the number of known healthcare worker deaths per week has ranged from 0 to 4 (CDC says “less than 5”) and therefore has averaged about 2 per week, or a rate of approximately 100 per year.⁸⁴ Since a fraction of these deaths presumably were of those infected outside the workplace, or among those already vaccinated (given the percentage of adults in the United States who have received a COVID-19 vaccine), or both,

the termination of the staff vaccination IFC is estimated to have minimal effects.

As discussed elsewhere in the preamble, we intend to establish measures on COVID-19 infection prevention to our quality improvement measures for most types of health care facilities. This is a far more flexible system than detailed regulations and will allow tailoring of actions and accomplishments down to the facility level, responding in real-time to any changes in SARS-CoV-2 variants, drug treatments, and other factors that improve either staff or patient health outcomes, including innovations that protect either group through the other, or both at once. For example, improved ventilation systems have been demonstrated to reduce airborne infections for any exposed persons, including staff, patients, and visitors.⁸⁵

Therefore, and subject to all the uncertainties and unknowns discussed earlier in this analysis that might lead to higher or lower numbers, there is no known reason to expect that repeal of the staff vaccination IFC will lead to a substantial or measurable increase or decrease in health care worker deaths, despite the many uncertainties and unknowns involved.

Changes in Patient Lives Saved or Lost. Most of the same factors that apply to staff apply with equal force to patients. There are, however, several key differences. First, CMS has long required that LTC facilities and IICFs—IID both encourage and arrange vaccination of patients with the annual influenza vaccine and the pneumococcal vaccine. These requirements now include COVID-19 vaccination following the educate and offer IFC that we are now making permanent and thus no longer contingent on the scope or magnitude of COVID-19 infections. These facilities are the most important locations for patient education, both to protect other patients and to protect staff.

Second, the location where a patient is treated or dies may have little or no relevance to where they became infected.⁸⁶ This is true, of course, for workers as well. Many and perhaps

most worker infections undoubtedly come from contacts with infected individuals in external places such as sporting events, grocery stores, clubs, restaurants, and bars. But for health care these patterns are even more complex. The person who tests positive upon admission to a hospital most likely reached the hospital after contracting the disease in another setting.

It is also true that there are many more patient lives than staff lives at issue. While health care staff deaths from COVID-19 appear to have reached single digits on a weekly basis the total national weekly number of COVID-19 deaths has been about 3,000 on average for over 6 months.⁸⁷ Assuming no change, the number of COVID-19 deaths will be about 160,000 in 2023, about 5 percent of the national total of about 3.5 million annual deaths from all causes (and half the COVID-19 number in 2020).

D. Other Effects

There are no substantial budgetary effects of this final rule. Current payments for vaccine are federally financed, and not driven by whether there is a PHE for COVID-19 declared under section 319 of the Public Health Service Act. When the current budget for the vaccines runs out, private and public health insurance will in most cases assume the costs of vaccination, depending on future coverage decisions by these insurance programs. Likewise, there is little or no reason to expect that the expiration of the LTC facility testing IFC will have a consequential effect.

1. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. Under the RFA, “small entities” include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. For purposes of the RFA, we estimate that most health care facilities are small entities as that term is used in the RFA because they are either nonprofit organizations or meet the SBA definition of a small business (for most types of health care providers, having revenues of less than \$8.0 million to \$41.5 million in any 1 year). HHS uses an increase in costs or decrease in

⁸² <https://www.idsociety.org/covid-19-real-time-learning-network/emerging-variants/emerging-covid-19-variants/>.

⁸³ https://covid.cdc.gov/covid-data-tracker/#health-care-personnel_healthcare-deaths.

⁸⁴ CDC’s website acknowledges that these data have gaps and other imperfections, but the crucial point seems clear. From the full set of these sources, however imperfect, the number of cases is down substantially, and the number and rates of deaths have decreased even further compared to the first 2 years of the pandemic.

⁸⁵ See CDC, “Ventilation in Buildings,” June 2, 2021 version, at <https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html>, and Ehsan Mousavi et al, “COVID-19 Outbreak and Hospital Air Quality: A Systematic Review of Evidence on Air Filtration and Recirculation,” American Chemical Society Public Health Emergency Collection, August 26, 2020, at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7489049/>.

⁸⁶ Of course, this would not apply equally in all health care settings. Quick outpatient visits and long-term care residence would not show the same location of infection patterns.

⁸⁷ See the Data Table for Weekly Death Trends in CDC’s COVID Data Tracker. Only a handful of weeks have reached or exceeded 3,500 deaths since May 2022 as shown in this table, at https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_select_00.

revenues to a provider of more than 3 to 5 percent as its measure of “significant economic impact.” The HHS standard for “substantial number” is 5 percent or more of those that will be significantly impacted, but never fewer than 20.

This final rule was not preceded by a general notice of proposed rulemaking and the RFA requirement for a final regulatory flexibility analysis does not apply to final rules not preceded by a proposed rule. Regardless, this rule would not trigger the RFA requirement. As estimated previously, the total savings from this rule for future years are about \$691 million annually. Spread over 13 million full-time equivalent health care employees, this is about \$53 per employee. Assuming a fully loaded average wage and support cost per employee of \$90,000,⁸⁸ the annual savings do not approach the 3 percent threshold. Furthermore, the Department interprets the RFA’s definition of “significant economic impact” as applying only to newly imposed adverse effects, not to cost reductions or other savings. For these reasons, the Department has determined that this final rule will not have a significant adverse economic impact on a substantial number of small entities and that a final Regulatory Flexibility Analysis is not required. Regardless, the content of this RIA and the main preamble, taken together, would meet the requirements for a Final Regulatory Flexibility Analysis.

2. Small Rural Hospitals

Section 1102(b) of the Act requires us to prepare an RIA if a proposed or final rule may have a significant impact on the operations of a substantial number of small rural hospitals. For purposes of this requirement, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule is exempt because that provision of law only applies to those final rules for which a proposed rule was published. Because this rule has only the small and positive impact per employee calculated for RFA purposes, the Department has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)

⁸⁸This is the rounded weighted average annual cost of healthcare employees as estimated in the Totals line of Table 4 of the mandated vaccination interim final rule issued in November of 2021, op cit.

requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates will impose spending costs on State, local, or Tribal governments, or by the private sector, require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2023, that threshold is approximately \$175 million. This final rule was not preceded by a notice of proposed rulemaking, and therefore the requirements of UMRA do not apply. Regardless, this rule contains no State, local, or Tribal governmental mandates, nor any mandates on private sector entities that were not previously included in prior rules. Moreover, it saves rather than increases costs. The analysis in this RIA and the preamble as a whole would, however, meet the requirements of UMRA.

4. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct effects on State and local governments, preempts State law, or otherwise has federalism implications. While the staff vaccination IFC did preempt some State laws, those effects did not involve “substantial direct costs” and this final rule repeals those preemptions. Accordingly, the requirements of E.O. 13132 do not apply to this final rule.

E. Alternatives Considered

While we considered retaining the requirements established in the staff vaccination IFC, we believe that it has largely served its emergency purpose of protecting the health and safety of patients. As previously discussed in this RIA, about 86 percent of nursing home staff have completed the original primary vaccination series, helping reduce risk to patients.⁸⁹ Moreover, many and likely most of the remaining staff have previously been infected by COVID-19 and benefit from some protective immunity.⁹⁰ We also note that the subject addressed by this rule is whether or not to extend and/or modify the staff vaccination IFC, not the array of actions pursued with the many tools and venues which the Federal

⁸⁹ https://www.cdc.gov/nhsn/covid19/ltc-vaccination-dashboard.html#anchor_1638315381394.

⁹⁰ Reinfection of previously vaccinated persons or of previously infected persons would make them a temporary risk, but the frequency of this problem appears to be quite low. It remains, however, yet another future unknown.

Government uses, such as vaccine research.

In the population as a whole, as of March 29, 2023, COVID-19 death rates have decreased to about 323 a week, still far too high but a decreasing fraction of the 3.5 million annual and 66,000 weekly deaths from all causes in the United States.^{91 92} With regard to health care staff, the progress has been even more rapid, with staff deaths attributed to COVID-19 trending downward since late 2021 and remaining relatively low over the past year.⁹³ Given the many uncertainties as to future events, and with the option of new emergency regulations available under appropriate circumstances if progress is halted or reversed, a rule tailored to future events could always be created should the data justify such an action.

While not otherwise addressed in this RIA, we did consider whether it might be appropriate to not finalize the educate and offer IFC but as discussed in this rule recognize the importance of ongoing access to vaccination for individuals residing in congregate care settings. Additionally, we also considered whether we could or should extend the LTC facility testing requirements that expired with the PHE, and determined that there was no need in the face of current standards of care that call for testing when clinically indicated.

F. Accounting Statement and Table

The Accounting Table (Table 4) summarizes the quantified impact of this rule. It covers only 3 years because there will likely be new developments regarding treatments and vaccinations and their effects in future years and we have no way of knowing which will most likely occur. A longer period would be even more speculative than the current estimates.

As explained in various places within this RIA and throughout this final rule, there are major uncertainties as to the effects of current or possible future variants of SARS-CoV-2 on future infection rates, medical treatments and costs, and prevention of major illness or mortality. Even the duration of vaccine

⁹¹ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

⁹² Farida Ahmad et al, “Provisional Mortality Data—United States, 2021,” at <https://pubmed.ncbi.nlm.nih.gov/35482572/>.

⁹³ <https://covid.cdc.gov/covid-data-tracker/#health-care-personnel>. Of 98,807,297 case reports received by CDC, 13,207,516 (13.37 percent) have known healthcare personnel (HCP) status. Completion of HCP status varied in case reporting over time and is noted in the figure and table below. For the 1,145,831 cases of COVID-19 among HCP, death status is available for 636,341 (55.54 percent).

effectiveness in preventing COVID-19, reducing disease severity, and risk of death, by those vaccinated are not currently known with precision or certainty. These uncertainties also impinge on benefits estimates. For those reasons we have not quantified into annual totals the effects on mortality risk of this rulemaking or of other

actions (including the retention of the educate and offer IFC for LTC facilities and ICFs-IID, which would have a life-extending effect relative to an analytic baseline in which the future is characterized by a hypothetical absence of that IFC⁹⁴) and have used only a 3-year projection for the cost savings estimates in our Accounting Statement.

We also show a range (plus or minus 25 percent) for the upper and lower bounds of potential cost savings to emphasize the uncertainty as to several major variables, including changes in voluntary vaccination levels, longer-term effects, and others previously discussed.

TABLE 4—ACCOUNTING STATEMENT—CLASSIFICATION OF ESTIMATED COSTS AND SAVINGS RELATIVE TO AN ANALYTIC BASELINE IN WHICH THE STAFF VACCINATION AND EDUCATE-AND-OFFER IFCs ARE RETAINED INTO THE FUTURE
[\$ millions]

Category	Primary estimate	Lower bound	Upper bound	Units		
				Year dollars	Discount rate (%)	Period covered
Benefits Annualized and Monetized (\$millions/year)	\$690	\$518	\$862	2022	7	2023–2025
	690	518	862	2022	3	2023–2025
Benefits Notes: The benefits of this rule are the estimated reductions in costs from ending requirements for mandatory staff vaccinations.						
Costs (not annualized or monetized) .....	.....	.....	.....	2022	7	2023–2025
	.....	.....	.....	2022	3	2023–2025
Costs Notes: The estimated effects of this rule on staff and patient lives saved or lost from COVID-19 infections are not estimated.						
Transfers	None.					

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on May 11, 2023.

List of Subjects

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 441

Aged, Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 460

Aged, Citizenship and naturalization, Civil rights, Health, Health care, Health records, Individuals with disabilities, Medicaid, Medicare, Religious

discrimination, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant program-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 484

Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 486

Administrative practice and procedure, Grant programs—health, Health facilities, Home infusion therapy, Medicare, Reporting and recordkeeping requirements, X-rays.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural and urban areas.

42 CFR Part 494

Diseases, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV to remove expired language and finalize certain provisions issued in the interim final rule published at 85 FR 54820 (September 2, 2020); to finalize certain provisions issued in the interim final rule published at 86 FR 26306 (May 13, 2021); and to withdraw the regulations issued in the interim final rule published at 86 FR 61555 (November 5, 2021) as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

- 1. The authority citation for part 416 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

⁹⁴ Relative to this without-IFC baseline, the finalized requirements would also impose cost, as estimated at the time of the IFC's issuance.

§ 416.51 [Amended]

- 2. Section 416.51 is amended by removing paragraph (c).

PART 418—HOSPICE CARE

- 3. The authority citation for part 418 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 418.60 [Amended]

- 4. Section 418.60 is amended by removing paragraph (d).

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

- 5. The authority citation for part 441 continues to read as follows:

Authority: 42 U.S.C. 1302.

§ 441.151 [Amended]

- 6. Section 441.151 is amended by removing paragraph (c).

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

- 7. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395, 1395eee(f), and 1396u–4(f).

§ 460.74 [Amended]

- 8. Section 460.74 is amended by removing paragraph (d).

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

- 9. The authority citation for part 482 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395hh, and 1395rr, unless otherwise noted.

§ 482.42 [Amended]

- 10. Section 482.42 is amended by removing paragraph (g).

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

- 11. The authority citation for part 483 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1395i, 1395hh and 1396r.

§ 483.80 [Amended]

- 12. Section 483.80 is amended by removing paragraphs (h) and (i).

§ 483.430 [Amended]

- 13. Section 483.430 is amended by removing paragraph (f).

PART 484—HOME HEALTH SERVICES

- 14. The authority citation for part 484 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 484.70 [Amended]

- 15. Section 484.70 is amended by removing paragraph (d).

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

- 16. The authority citation for part 485 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395(hh).

§ 485.58 [Amended]

- 17. Section 485.58 is amended in paragraph (d)(4) by removing the last sentence.

§ 485.70 [Amended]

- 18. Section 485.70 is amended by removing paragraph (n).

§ 485.640 [Amended]

- 19. Section 485.640 is amended by removing and reserving paragraph (f).

§ 485.725 [Amended]

- 20. Section 485.725 is amended by removing paragraph (f).

§ 485.904 [Amended]

- 21. Section 485.904 is amended by removing paragraph (c).

PART 486—CONDITIONS FOR COVERAGE OF SPECIALIZED SERVICES FURNISHED BY SUPPLIERS

- 22. The authority citation for part 486 continues to read as follows:

Authority: 42 U.S.C. 273, 1302, 1320b–8, and 1395hh.

§ 486.525 [Amended]

- 23. Section 486.525 is amended by removing paragraph (c).

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

- 24. The authority citation for part 491 continues to read as follows:

Authority: 42 U.S.C. 263a and 1302.

§ 491.8 [Amended]

- 25. Section 491.8 is amended by removing paragraph (d).

PART 494—CONDITIONS FOR COVERAGE FOR END-STAGE RENAL DISEASE FACILITIES

- 27. The authority citation for part 494 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 494.30 [Amended]

- 28. Section 494.30 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–11449 Filed 5–31–23; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 54**

[WC Docket No. 21–93; DA 23–405; FR ID 142102]

Establishing Emergency Connectivity Fund To Close the Homework Gap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) grants, in part, the Request for Waiver filed by the Schools, Health & Libraries Broadband Coalition and the Consortium for School Networking (collectively, the Petitioners). The Bureau waives and extends the service delivery date for certain applicants who applied for Emergency Connectivity Fund support for equipment, other non-recurring services, and recurring services during the first, second, and third filing windows. The Bureau also waives and extends the service delivery date for recurring service requests for first, second, and third filing window applicants that were approved for new construction services, but were unable to use the full amount of their approved funding for monthly recurring services associated with the construction.

DATES: Effective June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Kate Dumouchel, Wireline Competition Bureau, (202) 418–7400 or by email at Kate.Dumouchel@fcc.gov. The Federal Communications Commission (Commission) asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Bureau's Order in WC Docket No. 21–93; DA 23–405, adopted May 12, 2023, and released May 12, 2023. Due to the COVID–19 pandemic,

the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/wcb-extends-emergency-connectivity-fund-service-delivery-deadline>.

I. Introduction

1. In this document, the Bureau grants, in part, the Request for Waiver filed by the Schools, Health & Libraries Broadband (SHLB) Coalition and the Consortium for School Networking (CoSN) (collectively, the Petitioners). First, the Bureau waives and extends the service delivery date for certain applicants who applied for Emergency Connectivity Fund (ECF) support for equipment, other non-recurring services, and recurring services during the first, second, and third filing windows, recognizing that some did not receive a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) approving an appeal, waiver, or post-commitment change request early enough to make full use of the commitment. Next, the Bureau waives and extends the service delivery date for recurring service requests for first, second, and third filing window applicants that were approved for new construction services, but were unable to use the full amount of their approved funding for monthly recurring services associated with the construction.

2. The Bureau finds that because of the timing of processing ECF applications and other factors beyond ECF applicants' and service providers' control, some ECF applicants may not be able to use all of their approved committed funding to the fullest extent possible without an additional waiver and extension of the service delivery date. Therefore, in providing this relief, the Bureau makes it easier for ECF applicants to use their full approved funding commitments and ensure applicants are treated fairly and equitably regardless of when their ECF applications are processed and funding commitment decision letters are issued. At the same time, The Bureau also seek to de-obligate funding that applicants do not need as soon as possible to make additional funds available for the ECF funding applications that otherwise could not be funded because demand received during the third application filing window exceeded the amount of available funds. Accordingly, the Bureau grants, in part, the Petitioners' request and waives and modifies § 54.1711(e) of the Commission's rules, and the Bureau directs the Universal Service Administrative Company

(USAC or Administrator) to extend the service delivery date for all the relevant funding requests, as discussed further below.

II. Discussion

3. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

4. To ensure the first and second filing window ECF applicants can fully use their approved funding, the Bureau finds that good cause exists to waive and extend the service delivery date if an FCDL or RFCDL approving an appeal, waiver, or post-commitment change was issued after a certain date, depending on funding request type. For recurring service funding requests with an FCDL or approved RFCDL dated on or after July 1, 2022, the service delivery date is 14 months after the date of the FCDL or approved RFCDL, but not to extend beyond June 30, 2024. For eligible equipment funding requests with an FCDL or approved RFCDL dated on or after January 1, 2023, the Bureau extends the service delivery date to 180 days after the date of the FCDL or RFCDL, not to extend beyond June 30, 2024. The Bureau provides 14 months and 180 days, respectively, because it recognizes that receiving a commitment decision after a specific date that then does not allow the applicant to use the full 12 months of approved recurring services, or receive its approved equipment, presents special circumstances that merit a waiver of our rules. This means that applicants receiving an FCDL or RFCDL will have time to purchase equipment or up to 12 months of recurring services delivered after the FCDL or approved RFCDL, but not to extend beyond the ECF Program's sunset date of June 30, 2024.

5. For equipment funding requests submitted in the first and second filing windows, the Bureau finds that six months is sufficient time for delivery after an FCDL or RFCDL. In this regard, the Bureau notes that connected devices, hotspots, and other eligible equipment are commercially available through multiple service providers and that supply chain issues that may have existed during the pandemic have lessened. Given our goal of ensuring that ECF funds are used expeditiously for their intended purpose, and that any unused funding is available for the

pending third application filing window ECF requests, the Bureau expects schools and libraries to timely place orders for eligible equipment, and for service providers to timely fulfill them. Further, if the requested equipment is no longer needed, the Bureau also expects applicants will take action to return the unneeded funds to the program so the funds may be made available to other ECF applicants whose students, school staff, or library patrons have continuing unmet needs. Accordingly, the Bureau is providing a shorter period of time for the receipt and delivery of eligible equipment to ensure this funding is being used expeditiously, and for the intended purposes of this emergency program.

6. The Petitioners request that the Bureau extends the service delivery date for all first and second window applicants that did not receive the FCDL or approved RFCDL until on or after March 1, 2022. The Bureau finds that, on balance, a blanket waiver is not appropriate for these funding requests and that it is better to target the waiver relief to the ECF applicants that are more likely to have issues being able to use their full funding commitment before the service delivery date. The Bureau must balance its efforts to de-obligate unused ECF funding and make it available to the remaining third window ECF applications that otherwise cannot be funded because of insufficient available funds. If there are applicants that received funding commitment decisions before the dates outlined in this document or other applicants that fall outside of the relief provided in this document, and are unable to fully use their committed ECF support due to special circumstances, they may file a waiver with the Commission to request to extend their current service delivery date. This will allow the Bureau to grant relief to those applicants that may need additional time without delaying the Commission's ability to de-obligate unused ECF funding for the majority of first and second window ECF applicants that have fully used their funding and do not need additional time. For similar reasons, the Bureau also elects to extend the service delivery date for first and second window applicants that received an FCDL or RFCDL on or after July 1, 2022, for recurring services, and on or after January 1, 2023, for equipment, by 14 months and 180 days, respectively, rather than extending all these ECF first and second window funding requests' service delivery dates to June 30, 2024, in order to de-obligate unused funds and make them available for remaining

timely-filed ECF third window requests. Fourteen months provides schools and libraries with time to deploy equipment and provide up to 12 months of recurring service, and 180 days provides schools and libraries with time to purchase and distribute equipment and devices to students, school staff, and library patrons with unmet need.

7. Next, the Bureau extends the current December 31, 2023, service delivery date to June 30, 2024, for all third application filing window equipment, non-recurring, and recurring service requests. The Bureau recognizes that due to circumstances beyond the control of the ECF applicants and service providers, additional time is needed for applicants to be able to fully use their approved funding for these third window requests. Receiving a commitment decision or an approved appeal or waiver after a specific date that then does not allow the applicant time to purchase and receive the approved eligible equipment and services, presents special circumstances that merit a waiver of our rules. Unlike for the funding requests from the first and second filing windows, on balance, the Bureau finds that a single service delivery date for the majority of third window funding requests provides administrative simplicity and reduces confusion given that these funding requests with a current December 31, 2023, service delivery date will likely not be de-obligated and committed in time to allow additional third filing window applicants enough time to purchase and receive eligible equipment and services before the program's funding sunsets on June 30, 2024. This extension is limited to the number of months requested and approved in the third application filing window, and is not to exceed 12 months.

8. Recognizing that there are some recurring services associated with new construction funding requests that may need additional time, the Bureau also extends relief to ECF applicants receiving a commitment for recurring services associated with a new construction request approved during the first, second, or third filing windows that received an FCDL or approved RFCDL on or after July 1, 2022. Unlike requests for equipment or commercially available services, applicants seeking support for new construction are provided one year from the date of their funding commitment decision letter to demonstrate that construction is completed and the services have been provided. The one-year deadline for new construction was established to ensure the greatly needed services were provided as quickly as possible to these

students, school staff, and library patrons with continuing unmet needs. The Bureau now recognizes that, due to special circumstances, some applicants are unable to fully use the months of service for which funding was approved because funding commitments were issued close to the service delivery date for these recurring service funding requests. The Bureau therefore extends the service delivery date to June 30, 2024, for approved recurring services associated with a new construction funding request if the FCDL or approved RFCDL for the new construction services was received on or after July 1, 2022. However, the Bureau does not otherwise extend or waive the current one-year deadline to complete the special construction services from the date of the FCDL.

9. The Bureau finds that waiving and extending the service delivery date for the ECF applicants discussed will not lead to any additional funding being made available to these applicants, but rather it allows the applicants to use their approved and committed ECF funding pursuant to the Commission's rules. In addition, the Bureau finds that the public interest would not be served if these applicants are not able to fully use the approved and committed ECF support for the eligible equipment and broadband services needed for these students, school staff, and library patrons with unmet needs who otherwise are not able to fully engage in remote learning. Rather, the actions the Bureau takes today will allow applicants to provide and use the ECF-supported equipment and services beyond the current service delivery dates, thereby enhancing the availability of off-campus connectivity to students, school staff, and library patrons with continuing unmet needs consistent with the goals of the ECF Program.

10. The Bureau is mindful that these ECF funds are limited and have adopted safeguards to ensure the funds are fully used for their intended purpose. The Bureau concludes that waiving and extending the service delivery date for these ECF funding requests will allow for the greater provision of affordable devices and connectivity to students, school staff, and library patrons in need and, therefore, furthers the mission of the ECF. The Bureau encourages applicants and service providers, who agree to invoice on behalf of the applicant, to continue to submit timely requests for reimbursement after receiving the requested eligible equipment or services, to allow the unused ECF support to be made available to for the remaining ECF third window funding requests so that other

students, school staff, and library patrons with continuing unmet needs can also be served before the June 30, 2024, sunset date of the ECF Program.

11. The Bureau also modifies § 54.1711(e) of the Commission's rules to reflect the updated service delivery deadlines adopted herein. The Bureau makes this change without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. The updated rule will become effective June 5, 2023.

12. Finally, the Bureau finds no evidence of waste, fraud, or abuse is presented by waiving and extending the service delivery date in this manner. The Bureau emphasizes that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the ECF Program are used for their intended purposes to provide broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs. Although the Bureau grants a waiver of and extends the service delivery date for certain ECF funding requests, these actions do not affect the authority of the Commission or USAC to conduct audits and other reviews and investigations to verify compliance with ECF Program rules and requirements. The Commission is also required to recover funds disbursed in violation of statutory and/or rule requirements.

III. Ordering Clauses

13. *Accordingly, it is ordered*, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, and §§ 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3, that § 54.1711 of the Commission's rules *is waived and amended* to the extent provided herein.

14. *It is further ordered*, that pursuant to § 1.102(b)(1) of the Commission's rules, 47 CFR 1.102(b)(1), the Order *shall be effective* upon release.

15. The amended rule adopted in the Order constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements. Accordingly, this amended rule is *effective* June 5, 2023.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools,

Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Cheryl Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

Final Rule

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend § 54.1711 by revising paragraph (e) to read as follows:

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

* * * * *

(e) *Service delivery date.* (1) Except as provided in paragraphs (e)(1)(i) and (ii) of this section, for the initial filing window set forth in § 54.1708(b) and second application filing window, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.

(i) If the funding commitment decision letter or a revised funding commitment decision letter approving an appeal, waiver, or post-commitment request for equipment, is received on or after July 1, 2022, the service delivery date for service funding requests is 14

months from the date of that letter or June 30, 2024, whichever date is earlier.

(ii) If the funding commitment decision letter or a revised funding commitment decision letter approving an appeal, waiver, or post-commitment request for equipment, is received on or after January 1, 2023, the service delivery date for equipment is 180 days from the date of that letter or June 30, 2024, whichever date is earlier.

(2) For the third application filing window and any subsequent filing windows covering funding for purchases made between July 1, 2022, and June 30, 2024, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2024.

[FR Doc. 2023–11733 Filed 6–2–23; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 88, No. 107

Monday, June 5, 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 72

[NRC-2023-0107]

Draft Regulatory Guide: Weather-Related Administrative Controls at Independent Spent Fuel Storage Installations

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG-3057, "Weather-Related Administrative Controls at Independent Spent Fuel Storage Installations." This DG is a proposed new regulatory guide (RG) 3.77 and provides licensees with methods that the NRC staff considers acceptable for specific or general licensees of an independent spent fuel storage installation and certificate of compliance holders to comply with protection against environmental conditions and natural phenomena.

DATES: Submit comments by July 5, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0107. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-

A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

John-Chau Nguyen, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-0262; email: John-Chau.Nguyen@nrc.gov, or Matt Learn, Office of Nuclear Material Safety and Safeguards, telephone: 630-829-9603; email: Matthew.Learn@nrc.gov, or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301-415-2493; email: Harriet.Karagiannis@nrc.gov. All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2023-0107 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-2023-0107.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov.

- *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 a.m. and 4 p.m. eastern

time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0107 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS.

The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Weather-Related Administrative Controls at Independent Spent Fuel Storage Installations," (ADAMS Accession No. ML23089A012) is temporarily identified by its task number, DG-3057.

This DG-3057 is a proposed new RG 3.77, and provides the NRC staff and the industry with guidance that would provide licensees the option, in certain limited circumstances, to use administrative controls to ensure that the structures, systems, and components important to safety are designed to withstand the effects of weather-related

wind and tornado natural phenomena without impairing their capability to perform their intended design functions during outdoor dry storage system handling activities. This DG is endorsing Nuclear Energy Institute 22–02, Revision 2, “Guidelines for Weather-Related Administrative Controls for Short Duration Outdoor Dry Cask Storage Operations,” with clarifications and exceptions.

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML23089A014). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the “Proposed Rules” section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Backfitting, Forward Fitting, and Issue Finality

Issuance of this draft regulatory guide would not constitute backfitting as defined in section 72.62 of title 10 of the *Code of Federal Regulations* (10 CFR), “Backfitting,” and as described in NRC Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests” (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52. Further, as explained in DG–3057, applicants and licensees would not be required to comply with the positions set forth in DG–3057.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

Dated: May 31, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–11895 Filed 6–2–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 6, 8, 10, and 11

[Docket No. TTB–2022–0011; Notice No. 216B; Re: Notice No. 216 and Notice No. 216A]

RIN 1513–AC92

Consideration of Updates to Trade Practice Regulations

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is extending for an additional 30 days the comment period for an advance notice of proposed rulemaking it published on November 9, 2022, entitled, “Consideration of Updates to Trade Practice Regulations.” TTB is taking this action in response to a request submitted by multiple stakeholder organizations.

DATES: The comment period for the advance notice of proposed rulemaking published November 9, 2022, at 87 FR 67612, is extended for thirty days. Comments are now due on or before July 7, 2023.

ADDRESSES: You may electronically submit comments on the advance notice of proposed rulemaking and view copies of that notice, this comment period extension notice, and any comments TTB receives within Docket No. TTB–2022–0011 as posted on the *Regulations.gov* website at <https://www.regulations.gov>. A link to that docket is available on the TTB website at <https://www.ttb.gov/laws-and-regulations/all-rulemaking> under Notice No. 216. Alternatively, you may submit comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of Notice No. 216 for information on the specific issues and questions on which TTB is soliciting comments, and for information on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Christopher Forster-Smith, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC

20005; telephone 202–453–1039 ext. 150.

SUPPLEMENTARY INFORMATION: Through an advance notice of proposed rulemaking (ANPRM) issued in November 2022, the Alcohol and Tobacco Tax and Trade Bureau (TTB) solicited comments on its trade practice regulations related to the Federal Alcohol Administration Act’s tied house, exclusive outlet, commercial bribery, and consignment sales prohibitions, which are contained in 27 CFR parts 6, 8, 10, and 11, respectively. TTB published that ANPRM as Notice No. 216, “Consideration of Updates to Trade Practice Regulations,” in the **Federal Register** on November 9, 2022, at 87 FR 67612. TTB solicited comments on specific issues and questions set out in the ANPRM and also invited comments on any other issue or concern related to its trade practice regulations.

As originally published, the comment period closing date for the ANPRM was March 9, 2023. In response to a request from eight alcohol industry trade associations, TTB extended the comment period for Notice No. 216 until June 7, 2023 (see Comment 21 as posted in Docket TTB–2022–0011 on the “*Regulations.gov*” website at <https://www.regulations.gov>).

TTB recently received another joint request from the same eight alcohol industry trade associations to extend the comment period for the ANPRM for an additional 90 days. The eight associations supporting the request are the Wine Institute, the Distilled Spirits Council of the United States (DISCUS), WineAmerica, the American Distilled Spirits Alliance (ADSA), the Wine and Spirits Wholesalers of America (WSWA), American Beverage Licensees (ABL), the Beer Institute, and the National Beer Wholesalers Association (NBWA).

The eight associations cite several factors as a basis for their request, and state that “the additional time will allow all producers and all retailers, large and small, to provide meaningful feedback and evidence.” The comment extension request submitted by the associations is posted in Docket TTB–2022–11 as Comment 37 on the “*Regulations.gov*” website.

TTB also received a comment from the Brewers Association, an industry trade association, opposing any further extension of the comment period. In its comment, the Brewers Association notes that the already-extended comment period for Notice No. 216 will have been open for nearly 7 months by the June 7th closing date. The comment also notes that as Notice No. 216 is an

advance notice of proposed rulemaking, there will be further opportunities to comment as the process continues with the issuance of a notice of proposed rulemaking, and states that further postponement of that process is unwarranted. The Brewers Association comment is posted in Docket TTB–2022–11 as Comment 38 on the “*Regulations.gov*” website.

TTB has decided to extend the comment period for Notice No. 216 for a final time, for an additional 30 days. TTB believes that this 30-day extension of the comment period, in addition to the time that the comment period has been open since November 2022, will be of sufficient length to allow interested parties to consider and comment on the issues raised in the ANPRM, while allowing TTB to then proceed with a notice of proposed rulemaking, which will provide an opportunity to comment on proposed regulations, and ultimately conclude the rulemaking in a timely manner.

Therefore, TTB will now accept public comments on Notice No. 216 through July 7, 2023. See the ANPRM, Notice No. 216, for complete information on the specific issues and questions on which TTB is seeking comment, as well as information on how to submit comments electronically or by postal mail, and on the confidentiality and public disclosure of any submitted comments.

Signed: June 1, 2023.

David M. Wulf,

Deputy Administrator.

[FR Doc. 2023–12047 Filed 6–1–23; 4:15 pm]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

28 CFR Part 81

[Docket No. CRM 120; AG Order No. 5665–2023]

RIN 1105–AB57

Implementing the Child Pornography Victims Reserve

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this rule, the Department of Justice (“the Department”) is proposing regulations that implement the Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018 (“the AVAA Act” or “the Act”). The Act established the Child Pornography Victims Reserve (“Reserve”) to provide defined monetary assistance to eligible individuals who are depicted in child

pornography that is the basis for certain convictions. The Reserve provides payment to such child pornography victims based on orders obtained in United States district courts. By statute, eligibility determinations are made by courts. Under this proposed rule, a claimant may choose to request that the Department present an application for a court order. This proposed rule provides procedures for the submission of requests and court orders to the Department related to payments from the Reserve. The Department will provide payment from the Reserve to the victim pursuant to a court order issued, upon receipt of the order and the requisite information from the claimant following instructions on the Department’s website for this program.

DATES: Written and electronic comments must be sent or submitted on or before August 4, 2023. Comments received by mail will be considered timely if they are postmarked or otherwise indicate a mailing or shipping date on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments prior to Midnight Eastern Time at the end of that day.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit those comments, identified by the agency name, and reference Docket No. CRM 120, by one of the two methods below.

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

- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail or shipment to the following: Mr. Steve Grocki, Child Exploitation and Obscenity Section, U.S. Department of Justice, 1301 New York Ave NW, Suite 1100, Washington, DC 20530.

To ensure proper handling, please reference the agency name and Docket No. CRM 120 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Catherine Pierce, Senior Advisor, Office for Victims of Crime, telephone (202) 307–6785 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this

proposed rule via one of the methods and by the deadline stated above. All comments must be submitted in English or be accompanied by an English translation. The Department of Justice also invites comments that relate to the economic, environmental, or federalism effects that might result from this rulemaking. In addition, the Department seeks comments on appropriate criteria to be included in the request form to the Department to ensure that claimants or their authorized representatives are who they purport to be and are not fraudulent. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at www.regulations.gov. Interested persons are not required to submit their personally identifying information (“PII”) in order to comment on this proposed rule. However, any PII that is submitted is subject to being posted to the publicly accessible website at www.regulations.gov without redaction.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online.

Additionally, the Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

II. Overview

The Child Pornography Victims Reserve was established to provide defined monetary assistance to eligible individuals who are depicted in child pornography that is the basis for certain

convictions under 18 U.S.C. chapter 110. The Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Public Law 115–299, secs. 4–5, 132 Stat 4383, 4385–88, codified at 18 U.S.C. 2259, 2259A, and 2259B, and 34 U.S.C. 20101(d). Under 18 U.S.C. 2259(d), a United States district court may order payment from the Reserve to a victim of a defendant convicted in Federal court of trafficking in child pornography depicting that victim. The Department, pursuant to this proposed rule, will make a payment from the Reserve to such child pornography victims based on orders obtained in United States district courts.

The Department is issuing this proposed rule pursuant to 18 U.S.C. 2259B(c), which provides that the Attorney General shall issue regulations to implement the payment of defined monetary assistance out of the Reserve. This proposed rule outlines procedures for persons to request to apply through the Department for the defined monetary assistance. As set forth in more detail below, if a claimant chooses to proceed through the Department, the Department may present the claimant's application for a court order. ("Claimant" means the person who claims to be a victim of trafficking in child pornography and to be eligible for the defined monetary assistance at 18 U.S.C. 2259(d), and "victim" or "victim of trafficking in child pornography" means a person whom a Federal court has determined, under 18 U.S.C. 2259(d)(1)(B), to be a victim of trafficking in child pornography.) The Department will provide payment from the Reserve to the victim pursuant to a court order issued under 18 U.S.C. 2259(d)(1)(C), upon receipt of the order and the requisite information from the claimant following instructions on the Department's website for this program.

The proposed rule also sets forth procedures by which persons may submit requests to the Department through their attorney, a legal guardian (in the case of claimants under the age of 18 or who are incompetent, incapacitated, or deceased), or a representative authorized by the claimant, which includes a personal representative of an estate (for deceased claimants) (collectively, "authorized representative"). The proposed rule is procedural in nature, implementing a process by which a claimant may request that the Department facilitate the claimant's request that a court make a determination of eligibility pursuant to the eligibility requirements in the Act. It does not create new rights or impose obligations independent of the statute, and it does not create an

attorney-client relationship between the claimant and any Department attorney.

III. Background

Under Federal law, victims of child pornography offenses are entitled to full and timely restitution from defendants charged and convicted in Federal court, including restitution for losses caused by conduct such as the possession, receipt, viewing, transportation, and distribution of these images. See 18 U.S.C. 2259. Restitution is imposed upon an individual criminal defendant by a Federal court at the time of sentencing, and the obligation to pay restitution is part of the defendant's criminal sentence. See *id.*; see also 18 U.S.C. 3663A. The Federal Government bears the burden of proving that the defendant owes restitution to a victim, although a defendant can agree to pay restitution as part of a plea agreement. In order for a court to impose a restitution obligation on a child pornography trafficking defendant, the Federal Government, represented by the prosecutor, must prove the following:

- *Victim status*: This element means that the person seeking restitution is a victim, *i.e.*, that the person has been harmed as a result of the commission of a Federal child pornography trafficking crime.
- *Losses*: This element refers to the amount of losses incurred by the victim, both since the offense took place and that are reasonably projected to be incurred in the future. There is no statutory limit on how much restitution may be ordered to be paid to a victim, but there must be a sufficient evidentiary basis to prove that all of the losses have been or are reasonably projected to be incurred. The statute permits recovery for the following types of losses: medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; reasonable attorneys' fees, as well as other costs incurred; and any other relevant losses incurred by the victim. 18 U.S.C. 2259(c)(2). Restitution losses are limited to actual monetary losses and should not be confused with amounts of money a victim might be awarded for pain and suffering or punitive damages in a civil tort lawsuit.

- *Causation*: As discussed in more detail below, this element requires proof that the losses were caused in the aggregate by the trade in child pornography depicting the victim.

- *Amount*: In cases where multiple defendants contributed to the victim's losses, the court must determine how

much each individual defendant should pay to the victim.

In all Federal cases, restitution is obtained on a case-by-case basis. Because child pornography can be possessed and shared by many different unrelated criminal defendants and distributed repeatedly, a single child pornography trafficking victim may receive restitution orders in hundreds of individual criminal cases being brought in different Federal courts all over the country. Under current law, each of these defendants is ordered to pay some portion of the victim's overall losses. Once the victim has collected payment for the full amount of the victim's losses from one or more defendants, no further restitution orders can be imposed on additional defendants on the victim's behalf unless new losses are incurred. See 18 U.S.C. 2259(b)(2)(C).

In 2009, a victim sought restitution for the first time, not from the individual who sexually abused her and produced and shared the images, but from individuals who subsequently traded and collected those images. A small number of other child pornography victims subsequently sought similar restitution. Federal prosecutors across the country were soon seeking restitution for victims in Federal courts in child pornography possession, receipt, and distribution cases.

Despite the Department's overall success in obtaining orders of restitution for these victims, courts were inconsistent in their approach to restitution claims. Some courts struggled to determine whether an individual defendant convicted of possession, receipt, or distribution proximately caused a victim's losses. If a defendant was only one of thousands who harmed the victim, then some courts indicated that the defendant could not be said to have caused the victim's losses because those losses would be essentially the same if that particular defendant had never committed the crime. On that logic, some courts simply denied the restitution requests. Others demanded a showing as to how much an individual defendant's crime incrementally increased the victim's losses, imposing a generally insurmountable evidentiary burden. Among courts that awarded restitution, many grappled with how to determine the amount that the defendant should pay to the victim.

These issues were brought to the Supreme Court in *Paroline v. United States*, 572 U.S. 434 (2014). After finding that section 2259 required proof of proximate causation for all the categories of losses referenced in the

statute, the Court summed up the problem this way:

In this case . . . , a showing of but-for causation cannot be made. . . . From the victim's perspective, Paroline was just one of thousands of anonymous possessors. . . . [I]t is not possible to prove that her losses would be less (and by how much) but for one possessor's individual role in the large, loosely connected network through which her images circulate. Even without Paroline's offense, thousands would have viewed and would in the future view the victim's images, so it cannot be shown that her trauma and attendant losses would have been any different but for Paroline's offense.

Id. at 450 (internal citations omitted).

To resolve this dilemma, the Court adopted the less demanding aggregate causation standard:

[A]lternative and less demanding causal standards are necessary in certain circumstances to vindicate the law's purposes. It would be anomalous to turn away a person harmed by the combined acts of many wrongdoers simply because none of those wrongdoers alone caused the harm. And it would be nonsensical to adopt a rule whereby individuals hurt by the combined wrongful acts of many (and thus in many instances hurt more badly than otherwise) would have no redress, whereas individuals hurt by the acts of one person alone would have a remedy.

Id. at 452. Therefore, the Court concluded:

In this special context, where it can be shown both that a defendant possessed a victim's images and that a victim has outstanding losses caused by the continuing traffic in those images but where it is impossible to trace a particular amount of those losses to the individual defendant by recourse to a more traditional causal inquiry, a court applying § 2259 should order restitution in an amount that comports with the defendant's relative role in the causal process that underlies the victim's general losses.

Id. at 458. The Court then considered how district courts might determine the amount a given defendant should pay a victim in restitution. To provide guidance, the Court cited a number of factors courts might consider, including "the number of past criminal defendants found to have contributed to the victim's general losses; . . . whether the defendant reproduced or distributed images of the victim; whether the defendant had any connection to the initial production of the images; how many images of the victim the defendant possessed; and other facts relevant to the defendant's relative causal role." *Id.* at 460.

The Department is not aware of any district court judge since *Paroline* denying a restitution request in a child pornography possession, receipt, or

distribution case for insufficient proof of causation. The aggregate causation standard is easily understood and applied. To the extent that restitution is contested, the dispute is often solely over how much a defendant should be ordered to pay a given victim.

Nonetheless, even after *Paroline*, few victims exercised their right to restitution. It appeared that the process of tracking hundreds of cases around the country over the course of years was too burdensome. Almost all victims seeking restitution in child pornography trafficking cases hire an attorney to help coordinate the logistics. In addition, although the government bears the burden of proving restitution, in order to submit estimates of future losses, many victims hire psychological experts and economic analysts to help prepare their claims. The necessity of engaging multiple experts has served as a barrier that prevents victims from seeking restitution at all.

Congress therefore enacted the AVAA Act to create an alternative system to allow victims of trafficking in child pornography to obtain some measure of compensation (called "defined monetary assistance") without having to prove their losses. The process of obtaining defined monetary assistance is an alternative to the traditional means of seeking restitution as part of a Federal prosecution. Providing the defined monetary assistance alternative is meant to ameliorate the structural impediments that prevent victims from claiming restitution while preserving the option of obtaining full restitution for those who wish to do so. Under the terms of the statute, victims of these types of child pornography offenses can choose whether to present their full restitution claims in court through prosecutors, as is currently done, or to obtain a one-time payment of defined monetary assistance. The amount of defined monetary assistance in 2019 was \$35,000, but the amount is adjusted for inflation over time. 18 U.S.C. 2259(d)(1)(D).

The Act provides that the "Attorney General shall administer" the Reserve. See 18 U.S.C. 2259B(c). The determination regarding victim eligibility for the payment is made by the court. The procedural details of the Department's administration of the Reserve and the substantive law applicable to the court's determination are discussed in Section IV of this preamble.

IV. Proposed Process To Obtain Defined Monetary Assistance From the Reserve

Pursuant to 18 U.S.C. 2259(d)(1)(B) and (C), a district court determines

whether a claimant is eligible to receive defined monetary assistance, and, if it makes such a finding, orders payment of defined monetary assistance to the victim or the victim's authorized representative. The Act does not specify any application process, but it does authorize the Attorney General to administer the Reserve. Pursuant to this authorization, the Department proposes to establish the process set forth in this proposed rule to allow claimants to request that the Department facilitate obtainment of the requisite district court order for the victim.

A. Proposed Request and Review Process

This proposed rule is designed to assist claimants in obtaining court determinations of eligibility for payment of defined monetary assistance from the Reserve. Under the proposed rule, claimants may choose to request that the Department present an application to a court for the court's determination of eligibility. The Department will review the request and may follow up as needed to seek additional information from the claimant or the claimant's authorized representative in order to resolve any gaps in the claimant's supporting information. It is the claimant's responsibility to present evidence sufficient to establish a complete request, but in no instance will the claimant be required to send—nor shall the claimant send—any images of child pornography. A request is complete where it is supported by all information required by the request form and by responses to follow-up requests for information. The Department will not present an application based on a request that is incomplete or duplicative of a request that the Department has already received. The Department will provide notice to a claimant if it decides not to present the requested application to the court.

After the Department receives a claimant's request, and the Department has exhausted reasonable efforts to obtain any needed additional information from the claimant, the Department will use reasonable efforts to identify a Federal child pornography trafficking case in which an image of the claimant appears. The Department will consider any case(s) identified by the claimant as well as any in which the Department has independent information linking the claimant to a Federal child pornography trafficking case. If, based on the information in the request, the claimant might be eligible for defined monetary assistance as a result of more than one case, the

Department, in its sole discretion, will decide in which case it will present the application.

It may take time for the Department to identify an appropriate case to seek the required court order or to determine which of several potential cases is the most appropriate. The Department will endeavor to obtain the order in a timely manner.

B. Presentment of an Application for an Order Affirming Eligibility

Once the Department identifies an appropriate case, the Department will present the claimant's application to the district court, which may then issue an order affirming the claimant's eligibility for payment. The mere presentment of an application to a court does not imply that the Department has taken a position on the ultimate merits of the application. The Department may or may not (as it deems appropriate) present the application with an accompanying recommendation—for example, the Department may include a recommendation that the court grant the motion where the Department is persuaded that the statutory standard for payment is met. Conversely, the Department may recommend that the court deny the application if it is not persuaded that the statutory standard for payment is met.

In the event that an application is denied by the district court, the Department may decide to appeal a ruling by a district court denying the claimant's eligibility for defined monetary assistance. The Department will make reasonable efforts to consult with the claimant (and the claimant's authorized representative, if applicable), on the issue of appeal.

Depending on the basis for the court's ruling, the Department may seek to present the claim underlying a denied application in another case when it would be appropriate to do so. The Department will make reasonable efforts to consult with the claimant (or the claimant's authorized representative, if applicable) about any decision to present a claim in another case.

If an application is denied by the district court, no appeal is taken or such appeal is unsuccessful, and the claim underlying an application is not presented in another case, the claimant will not receive defined monetary assistance on the basis of the claimant's request to the Department. If the claimant resubmits a request to the Department with additional supporting information, the Department may present that new application as consistent with these regulations.

C. Payment

Once the court issues an order of payment, the Department will pay the victim the defined monetary assistance from the Reserve, as specified in the order. Payment will typically be made via electronic funds transfer facilitated by the Department of the Treasury, but the Department may use other methods (e.g., physical check) depending on the circumstances and technology or systems in place at the time of payment. Any money received may be subject to Federal, state, or local taxes.

D. Limits on Attorney Representative Fees and Costs

There is no fee to submit a request to the Department when seeking defined monetary assistance from the Reserve, and a claimant (or authorized representative, if applicable) may submit a request for defined monetary assistance without being represented by an attorney. Nonetheless, a claimant (or authorized representative, if applicable) may hire an attorney for this purpose; it will be entirely the claimant's or authorized representative's decision whether to do so. Under 18 U.S.C. 2259(d)(4), if the claimant or authorized representative is represented by counsel, the attorney shall not charge, receive, or collect, and the court may not approve, any payment of fees and costs that in the aggregate exceeds 15 percent of any defined monetary assistance paid under the Act on such claim. An attorney who violates this provision is subject to fine, imprisonment of up to one year, or both.

E. Privacy

Claimant submissions will not be made public and will be protected and used only in accordance with applicable law, including the Privacy Act of 1974, 5 U.S.C. 552a. Pursuant to 5 U.S.C. 552a, 18 U.S.C. 3509(d)(1), and 18 U.S.C. 3771(a)(8), the Department will not disclose to the public the names of the individuals who have requested defined monetary assistance from the Reserve or the names of the decedents for whom defined monetary assistance is sought from the Reserve, except as necessary to process a request or application or obtain a court order, to bring a criminal or civil case against an individual for obtaining defined monetary assistance by fraud, or pursuant to law or court order. However, the fact that a victim has received defined monetary assistance must be introduced in a Federal criminal proceeding where the amount of the victim's losses is at issue.

The process of providing a claimant with access to information held by the government will be subject to all applicable laws and regulations, including the Privacy Act of 1974, 5 U.S.C. 552a, and subpart B of part 16 of title 28, Code of Federal Regulations.

F. Victim Choice as to Defined Monetary Assistance Versus Restitution

Victims may choose to pursue restitution; to pursue defined monetary assistance; or to pursue some combination of the two, whether in the same case or in multiple cases, as appropriate. 18 U.S.C. 2259(d)(3) provides that a victim who has previously collected restitution in an amount greater than the amount of the defined monetary assistance available under section 2259(d)(1)(D) is ineligible to seek defined monetary assistance. A victim who has collected restitution in an amount less than the amount of defined monetary assistance (i.e., less than \$35,000, adjusted for inflation as described above) is eligible to seek defined monetary assistance. Although the statute does not define the term "collected," the word "collected" ordinarily means amounts actually received, not merely amounts ordered but not yet paid. *See, e.g., Collect*, Oxford English Dictionary, <https://www.oed.com/view/Entry/36263> (last visited Feb. 26, 2023) (defining "collect" to mean "to receive money"). There is often a lag between order and payment. The amount collected is the aggregated payment from all defendants. Once victims have collected an amount of restitution equal to the amount of defined monetary assistance, they become ineligible to obtain defined monetary assistance. For example, a defendant may have been ordered to pay a victim \$50,000 in restitution, but the victim to date might have received only \$5,000. That victim would remain eligible for defined monetary assistance until the \$35,000 (inflation-adjusted) collection threshold is reached. If a victim obtains orders for restitution, and then receives defined monetary assistance, the amount of the defined monetary assistance must be disclosed if the victim is later asked to provide information to a court pursuant to 18 U.S.C. 2259(b)(2)(C) concerning the amount of restitution collected. *See also* 18 U.S.C. 2259(d)(2)(C).

G. One-Time Defined Monetary Assistance Payment; Effect on Restitution and Civil Remedies

Under 18 U.S.C. 2259(d)(2)(A), a victim may receive a payment of defined monetary assistance only once. Even after receiving such a payment, a

victim can, under 18 U.S.C. 2259(d)(2)(B), decide to seek restitution in court pursuant to 18 U.S.C. 2259. However, 18 U.S.C. 2259(d)(2)(C) specifies that the amount a victim received in defined monetary assistance must be deducted from the total amount of losses sought in restitution. For example, if a victim obtains defined monetary assistance in the amount of \$35,000, and in a later case pursues a restitution claim for \$100,000, the maximum amount recoverable on the latter claim would be \$65,000.

Obtaining restitution or defined monetary assistance does not bar victims from seeking a civil remedy, such as under 18 U.S.C. 2255, although either may impact the amount the victims recover in a civil suit.

H. Statutory Requirements for Eligibility

Defined monetary assistance is available to “any victim of . . . trafficking in child pornography.” 18 U.S.C. 2259(d)(1)(A). The Act imposes three requirements for payment of defined monetary assistance.

First, the claimant must appear in child pornography that has been trafficked. “Trafficking in child pornography” is defined in 18 U.S.C. 2259(c)(3) by reference to statutes that prohibit advertising, transporting, distributing, receiving, or possessing child pornography, or accessing child pornography with intent to view it.

Second, at least one defendant must have been convicted in Federal court of conduct (advertising, transporting, distributing, receiving, or possessing child pornography, or accessing child pornography with intent to view it) involving a visual depiction of the claimant. The Act imposes no time limits on when the conviction must have occurred. Any qualifying conviction serves as a basis for establishing a claimant’s eligibility for defined monetary assistance, so long as there is sufficient evidence to obtain a court order as required under the statute.

Sometimes the evidence may suggest that the defendant possessed child pornography depicting a particular victim, but the defendant’s conviction was for a different crime. This could happen if child pornography involving Victim A was found on a defendant’s computer, but the defendant was actually convicted of producing child pornography of Victim B or distributing child pornography depicting Victim C. Victim A would not be entitled to defined monetary assistance based upon that case, though Victim A might be eligible in a different case.

A single conviction is sufficient to establish a claimant’s eligibility. There is no need under the Act to prove that the claimant was a victim in more than one conviction for trafficking in child pornography.

Third, the claimant must appear in a visual depiction that shows “sexually explicit conduct” as defined in 18 U.S.C. 2256(2)(A) and must have been under the age of 18 at the time the visual depiction was created.

Not all images of children being traded online meet this definition of sexually explicit conduct. As one example, some individuals may appear in imagery that is illegal under State law, but that is not prohibited under Federal law. Because such images do not depict “sexually explicit conduct” as defined in section 2256, individuals appearing in such material would not be eligible for defined monetary assistance. In order to obtain defined monetary assistance, the claimant would need to establish that a defendant was convicted of a Federal offense involving the sexually explicit imagery.

A claimant need not be a United States citizen and need not reside in the United States in order to be eligible for defined monetary assistance.

I. Section-by-Section Overview of Proposed Rule

Section 81.51 sets forth the statutory basis for and the purpose of the Reserve, as well as the statutory one-time payment amount.

Section 81.52 provides the definitions applicable to this subpart. If a term is not defined in § 81.52, the term would have the statutory definition at 18 U.S.C. 2256, 2259, 2259A, or 2259B.

Section 81.53 provides certain requirements for eligibility for a payment from the Reserve, including burden of proof and eligibility exclusions.

Section 81.54 provides a description for how persons may submit requests to the Department for funds from the Reserve using an online portal located on the Department’s website for this program. Additional information as to how to submit a request to the Department will be available on the website.

Section 81.55 explains that the claimant must follow the directions on the Department’s website for this program to submit a request to the Department for monetary assistance. Failure to submit all required documentation would potentially result in delay of the adjudication or return of the request by the Department.

Section 81.56 details the procedures to determine a personal representative

to request and receive funds on the claimant’s behalf.

Section 81.57 provides the process by which requests submitted to the Department for defined monetary assistance and court orders requiring payment will be processed by the Department.

Section 81.58 sets forth signatures and certifications required for a request to the Department to be considered complete.

Section 81.59 provides information related to privacy and confidentiality of claimants’ names during the course of the request process.

V. Regulatory Analyses

A. Administrative Procedure Act

This proposed rule concerns matters relating to “benefits,” 5 U.S.C. 553(a)(2), and also to “rules of . . . agency procedure,” 5 U.S.C. 553(b)(A). Therefore, it is exempt from the requirement of prior notice and comment and from a delay in its effective date. Nevertheless, the Department believes that comments from the public may be useful in developing these proposed regulatory changes. Consequently, it is publishing this rule as a notice of proposed rulemaking and is soliciting public comments on this proposal.

B. Executive Orders 12866 and 13563

This proposed rule has been drafted and reviewed in accordance with Executive Orders 12866 and 13563. This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. The rulemaking is primarily procedural, dealing with the administrative process of submitting requests to the Department for defined monetary assistance. The key eligibility standards are set forth in the statute, and the Department is not by this proposed rule making any changes to those standards.

As set forth in the cost-benefit analysis below, this proposed rule will not have the economic effects described in section 3(f) of Executive Order 12866. It will not create any inconsistency or interference with an action taken or planned by another agency because the statutory authorization for this program directs the Attorney General (and, thus, the Department, and not any other agency) to administer the program. It does not affect entitlements, grants, user fees, or loan programs, nor does it raise novel legal or policy issues because the proposed rule is primarily procedural, describing the Department’s implementation of the statutory eligibility criteria.

This regulation has no cost to State, local, or Tribal governments, or to the private sector. The Child Pornography Victims Reserve is funded by assessments paid by certain Federal offenders, as well as gifts, bequests, or donations from private individuals, deposited into the Crime Victims Fund in the United States Treasury and set aside in the Reserve; those funds may not be obligated in an amount above \$10 million in any given year. See 18 U.S.C. 2259B(a); 34 U.S.C. 20101(d)(6).

The cost to the Federal Government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, including both prospective and retroactive claimants.

Although spending is anticipated to be higher in the initial years as a result of the number of potential retroactive claimants, the program will not spend more than the statutory maximum of \$10 million each fiscal year. That is, even if claimants submit requests for defined monetary assistance that, in the aggregate, exceed \$10 million in one year, the Department will spend no more than \$10 million, and will pay only those claims that can be satisfied from that amount. In such a circumstance, claims will be paid based on the date on which courts ordered the payments, with the earliest-ordered payments made first. See 18 U.S.C. 2259B(b). Once the Department has paid out the allotted \$10 million dollars in any given fiscal year, the requests that remain unpaid will roll over into the next fiscal year and will be processed in the original order in which they were ordered. The Department will also follow the same order-of-payment procedure in any other situation in which the Reserve has insufficient funds to make all of the payments ordered under section 2259(d).

The Department has assessed the benefits and costs anticipated from this rulemaking and has considered whether there are reasonably feasible alternatives to this rulemaking, including whether there are reasonably viable non-regulatory actions that could be taken in lieu of this rulemaking. The purpose of this rulemaking is to provide the legal and administrative framework for defined monetary assistance to be given to any individual (or an authorized representative of such individual) who is determined by a Federal court to be a victim of trafficking in child pornography as defined by 18 U.S.C. 2259(c) and (d). The Department concludes that there are no viable non-regulatory actions that it could take to implement the AVAA Act in a fair and efficient manner.

C. Executive Order 13132

This regulation 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. Therefore, under Executive Order 13132, the Department has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.

D. Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant economic impact upon a substantial number of small entities. This regulation pertains to defined monetary assistance for eligible individuals who are depicted in child pornography that is the basis for certain convictions under 18 U.S.C. chapter 110. The Reserve will provide payment to such child pornography victims based on orders obtained in U.S. district courts.

E. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Congressional Review Act

This proposed regulation will not constitute a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This regulation will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or 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.

G. Paperwork Reduction Act of 1995

This proposed rule implements 18 U.S.C. 2259, 2259A, 2259B, and 34 U.S.C. 20101(d), which establish the Reserve and define eligibility for payments from the Reserve. In order to evaluate requests and provide defined monetary assistance, the Department must collect certain information from individuals who are depicted in child pornography that is the basis for certain convictions under 18 U.S.C. chapter

110, or from their authorized representatives. Accordingly, the Department's Executive Office for United States Attorneys will submit an information collection request upon publication of the final rule to the Office of Management and Budget for review and clearance in accordance with the procedures of the Paperwork Reduction Act of 1995.

H. Privacy Act of 1974

The Department's Office of Justice Programs will publish a notice of a new Privacy Act system of records upon publication of the final rule, which will become effective upon publication, subject to a 30-day comment period for the routine uses claimed in the notice. In the interim, disclosures necessary to process requests will be made only with the prior written consent of claimants or as otherwise authorized under 5 U.S.C. 552a(b).

I. Severability

It is the Department's intent that if any provision of this proposed rule is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the remainder of the provision or rule shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this part and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

List of Subjects in 28 CFR Part 81

Child abuse, child pornography, victims, restitution, benefits.

By the authority vested in the Attorney General under 5 U.S.C. 301 and 28 U.S.C. 509, 510, 28 CFR part 81 is proposed to be amended as follows:

PART 81—CHILD ABUSE AND CHILD PORNOGRAPHY REPORTING DESIGNATIONS AND PROCEDURES, AND CHILD PORNOGRAPHY VICTIMS RESERVE

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

Authority: 18 U.S.C. 2259, 2259A, 2259B; 28 U.S.C. 509, 510; 34 U.S.C. 20101(d), 20341.

■ 2. Revise the heading for part 81 to read as set forth above.

§§ 81.14 through 81.50 [Reserved]

■ 3. Amend subpart B by adding and reserving §§ 81.14 through 81.50.

■ 4. Amend part 81 by adding subpart C to read as follows:

Subpart C—Child Pornography Victims Reserve

Sec.

- 81.51 Child Pornography Victims Reserve.
- 81.52 Definitions.
- 81.53 Eligibility.
- 81.54 Submission of requests to the Department.
- 81.55 Supporting information.
- 81.56 Procedures for determining the personal representatives of an estate.
- 81.57 Request and order processing.
- 81.58 Signatures and certifications.
- 81.59 Privacy.

§ 81.51 Child Pornography Victims Reserve.

The Child Pornography Victims Reserve (“Reserve”) was established on December 7, 2018, to provide a source of defined monetary assistance for eligible victims of trafficking in child pornography, pursuant to 18 U.S.C. 2259(d). Pursuant to the Department of Justice’s (“the Department’s”) authority to administer the Reserve, the Department will—

(a) Accept a request that the Department seek a court order for a determination of eligibility for defined monetary assistance from a claimant who chooses to proceed through the Department;

(b) Process such request and use reasonable efforts to follow up with such claimant to obtain information sufficient for a court to determine the claimant’s eligibility for defined monetary assistance;

(c) Upon confirming that the request to the Department is complete and not duplicative of a previously received request, use reasonable efforts to identify a Federal child pornography trafficking case in which an image of the identified victim appears and in which the Department may present an application for court determination of the claimant’s eligibility; and

(d) Pay a claimant pursuant to a Federal court order determining that such claimant is eligible to receive defined monetary assistance.

§ 81.52 Definitions.

(a) If a term is not defined in this section, the statutory definition at 18 U.S.C. 2256, 2259, 2259A, or 2259B applies to the submission and processing of requests to the Department.

(b) *Authorized representative* means an attorney or legal guardian (for claimants under age 18, incompetent, or incapacitated) of a claimant, the personal representative of a deceased claimant’s estate, any other person

appointed as a representative of a claimant by a Federal court pursuant to 18 U.S.C. 2259(c)(4), or a personal representative designated by the claimant to act on the claimant’s behalf.

(c) *Claimant* means the person who claims to be a victim of trafficking in child pornography and to be eligible for the defined monetary assistance at 18 U.S.C. 2259(d).

(d) *Reserve* means the Child Pornography Victims Reserve set forth in 34 U.S.C. 20101(d)(6).

(e) *Victim* or *victim of trafficking in child pornography* means a person whom a Federal court has determined, under 18 U.S.C. 2259(d)(1)(B), to be a victim of trafficking in child pornography.

§ 81.53 Eligibility.

(a) *Presentment of claims for payment to Federal courts.* If a claimant chooses to submit a request to the Department, the Department shall review a properly submitted request and, as necessary, will ask the claimant for additional information to support the request. Once the Department confirms the request is complete and not duplicative of a previously received request, the Department will use reasonable efforts to find an appropriate case in which to present the claim by means of an application for an order of payment of defined monetary assistance in a Federal court. If the Department is unable to locate an appropriate case, it will notify the claimant and may decline to present the claim. If the Department presents the claimant’s application to a court, the Department may include a recommendation as to whether the court should grant or deny the application.

(b) *Determination by a court.* A Federal court will make the determination, under 18 U.S.C. 2259(d)(1)(B), as to whether a claimant is entitled to defined monetary assistance from the Reserve and, if so, shall order payment in the amount specified in 18 U.S.C. 2259(d)(1)(D). This amount is \$35,000 as adjusted for inflation from December 7, 2018, based on the date of the court’s order.

(c) *Payment.* The Department shall pay to the victim (or the victim’s authorized representative, as applicable) from the Reserve the defined monetary assistance set forth in 18 U.S.C. 2259, in accordance with the applicable Federal court order and consistent with 18 U.S.C. 2259(b).

(d) *Exclusions.* (1) A victim may obtain defined monetary assistance under 18 U.S.C. 2259(d) only once. *See* 18 U.S.C. 2259(d)(2)(A).

(2) In no event shall an individual who is convicted of an act described in chapter 110 of Title 18, with respect to the victim, receive any defined monetary assistance from the Reserve on behalf of the victim. *See* 18 U.S.C. 2259(c)(4).

(3) Claimants who have collected restitution payments in excess of \$35,000 (as adjusted for inflation from December 7, 2018) pursuant to 18 U.S.C. 2259 are not eligible to receive defined monetary assistance under this program. *See* 18 U.S.C. 2259(d)(3).

§ 81.54 Submission of requests to the Department.

(a) Requests submitted to the Department must be submitted in the form and manner, and supported by documentation, specified from time to time by the Department. The Department’s website will contain directions on how to access the claims system for defined monetary assistance.

(b) Requests may be submitted to the Department at any time. The Department may decline to present to a court any application based on a request that duplicates a previously received request. A request duplicates a previously received request if it is submitted by or in connection with the same claimant and is premised on the same conduct as the previously received request. If a claimant obtains new information relevant to a claim after submitting a request, the claimant should amend that request rather than submitting a new request.

(c) If a claimant is represented by an authorized representative, the request to the Department and any supporting information may be submitted to the Department by that authorized representative. The authorized representative must submit a separate request on behalf of each represented claimant.

§ 81.55 Supporting information.

(a) As part of a request to the Department, the claimant should submit information as instructed by the Department. Failure to submit all required information may result in delay or a decision by the Department not to present the claimant’s application to a court.

(b) All information supporting the request should be updated as necessary while the request to the Department is pending, including the amounts of any restitution collected, address changes, changes to information needed to process payment to the claimant, and any other pertinent information that may be relevant to the request.

(c) To avoid a potential violation of Federal law, claimants (or authorized representatives, if applicable) should not send images of child pornography when providing supporting information.

§ 81.56 Procedures for determining the personal representative of an estate.

(a) *In general.* For any request to the Department by the estate of a deceased claimant, the personal representative of the estate, who will be the authorized representative for purposes of defined monetary assistance from the Reserve, shall be determined as follows:

(1) First preference will be given to an individual appointed by a court of competent jurisdiction as the personal representative of the decedent or as the executor or administrator of the deceased claimant's will or estate.

(2) In the event that no personal representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, the next preferred personal representative for purposes of defined monetary assistance from the Reserve will be the person named by the deceased claimant in the claimant's will as the executor or administrator of the deceased claimant's estate.

(3) In the event that no will exists, the next preference for personal representative for purposes of defined monetary assistance from the Reserve will be the first person in the line of succession for inheritance established by the laws of the deceased claimant's domicile governing intestacy. In the case where state law provides for two or more persons to inherit in equal shares (e.g., parents or siblings), the defined monetary assistance payment will be split accordingly.

(4) In the event that none of the individuals described in paragraphs (a)(1) through (3) of this section is available to serve as personal representative, any other person may seek to be appointed by a court of competent jurisdiction as the personal representative for purposes of defined monetary assistance from the Reserve. Upon appointment, that person will serve as personal representative.

(b) *Notice to beneficiaries.* (1) Any purported personal representative must, before submitting a request to the Department, provide written notice of the intent to submit a request and the procedures in paragraph (c) of this section to object to such status as personal representative to the immediate family of the decedent; to the executor, administrator, and beneficiaries of the decedent's will; and

to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(2) Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this subpart. The purported personal representative must certify that such notice (or other notice that the Department deems appropriate) has been given.

(c) *Objections to personal representatives.* Objections to the authority of an individual to file as the personal representative of a decedent may be submitted to the Department, as instructed on the Department's website for this program, by parties who assert a financial interest in the award. Any such objection must be submitted within 30 days following receipt of notice by the personal representative as defined under this section. If timely submitted, such objections shall be treated as evidence of a "dispute" under paragraph (d) of this section.

(d) *Disputes as to the identity of the personal representative.* The Department will not, and shall not be required to, arbitrate, litigate, or otherwise resolve any dispute as to the identity of the personal representative. In the event of a dispute over the appropriate personal representative, the Department may suspend or return a request to the claimant without prejudice to its later resubmission and may withhold any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree in writing to the identity of a personal representative to act on their behalf, who may seek and accept defined monetary assistance from the Reserve while the disputing parties work to settle their dispute.

§ 81.57 Request and order processing.

(a) Upon receipt of a request to the Department, the Department will review it and may follow up with claimants (or authorized representatives) to resolve any gaps in the request's supporting information.

(b) The Department will then use reasonable efforts to identify a Federal criminal case involving the claimant to present the claimant's application (with supporting information, as appropriate) for a court to determine the claimant's eligibility to receive defined monetary assistance. If the Department is unable to locate such a case, it will notify the claimant. If the Department presents the claimant's application to a court, in its

sole discretion, the Department may or may not present the claim with an accompanying recommendation that the court order payment or not.

(c) If a court issues an order requiring payment to any claimant, the Department will process payment of defined monetary assistance to the victim in accordance with the order in the amount specified therein, upon receipt of the order and the requisite information from the claimant following instructions on the Department's website for this program. Failure to submit all required information to the Department may result in delay of payment.

(d) If the court issues an order denying eligibility based on an application submitted by the Department, the Department will notify the claimant. The Department may decide to appeal a ruling by a district court denying the Department's motion to establish a claimant's eligibility for defined monetary assistance. The Department will make reasonable efforts to consult with the claimant (and the claimant's authorized representative, if applicable) on the issue of appeal.

§ 81.58 Signatures and certifications.

A request to the Department will be deemed submitted when it is submitted online at the Department's website for this program; or, as provided in accordance with § 81.54, consistent with the instructions on the request form. By submitting the request, the claimant (or, if submitted by an authorized representative, the authorized representative) acknowledges and certifies as to each of the following:

(a) *Veracity of request.* The claimant certifies, under oath, subject to penalty of perjury or in a manner that meets the requirements of 28 U.S.C. 1746, that the information provided in the request and any documents submitted in support of the request are true and accurate to the best of the claimant's knowledge, and the claimant agrees that any defined monetary assistance paid from the Reserve is expressly conditioned upon the truthfulness and accuracy of the information and documentation submitted in support of the request. Where a claimant is represented by an authorized representative, that representative must have authority to certify the request on behalf of the claimant.

(b) *Potential criminal penalties.* The claimant understands that false statements or claims made in connection with the request may result in fines, imprisonment, and any other remedy available by law to the Federal Government, including fines and

imprisonment as provided in 18 U.S.C. 1001 and treble damages and civil penalties under the False Claims Act, 31 U.S.C. 3729, *et seq.* Requests that appear to be potentially fraudulent or to contain false information will be forwarded to Federal, state, and local law enforcement authorities for possible investigation and prosecution.

(c) *Limitation on attorney fees.* If a claimant is represented by counsel, no attorney shall charge, receive, or collect any payment of fees and costs that in the aggregate exceeds 15 percent of any defined monetary assistance paid on such application. An attorney who violates this provision is subject to fine, imprisonment of up to one year, or both.

§ 81.59 Privacy.

The Department will not disclose to the public the names of the claimants (or their authorized representatives) who have requested defined monetary assistance from the Reserve under this program, except as necessary to process a request or application or pursuant to law or court order.

Dated: May 24, 2023.

Merrick B. Garland,
Attorney General.

[FR Doc. 2023-11637 Filed 6-2-23; 8:45 am]

BILLING CODE 4410-14-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA-HQ-OAR-2003-0156; FRL-7547.2-02-OAR]

RIN 2060-AV99

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Review; Withdrawal of Proposed Provision Removing Pyrolysis/Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal of proposed provision.

SUMMARY: On August 31, 2020, the U.S. Environmental Protection Agency (EPA) gave notice that, in accordance with the requirements of the Clean Air Act (CAA), the Agency had performed a 5-year review of the Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Other Solid Waste Incineration (OSWI) Units, which includes certain very small municipal waste combustion (VSMWC) and institutional waste incineration (IWI) units. In the same

action, the EPA proposed to modify the OSWI definition of “municipal waste combustion unit,” effectively removing pyrolysis/combustion units from the definition. In this action, the EPA is withdrawing that proposed modification.

DATES: As of June 5, 2023, EPA withdraws the proposed definition “*Municipal waste combustion unit*” in § 60.2977, published at 85 FR 54178, on August 31, 2020.

ADDRESSES: The EPA has established a docket for the OSWI rulemaking under Docket ID No. EPA-HQ-OAR-2003-0156. All documents in the docket are listed on the <https://www.regulations.gov/> website. 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 form. Publicly available docket materials are available either electronically through <https://www.regulations.gov/>, or in hard copy at the EPA Docket Center, WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday (except Federal 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.

FOR FURTHER INFORMATION CONTACT: Dr. Nabanita Modak Fischer, Sector Policies and Programs Division (E143-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5572; and email address: modak.nabanita@epa.gov.

SUPPLEMENTARY INFORMATION: *Organization of this document.* The information in this preamble is organized as follows:

- I. General Information
 - A. Overview
 - B. Why is the EPA withdrawing the proposed provision?
- II. Impacts of the Withdrawal
- III. Statutory Authority

I. General Information

A. Overview

In 2005, the EPA stated that “pyrolysis/combustion units (two chamber incinerators with a starved air primary chamber followed by an afterburner to complete combustion)

within the VSMWC and IWI subcategories are considered OSWI units” (70 FR 74876 and 74877; December 16, 2005). As a result of recent market trends, especially with respect to the increased processing of waste plastics, the EPA received several inquiries about OSWI units and the applicability of OSWI regulations to pyrolysis/combustion units for a variety of process and feedstock types. Based on these requests and the absence of a statutory definition of pyrolysis in the CAA, the Agency believed that there was considerable confusion in the regulated community regarding the applicability of OSWI to pyrolysis/combustion units. Moreover, the term “pyrolysis/combustion” is not defined in the current OSWI regulation, nor is it included in the definition of “Institutional waste incineration unit.” On August 31, 2020, as part of the Agency’s periodic review under the CAA, the EPA proposed, among other things, to revise the OSWI definition of “municipal waste combustion unit” to remove the reference to “pyrolysis/combustion units” (85 FR 54178). The EPA received significant adverse comments on that proposed revision.

In response to the adverse comments received on the August 2020 proposal and ongoing questions about the regulation of pyrolysis/combustion units, the EPA issued an advance notice of proposed rulemaking (ANPRM) on September 8, 2021 (86 FR 50296). The EPA determined that the issuance of the ANPRM was an efficient means for gaining a comprehensive understanding of pyrolysis/combustion units and how they are used. The EPA expected that this action would allow a diverse group of stakeholders to participate and provide information on the details of pyrolysis/combustion units, the use of these units to thermally process various materials, the products of these processes, and the characterization of emissions from these processes. The Agency received 170 comments on the ANPRM. In addition, the EPA had several discussions with stakeholders during the comment period.

B. Why is the EPA withdrawing the proposed provision?

The EPA has been reviewing the information gathered in the ANPRM and is developing the final OSWI rulemaking package. Based on discussions with stakeholders and our review of the comments on the ANPRM and OSWI proposal as well as current scientific literature on the topic it is evident that pyrolysis is a complex process that is starting to be used in many and varied industries. The EPA

will need significant time and personnel resources to fully analyze the comments and evaluate all current information sources to gain a technical and regulatory understanding of the pyrolysis process. Concurrently, the EPA is continuing to develop the final OSWI rulemaking pursuant to a schedule set by the court in *Sierra Club v. McCarthy*, No. 1:16-cv-2461 (D.D.C.). It is likely that the Agency's review of the pyrolysis information may need to extend beyond the final rulemaking deadline considering the complex issues, the numerous comments from stakeholders with different viewpoints, and multiple competing priorities resulting from promulgating several different CAA regulations under court-ordered deadlines. Because the EPA proposed to remove pyrolysis/combustion units from the OSWI rule, those units would not be subject to the control requirements in the OSWI rule if the EPA were to finalize the proposal in the absence of a withdrawal of the proposed provision. The EPA does not believe it would be appropriate for those sources to become unregulated emissions sources during the time

required for our analysis of pyrolysis/combustion units to be completed, particularly if the Agency ultimately concludes that regulation is needed. To prevent such a regulatory gap and ensure that public health protection is maintained for pyrolysis/combustion units, the EPA is withdrawing its proposal to revise the definition of "municipal waste combustion (MWC) unit" in the OSWI rule to remove the reference to "pyrolysis/combustion units."

II. Impacts of Withdrawal

The provision was proposed as a part of the Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units Review on August 31, 2020. There is no economic impact associated with the withdrawal of that proposed provision.

III. Statutory Authority

Section 129 of the CAA requires the EPA to establish New Source Performance Standards (NSPS) and Emission Guidelines (EG) pursuant to sections 111 and 129 of the CAA for

new and existing solid waste incineration units, including "other categories of solid waste incineration units." The Administrator is determining that this action is subject to the provisions of CAA section 129(a)(5) as well as under the general authority of CAA section 301(a)(1). This final rule does not establish new regulatory requirements. Hence, the requirements of Executive Orders that generally apply to rulemakings (e.g., the Unfunded Mandates Reform Act) do not apply to this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Michael S. Regan,
Administrator.

■ Accordingly, as of June 5, 2023, the EPA withdraws the definition for "Municipal waste combustion unit" in § 60.2977, which published at 85 FR 54211, on August 31, 2020.

[FR Doc. 2023-11476 Filed 6-2-23; 8:45 am]

BILLING CODE 6560-50-P

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Federal Register Notice: USAID COVID-19 Performance Monitoring

AGENCY: United States Agency for International Development (USAID).

ACTION: Notice of request for OMB approval.

SUMMARY: In accordance with the Information Collection Review procedures of the Paperwork Reduction Act of 1995 (PRA), the United States Agency for International Development (USAID), is announcing that it has submitted a request to the Office of Management and Budget (OMB) for approval to inform technical approaches to implementing USAID's COVID-19 Implementation Plan. If granted, this approval will be valid for three years from the date of approval.

DATES: If this request for approval is granted, USAID plans to collect performance data beginning on or about May 31, 2023 and expected to end May 31, 2026.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Megan McGuire, mmcguire@usaid.gov, +1 (202) 705 6136. 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: The proposed collection would request reporting from USAID award recipients (Implementing Partners) of performance indicators to be submitted on the frequency designated in their awards. This request is a revision of the six-month emergency OMB approval granted on November 23, 2022 and

ending May 31, 2023 (ICR reference #: 202211-0412-001; OMB control #: 0412-0621) which allows for mandatory reporting of COVID-19 performance indicators. This activity-level information, in conjunction with contextual data, allows USAID to track progress against the objectives of the U.S. Global COVID-19 Response and Recovery Framework. It will be used for adaptive management, evidence-based strategic decision-making, and accountability. Information will be requested of contracts and grants in the Global VAX surge countries (Angola, Côte d'Ivoire, Eswatini, Ghana, Lesotho, Nigeria, Senegal, South Africa, Tanzania, Uganda, and Zambia) and for contracts and grants receiving more than \$500,000 in COVID-19 funds obligated after 9/1/2022 in Ethiopia, Liberia, Madagascar, Malawi, Mozambique, Haiti and the Philippines.

Description of Proposed Use of Information

The performance data would supplement contextual, country-level data currently analyzed by USAID and will provide critical, timely insight into the Agency's COVID-19 response. The collection and reporting of performance indicators by USAID's IPs will facilitate adaptive management, strategic planning, and ensure that COVID-19 response activities are continually aligned with the Agency's primary objectives and the evolving nature of the pandemic. The data will inform the strategic and operational approaches of both the Agency's Washington offices and field-based Missions involved in the COVID-19 response.

Time Burden

USAID estimates an annual time burden of 332 hours per award or 83 hours per response, assuming most awards report on a quarterly basis. USAID expects that a total of 46 awards will be subject to the information collection requirements; for these awards, the time burden is expected to total 15,272 hours per year.

Beth Tritter,

Director, USAID COVID-19 Response Team.
[FR Doc. 2023-11844 Filed 6-2-23; 8:45 am]

BILLING CODE 6116-01-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 July 5, 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: Importation of Live Fish, Fertilized Eggs, and Gametes From Tilapia Lake Virus-Susceptible Species.
OMB Control Number: 0579-0473.

Summary of Collection: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) authorizes the Secretary of

Agriculture, either independently or in cooperation with States, to prohibit or restrict the importation, exportation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States.

Need and Use of the Information: APHIS has determined that the introduction and establishment of Tilapia Lake Virus (TiLV) posed a serious threat to U.S. agriculture and published a Federal Order placing certain requirements on the importation of all live fish, fertilized eggs, and gametes from TiLV-susceptible species imported from all countries. These imported items must be accompanied by a U.S. Department of Agriculture-issued import permit, an official veterinary health certificate, and evidence of a veterinary inspection at a designated U.S. port of entry before being allowed entry into the United States.

Description of Respondents: State, local, or Tribal government, importers, and veterinarians.

Number of Respondents: 57.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 98 hours.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023-11885 Filed 6-2-23; 8:45 am]

BILLING CODE 3410-34-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the District of Columbia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meetings.

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, that the District of Columbia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom. The purpose of these meetings is to plan, discuss, and vote, as needed, on matters related to the Committee's civil rights project.

DATES:

Tuesday, June 20, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, July 18, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, August 15, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, September 19, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, October 17, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, November 21, 2023, from 12:00 p.m.–1:00 p.m. ET.

Tuesday, December 19, 2023, from 12:00 p.m.–1:00 p.m. ET.

ADDRESSES: These meetings will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1613299890>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 161 329 9890#.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at ero@usccr.gov or 1-202-376-7533.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration link above. Any interested member of the public may attend these meetings. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of these meetings will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting "CC" in the meeting platform. To request additional accommodations, please email svillanueva@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following each meeting. Written comments may be emailed to Ivy Davis at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-376-7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, District of Columbia Advisory Committee link.

Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Meeting Announcement & Roll Call
- II. Welcome
- III. Project Planning
- IV. Other Business
- V. Next Meeting
- VI. Public Comment
- VII. Adjourn

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11829 Filed 6-2-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 1:00 p.m. MT on Monday, June 26, 2023. The purpose of this meeting is to review the testimony received at the March and May briefings on housing discrimination in the state, as well as plan their next briefing and select panelists.

DATES: Monday, June 26, 2023, from 1:00 p.m.–2:30 p.m. Mountain Time

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1617249664>.

Join by Phone (Audio Only): (833) 435-1820 USA Toll-Free; Meeting ID: 161 724 9664.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, Designated Federal Officer, at kfajota@usccr.gov or (434) 515-2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make

a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at lschiller@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Kayla Fajota at kfajota@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at lschiller@usccr.gov.

Agenda

- I. Welcome & Roll Call
- II. Discussion: Review of Testimony
- III. Panel Planning: Briefing #3
- IV. Public Comment
- V. Next Steps
- VI. Adjournment

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11833 Filed 6-2-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Hawai'i Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of a virtual business 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 Hawai'i Advisory Committee to the Commission will convene by ZoomGov on Wednesday, June 21, 2023, from 2:00 p.m. to 3:30 p.m. HST, to discuss the selection of panelists for the Committee's upcoming briefings.

DATES: The meeting will take place on Wednesday, June 21, 2023, from 2:00 p.m.–3:30 p.m. HST

ADDRESSES:

Link to Join (Audio/Visual): <https://www.zoomgov.com/j/1607062294?pwd=VE1BeUFhR3hnQ1NUWG9NTjJzYUUtqQT09>

Audio: (833) 435-1820; Meeting ID: 160 706 2294#.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, Designated Federal Officer (DFO) at kfajota@usccr.gov or by phone at (434) 515-2395.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email kfajota@usccr.gov at least 10 business days prior to 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 meeting. Written comments may be emailed to Kayla Fajota at kfajota@usccr.gov.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl0AAA>.

Please click on "Committee Meetings" tab. Records generated from this

meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above phone number or email address.

Agenda

- I. Welcome and Roll Call
- II. Announcements and Updates
- III. Approval of Prior Minutes
- IV. Discussion: Panel Planning
- V. Next Steps
- VI. Public Comment
- VII. Adjournment

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11828 Filed 6-2-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Arizona Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefing.

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 Arizona Advisory Committee (Committee) to the Commission will convene via ZoomGov on Wednesday, June 14, 2023, from 1:00 p.m.–3:30 p.m. Arizona Time. The purpose of the briefing is to collect testimony from invited panelists regarding racial and/or ethnic disparities in pediatric healthcare in Arizona.

DATES: The briefing will take place on:

- Wednesday, June 14, 2023, from 1:00 p.m.–3:30 p.m. Arizona Time

ADDRESSES:

Access Information:

Link to Join (Audio/Visual): <https://www.zoomgov.com/j/1618626002?pwd=YXZodzdCNTkxOWJxQWVNBhdGbdLUT09>

Telephone (Audio Only) Dial: 1-833-435-1820 (US Toll-free); Meeting ID: 161 862 6002#.

FOR FURTHER INFORMATION CONTACT:

Kayla Fajota, DFO, at kfajota@usccr.gov. or (434) 515-2395.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the

public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email kfajota@usccr.gov at least 10 business days prior to 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 meeting. Written comments can be sent via email to Kayla Fajota (DFO) at kfajota@usccr.gov.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at <https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t000001gzl2AAA>.

Please click on the "Committee Meetings" tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, <https://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

Agenda

- I. Welcome, Opening Remarks and Roll Call
- II. Panelist Presentations
- III. Committee Q & A
- IV. Public Comment
- V. Adjournment

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11827 Filed 6-2-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meetings.

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, that the Indiana Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold public meetings via Zoom. The purpose of these meetings is to plan, discuss, and vote, as needed, on matters related to the Committee's civil rights project.

DATES:

Wednesday, June 21, 2023, from 3:00 p.m.–4:00 p.m. ET

Wednesday, August 16, 2023, from 3:00 p.m.–4:00 p.m. ET

Wednesday, September 20, 2023, from 3:00 p.m.–4:00 p.m. ET

Wednesday, October 18, 2023, from 3:00 p.m.–4:00 p.m. ET

Wednesday, November 15, 2023, from 3:00 p.m.–4:00 p.m. ET

Wednesday, December 20, 2023, from 3:00 p.m.–4:00 p.m. ET

ADDRESSES: These meetings will be held via Zoom.

Registration Link (Audio/Visual):
<https://www.zoomgov.com/j/1606593800>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 160 659 3800#.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Director of Eastern Regional Office and Designated Federal Officer, at ero@usccr.gov or 1-202-376-7533.

SUPPLEMENTARY INFORMATION: These Committee meetings are available to the public through the registration link above. Any interested member of the public may attend these meetings. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of these meetings will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting "CC" in the

meeting platform. To request additional accommodations, please email svillanueva@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following each meeting. Written comments may be emailed to Ivy Davis at ero@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-376-7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Meeting Announcement & Roll Call
- II. Welcome
- III. Project Planning
- IV. Other Business
- V. Next Meeting
- VI. Public Comment
- VII. Adjourn

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11830 Filed 6-2-23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of virtual briefing.

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, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a briefing via web conference. The purpose of this briefing is to hear final testimony on the New York child welfare system and its impact on Black children and families.

DATES: Friday, July 21, 2023, from 1:00 p.m.–3:00 p.m. Eastern Time.

ADDRESSES: This briefing will be held via Zoom.

Registration Link (Audio/Visual):
<https://tinyurl.com/43zbrtr>.

Join by Phone (Audio Only): 1-833-435-1820 USA Toll-Free; Meeting ID: 160 094 0395#.

FOR FURTHER INFORMATION CONTACT:

Mallory Trachtenberg, DFO, at mtrachtenberg@usccr.gov or 1-202-809-9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting "CC" in the meeting platform. To request additional accommodations, please email svillanueva@usccr.gov at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Malloy Trachtenberg at mtrachtenberg@usccr.gov. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1-202-809-9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via www.facadatabase.gov under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Coordination Unit at svillanueva@usccr.gov.

Agenda

- I. Welcome Remarks
- II. Panelist Presentations
- III. Committee Q&A
- IV. Public Comment
- V. Closing Remarks

VI. Adjournment

Dated: May 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023-11826 Filed 6-2-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-51-2023]

Approval of Subzone Status; Bollore Logistics USA, Inc.; Conroe, Texas

On March 23, 2023, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of Conroe, grantee of FTZ 265, requesting subzone status subject to the existing activation limit of FTZ 265, on behalf of Bollore Logistics USA, Inc., in Conroe, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (88 FR 18295, March 28, 2023). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 265D was approved on May 31, 2023, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 265's 1,484-acre activation limit.

Dated: May 31, 2023.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2023-11882 Filed 6-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-817, A-560-805, A-580-836]

Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, and the Republic of Korea: Final Results of the Expedited Fourth Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on certain cut-to-length carbon-quality steel plate (CTL plate)

from India, Indonesia, and the Republic of Korea (Korea) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Sunset Reviews" section of this notice.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT:

Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3401.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2023, Commerce published the notice of initiation of the fourth sunset reviews of the *Orders*,¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² After the publication of the *Initiation Notice*, Commerce received notices of intent to participate from Cleveland-Cliffs Inc. (Cleveland-Cliffs), Nucor Corporation (Nucor), and SSAB Enterprises LLC (SSAB) (collectively, the domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers engaged in the production of CTL plate in the United States.

Commerce received substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴

¹ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan, and the Republic of Korea*, 65 FR 6585 (February 10, 2000) (collectively, *Orders*).

² See *Initiation of Five-Year ("Sunset") Reviews*, 88 FR 6700 (February 1, 2023) (*Notice of Initiation*).

³ See SSAB's Letter, "Notice of Intent to Participate in the Fourth Five-Year Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia," dated February 7, 2023; see also Cleveland-Cliffs' Letter, "Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders on Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, and Korea: Notice of Intent to Participate in Sunset Reviews," dated February 9, 2023; and Nucor's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Notice of Intent to Participate in Sunset Review," dated February 15, 2023.

⁴ See Domestic Interested Parties Letters, "Five-Year ("Sunset") Review of Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Domestic Industry Substantive Response," dated February 27, 2023; "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Substantive Response to Notice of Initiation of Sunset Review," dated March 2, 2023; and "Fourth Five-Year ("Sunset") Review of the Antidumping Duty Order on Certain

We did not receive a substantive response from any other interested party in these proceedings, and no party requested a hearing.

On March 23, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁵ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of these *Orders*.

Scope of the Orders

The products covered by the *Orders* are certain hot-rolled carbon-quality steel. For a complete description of the scope of these *Orders*, see the Issues and Decision Memorandum.⁶

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum.⁷ A list of topics discussed in the Issues and Decision Memorandum is included as the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx/>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping likely to prevail would be weighted-average margins up to the following percentages:

Country	Weighted-average dumping margin (percent)
India	42.39
Indonesia	52.42
Korea	6.09

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: May 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely To Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2023–11841 Filed 6–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–149]

Gas Powered Pressure Washers From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of gas-powered pressure washers (pressure washers) from the People's Republic of China (China) during the period of investigation, January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). On January 25, 2023, Commerce published in the **Federal Register** the notice of initiation of this investigation.¹ On March 14, 2023, Commerce postponed the preliminary determination of this investigation until May 30, 2023.²

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

¹ *Gas Powered Pressure Washers from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 88 FR 4812 (January 25, 2023) (*Initiation Notice*).

² *See Gas Powered Pressure Washers from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 88 FR 15672 (March 14, 2023).

³ *See Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Gas Powered Pressure Washers from the People's Republic of China,"* dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Cut-to-Length Carbon-Quality Steel Plate from India: Domestic Interested Parties' Substantive Response," dated March 3, 2023.

⁵ *See Commerce's Letter, "Sunset Reviews Initiated on February 1, 2023,"* dated March 23, 2023.

⁶ *See Memorandum, "Decision Memorandum for the Final Results of Expedited Fourth Sunset Reviews of the Antidumping Duty Orders on Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea,"* dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁷ *Id.*

Scope of the Investigation

The products covered by this investigation are gas powered pressure washers from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce’s regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁵ We received comments from several parties concerning the scope of the antidumping duty (AD) and countervailing duty (CVD) investigations of pressure washers as it appeared in the *Initiation Notice*.⁶ We are currently evaluating the scope comments filed by the interested parties and intend to issue our preliminary decision regarding the scope of the AD and CVD investigations shortly. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.

Preliminary Affirmative Determination of Critical Circumstances, in Part

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist with respect to imports of pressure washers from China for Jiangsu Jianghuai Engine Co., Ltd. (JD Power), Chongqing Dajiang Power Equipment Co., Ltd. (CDPE), and companies that were not responsive to Commerce’s

quantity and value questionnaire,⁷ but do not exist with respect to all other producers or exporters not individually examined. For a full description of the methodology and results of Commerce’s analysis, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an “authority” that gives rise to a benefit to the recipient, and that the subsidy is specific.⁸

Commerce notes that, in making these findings, it relied on facts available and, because Commerce finds that necessary information was missing from the record and because respondents did not act to the best of their ability to respond to Commerce’s requests for information, Commerce drew an adverse inference in selecting from among the facts otherwise available.⁹ For further information, see the “Use of Facts Otherwise Available and Adverse Inferences” section in the Preliminary Decision Memorandum.

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of pressure washers from

China based on a request made by the FNA Group, Inc. (the petitioner).¹⁰ Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than October 11, 2023, unless postponed.

All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

In this investigation, as discussed in the Preliminary Decision Memorandum, Commerce calculated an individual estimated countervailable subsidy rate for JD Power that is not zero, *de minimis*, or based entirely under section 776 of the Act. As further discussed in the Preliminary Decision Memorandum, the individual estimated countervailable subsidy rate for CDPE is based entirely upon section 776 of the Act. Therefore, Commerce is using the individual estimated subsidy rate calculated for JD Power as the all-others rate.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent <i>ad valorem</i>)
Jiangsu Jianghuai Engine Co., Ltd ¹¹	11.19
Chongqing Dajiang Power Equipment Co., Ltd	206.57
China GTL Tools Group, Ltd	206.57
Loncin Motor Co., Ltd	206.57
Maxworld Home Co., Ltd	206.57
Ningbo Jugang Machinery Manufacturing Co., Ltd	206.57
Powerful Machinery & Electronics Technology Developing Co., Ltd	206.57
Pinghu Biyi Cleaning Equipment Co., Ltd	206.57
Senci Electric Machinery Co., Ltd	206.57
Taizhou Bison Machinery Co., Ltd	206.57
Taizhou Longfa Machinery Co., Ltd	206.57
Taizhou Newland Machinery Co., Ltd	206.57
Zhejiang Anlu Cleaning Machinery Co., Ltd	206.57
Zhejiang Constant Power Machinery Co., Ltd	206.57
Zhejiang Lingben Machinery & Electronics Co., Ltd	206.57
Zhejiang Xinchang Bigyao Power Tool Co., Ltd	206.57
Zhejiang Zhinanche Cleaning Equipment Co., Ltd	206.57

⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁵ See *Initiation Notice*, 88 FR 4812.

⁶ See Preliminary Decision Memorandum at “IV. Scope Comments.”

⁷ See Commerce’s Letter, “Quantity and Value Questionnaire,” dated January 20, 2023.

⁸ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

⁹ See sections 776(a) and (b) of the Act.

¹⁰ See Petitioner’s Letter, “Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty

Investigation Final Determination,” dated April 24, 2023.

¹¹ As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds the following company to be cross-owned with JD Power: Jiangsu Nonghua Intelligent Agriculture Technology Co., Ltd.

Company	Subsidy rate (percent <i>ad valorem</i>)
All Others	11.19

Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, because we find that critical circumstances exist for JD Power, CDPE, and the non-responsive companies, therefore, for these companies, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. As noted above, we find that critical circumstances do not exist for all other producers or exporters not individually examined. Therefore, for all other producers or exporters not individually examined, Commerce will direct CBP to suspend liquidation of entries of subject merchandise as described in the scope of the investigation entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed in connection with this preliminary determination to interested parties within five days of its public announcement, or if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the AD and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the

ongoing AD and CVD pressure washers investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹² Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁴

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of pressure washers from China are

materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: May 30, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.*, the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the "power unit." The scope of the investigation covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the "power unit," including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of the investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure

¹² See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹³ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁴ See 19 CFR 351.310(d).

washers that include a heating element used to heat the water sprayed from the machine.

Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China. See *Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this investigation are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Investigation
- IV. Scope Comments
- V. Injury Test
- VI. Diversification of China's Economy
- VII. Preliminary Affirmative Determination of Critical Circumstances, in Part
- VIII. Use of Facts Otherwise Available and Adverse Inferences
- IX. Subsidies Valuation
- X. Interest Rate, Discount Rate, Hot-Rolled Steel, and Electricity Benchmarks
- XI. Analysis of Programs
- XII. Recommendation

[FR Doc. 2023-11875 Filed 6-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-834]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part; 2021-2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that sales of subject merchandise were made at less than normal value (NV) during the period of review (POR), May 1, 2021, through April 30, 2022. We are also rescinding this review with respect to Officine Tecnosider s.r.l. (OTS). We invite interested parties to comment on these preliminary results.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Nathan Araya, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3401.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order¹ on certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy with respect to two producers/exporters of the subject merchandise, NLMK Verona S.p.A (NVR) and OTS.²

On January 3, 2023, Commerce extended the preliminary results of this review to no later than May 31, 2023.³ For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁴

Scope of the Order⁵

The merchandise subject to the *Order* is certain carbon and alloy steel cut-to-length plate from Italy. For a complete description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

¹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea, and Taiwan, and Antidumping Duty Orders*, 82 FR 24096, 24098 (May 25, 2017) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 42144 (July 14, 2022).

³ See Memorandum, "Extension of Deadline for Preliminary Results of 2021-2022 Antidumping Duty Administrative Review," dated January 3, 2023.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Results of the 2021-2022 Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy," (Preliminary Decision Memorandum) dated concurrently with, and hereby adopted by, this notice.

⁵ See *Order*.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received a timely-filed withdrawal request from Cleveland-Cliffs Steel LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, the petitioners) on October 12, 2022, withdrawing its request for a review of OTS.⁶ Because the withdrawal request was timely filed, and no other party requested a review of this company, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to OTS.

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer or exporter	Weighted-average dumping margin (percent)
NLMK Verona S.p.A	15.88

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.⁷ Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.⁸ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.⁹ Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) a statement of the issue; (2) a brief summary of the arguments; and (3) a table of authorities.¹⁰ Case and rebuttal briefs should be filed using ACCESS¹¹ and must be served on interested parties.¹² Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has temporarily modified certain aspects of

⁶ See Petitioners' Letter, "Withdrawal of Request for Administrative Review," dated October 12, 2022.

⁷ See 19 CFR 351.224(b).

⁸ See 19 CFR 351.309(c).

⁹ See 19 CFR 351.309(d).

¹⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹¹ See 19 CFR 351.303.

¹² See 19 CFR 351.303(f).

its requirements for serving documents containing business proprietary information, until further notice.¹³

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.¹⁴ Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.¹⁵ Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.¹⁶

Assessment Rates

Upon completion of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.¹⁷ Pursuant to 19 CFR 351.212(b)(1), if NVR's weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales. If NVR's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by NVR for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others

rate established in the original less-than-fair-value (LTFV) investigation (6.08 percent) if there is no rate for the intermediate company(ies) involved in the transaction.¹⁸

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent, the all-others rate established in the LTFV investigation.¹⁹ These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping

duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: May 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2023-11840 Filed 6-2-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-844]

Certain Lined Paper Products From India: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain lined paper products (CLPP) from India would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the "Final Results of the Sunset Review" section of this notice.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Katherine Sliney, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2437.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, Commerce published a CVD order on CLPP from

¹³ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19: Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

¹⁴ See 19 CFR 351.310(c).

¹⁵ See 19 CFR 351.310(d).

¹⁶ See section 751(a)(3)(A) of the Act.

¹⁷ See 19 CFR 351.212(b).

¹⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹⁹ See *Order*.

India.¹ On February 1, 2023, Commerce initiated the third sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On February 15, 2023, Commerce received a notice of intent to participate from the Association of American School Paper Suppliers (AASPS)³ (the domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).⁴ AASPS claims interested party status pursuant to section 771(9)(F) of the Act, as an association whose member companies are U.S. producers of the domestic like product.⁵ Additionally, ACCO Brands USA LLC, Norcom, Inc., and Top Flight, Inc. claimed interested party status pursuant to section 771(9)(C) of the Act, as manufacturers in the United States of the domestic like product.⁶

On March 2, 2023, Commerce received an adequate substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁷ Commerce did not receive a substantive response from any government or respondent interested party to this proceeding. On March 23, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁸ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* is certain lined paper products from India. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁹

¹ See *Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 88 FR 6700 (February 1, 2023).

³ The individual members of AASPS are ACCO Brands USA LLC, Norcom Inc., and Top Flight Inc.

⁴ See AASPS's Letter, "Notice of Intent to Participate in Sunset Review," dated February 15, 2023.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ See AASPS's Letter, "Substantive Response to Notice of Initiation," dated March 2, 2023.

⁸ See Commerce's Letter, "Sunset Reviews Initiated on February 1, 2023," dated March 23, 2023.

⁹ See Memorandum, "Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order on Certain Lined Paper Products from India," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Subsidy rate (percent <i>ad valorem</i>)
Aero Exports	165.95
Navneet Education Limited ..	169.36
All Others	168.49

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

Commerce is issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Dated: May 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary

II. Background

III. Scope of the *Order*

IV. History of the *Order*

V. Legal Framework

VI. Discussion of the Issues

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

2. Net Countervailable Subsidy Likely To Prevail

3. Nature of the Subsidies

VII. Final Results of Sunset Review

VIII. Recommendation

[FR Doc. 2023–11839 Filed 6–2–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on certain steel nails (steel nails) from the United Arab Emirates (UAE). The period of review (POR) is May 1, 2021, through April 30, 2022. Commerce preliminarily finds that sales of steel nails from the UAE were made at less than normal value (NV). We invite interested parties to comment on these preliminary results.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT:

Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 2022, Commerce initiated an administrative review of the antidumping duty order on steel nails from the UAE,¹ in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act),² with respect to

¹ See *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*Order*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 42144 (July 14, 2022) (*Initiation Notice*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 48459 (August 9, 2022) (correcting certain names contained in the *Initiation Notice*).

18 producers/exporters of the subject merchandise.³ Commerce selected two mandatory respondents for individual examination: Master Nails and Pins Manufacturing, LLC (Master Nails)/ Middle East Manufacturing Steel LLC (MEM) (collectively, Master) and Rich Well Steel Industries LLC (Rich Well).⁴ On January 12, 2023, Commerce extended the deadline for the preliminary results of this administrative review until May 31, 2023.⁵ For details regarding the events that occurred subsequent to the initiation of the review, see the Preliminary Decision Memorandum.⁶

Scope of the Order

The products covered by the *Order* are steel nails from the UAE. For a full description of the scope, see the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation. Commerce received a timely-filed withdrawal request from the petitioner relating to 16 companies.⁷ Because the withdrawal request was timely filed, and no other party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review with respect to the following companies: (1) Al Falaq Building Materials; (2) Al Khashab Building Materials Co., LLC; (3) Al Rafaa Star Building Materials Est.; (4) Al Sabbah Trading and Importing, Est.; (5) All Ferro Building Materials, LLC; (6) Asgar Ali Yousif Trading Co., LLC; (7) Azymuth Consulting, LLC; (8) Burj Al Tasmeem, Tr.; (9) Dubai Wire FZE; (10) Gheewala Hardware Trading Company, LLC; (11) New World International,

LLC; (12) Okzeela Star Building Materials Trading, LLC; (13) Samrat Wire Industry, LLC; (14) SK Metal International DMCC; (15) Steel Racks Factory, LLC; and (16) Trade Circle Enterprises, LLC.⁸

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. We calculated export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period May 1, 2021, through April 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Master Nails and Pins Manufacturing, LLC/Middle East Manufacturing Steel, LLC	4.30
Rich Well Steel Industries LLC ..	2.28

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.⁹ Pursuant to 19 CFR 351.212(b)(1) if the weighted-average dumping margin for Master or Rich Well is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates

based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales. If either respondent's weighted-average dumping margin is zero or *de minimis*, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.¹⁰

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by Master or Rich Well where the respondent did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹¹

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by a company not covered in this review, but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which it was reviewed; (3) if the exporter is not a firm covered

³ Commerce previously determined that Master Nails and MEM comprise a single entity. See *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2020–2021*, 87 FR 61566 (October 12, 2022).

⁴ See Memorandum "Respondent Selection," dated August 2, 2022.

⁵ See Memorandum, "Extension of Deadline for Preliminary Results of 2021–2022 Antidumping Duty Administrative Review," dated January 12, 2023.

⁶ See Memorandum, "Decision Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order: Certain Steel Nails from the United Arab Emirates; 2021–2022," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁷ The petitioner is Mid Continent Steel & Wire, Inc.

⁸ See Petitioner's Letter, "Withdrawal of Request for Administrative Review," dated October 12, 2022.

⁹ See 19 CFR 351.212(b)(1).

¹⁰ See section 751(a)(2)(C) of the Act.

¹¹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

by this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.30 percent,¹² the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results or, if there is no public announcement, within five days of the publication of this notice.¹³ Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than seven days after the date on which the last verification report is issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.¹⁴ Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹⁵ Case and rebuttal briefs should be filed using ACCESS¹⁶ and must be served on interested parties.¹⁷ Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹⁸

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS.¹⁹ Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the

hearing at a time and date to be determined. A hearing request must be filed electronically using ACCESS and received in its entirety by 5:00 p.m. Eastern Time within 30 days after publication of this notice.

Verification

As provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: May 26, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

[FR Doc. 2023–11842 Filed 6–2–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–089]

Certain Steel Racks and Parts Thereof From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain steel racks and parts thereof (steel racks) from the People's Republic of China (China), covering the period of review (POR) January 1, 2021, through December 31, 2021, because, as explained below, there are no reviewable suspended entries for the sole company that is subject the instant review.

DATES: Applicable June 5, 2023.

FOR FURTHER INFORMATION CONTACT: Drew Jackson AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2022, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on steel racks from China.¹ Commerce received a timely request for review of the steel racks CVD order from the following exporters of subject merchandise: (1) Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng); (2) Nanjing Ironstone Storage Equipment Co., Ltd. (Nanjing Ironstone); (3) Xiamen Luckyroc Industry Co., Ltd. (Xiamen Luckyroc); and (4) Ningbo Xinguang Rack Co., Ltd. (Xinguang Rack).² We received no other requests for review. On November 3, 2022, Commerce published in the **Federal Register** a notice of initiation of an administrative review with respect to Dongsheng, Nanjing Ironstone, Xiamen Luckyroc, and Xinguang Rack, in

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 87 FR 53719 (September 1, 2022).

² See Dongsheng's Letter, "Request for Administrative Review," dated September 29, 2022; and Nanjing Ironstone, Xiamen Luckyroc, and Ningbo Xinguang's Letter, "Request for Administrative Review," dated September 29, 2022.

¹² See *Order*, 77 FR at 27422.

¹³ See 19 CFR 351.224(b).

¹⁴ See 19 CFR 351.309(d); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ See generally 19 CFR 351.303.

¹⁷ See 19 CFR 351.303(f).

¹⁸ See *Temporary Rule*.

¹⁹ See 19 CFR 351.310(c).

accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).³ Between October 11, 2022, and January 20, 2023, Nanjing Ironstone, Dongsheng, and Xinguang Rack timely withdrew their requests for administrative review.⁴ On November 16, 2022, and December 13, 2022, Commerce placed U.S. Customs and Border Protection (CBP) entry data for U.S. imports of the subject merchandise during the POR on the record for respondent selection purposes.⁵ On April 4, 2023, Commerce notified all interested parties that in the absence of any suspended entries during the POR for Xiamen Luckyroc, which is the only remaining company subject to the instant administrative review, Commerce intended to rescind this review.⁶ Commerce provided all parties an opportunity to comment on CBP's findings.⁷ No parties submitted comments.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of a CVD order where it concludes that there were no reviewable entries of subject merchandise during the POR.⁸ Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate for the review period.⁹ Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated CVD assessment rate for the review period.¹⁰ As noted above, Nanjing Ironstone, Dongsheng, and Xinguang Rack timely withdrew their

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 66275 (November 3, 2022).

⁴ See Nanjing Ironstone's Letter, "Ironstone Withdrawal of Request for Administrative Review," dated October 11, 2022; Dongsheng's Letter, "Dongsheng Withdrawal of Request for Administrative Review," dated January 18, 2023, and Xinguang Rack's Letter, "Xinguang Rack Withdrawal of Request for Administrative Review," dated January 20, 2023.

⁵ See Memorandum, "Customs Data for Respondent Selection," dated November 16, 2022; see also Memorandum, "Revised Customs Data for Respondent Selection," dated December 13, 2022.

⁶ See Memorandum, "Notice of Intent to Rescind Review," dated April 4, 2023.

⁷ *Id.*

⁸ See, e.g., *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2017–2018*, 84 FR 54844, 54845 and n.8 (October 11, 2019) (citing *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 14349 (March 20, 2017)).

⁹ See 19 CFR 351.212(b)(2).

¹⁰ See 19 CFR 351.213(d)(3).

requests for administrative review and CBP confirmed that there were no entries of subject merchandise during the POR with respect to Xiamen Luckyroc, the only remaining company subject to this review. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Cash Deposit Requirements

As Commerce has proceeded to a final rescission of this administrative review, no cash deposit rates will change. Accordingly, the current cash deposit requirements shall remain in effect until further notice.

Assessment Rates

Commerce will instruct CBP to assess CVDs on all appropriate entries. Because Commerce is rescinding this review in its entirety, the entries to which this administrative review pertained shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 35 days after the publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of the APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with regulations and terms of an APO is a violation, which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: May 31, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–11884 Filed 6–2–23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD060]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory bodies will meet June 21–27, 2023 in Vancouver, WA and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely.

DATES: The Pacific Council meeting will begin on Thursday, June 22, 2023, at 9 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. on Friday, June 23 through Tuesday, June 27, 2023. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, June 22, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Hilton Vancouver Washington, 301 W 6th Street, Vancouver, WA; telephone: (360) 993–4500. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting 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 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: (503) 820–2418 or (866) 806–7204 toll-free, or access the Pacific Council website, www.pcouncil.org, for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The June 21–27, 2023 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Thursday, June 22, 2023, and 8 a.m. PDT Friday, June 23 through Tuesday, June 27, 2023. Broadcasts end

when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see www.pcouncil.org).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as "Final Action" refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance June 2023 briefing materials and posted on the Pacific Council website at www.pcouncil.org no later than Friday, June 2, 2023.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Agenda
4. Executive Director's Report

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Council Coordination Committee Meeting Update
2. Council and Process Efficiencies
3. Marine Planning Update
4. Legislative Matters
5. Fiscal Matters
6. Approval of Council Meeting Records
7. Membership Appointments and Council Operating Procedures
8. Future Council Meeting Agenda and Workload Planning

D. Habitat Issues

1. Current Habitat Issues

E. Pacific Halibut Management

1. Scoping Topics for Catch Sharing Plan and Regulation Changes

F. Ecosystem Management

1. Fishery Ecosystem Plan Initiative 4—Ecosystem Workgroup Update

G. Coastal Pelagic Species Management

1. National Marine Fisheries Service Report
2. Pacific Mackerel Assessment and Biennial Management Measures—Final Action
3. Essential Fish Habitat Amendment—Final Action

H. Groundfish Management

1. National Marine Fisheries Service Report
2. Sablefish Gear Switching—Initial Preliminary Preferred Alternative
3. Amendment 31 Stock Definitions—Final Action
4. Limited Entry Fixed Gear Follow-On Actions and Fixed Gear Marking—Scoping
5. Electronic Monitoring Implementation Update
6. Groundfish Endangered Species Workgroup Report
7. 2025–2026 Harvest Specifications and Management Measures Planning
8. Inseason Management—Final Action

I. Salmon Management

1. Sacramento River Fall Chinook and Klamath River Fall Chinook Conservation Objectives—Scoping

J. Highly Migratory Species Management

1. National Marine Fisheries Service Report
2. International Management Activities
3. Exempted Fishing Permits—Preliminary
4. Drift Gillnet Bycatch Performance Report
5. Swordfish Fishery Management Workshop—Scoping

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, www.pcouncil.org, no later than Friday, June 2, 2023 by the end of the business day.

SCHEDULE OF ANCILLARY MEETINGS

Day 1—Wednesday, June 21, 2023:

Coastal Pelagic Species Advisory Subpanel.	8 a.m.
Coastal Pelagic Species Management Team.	8 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Habitat Committee	8 a.m.
Salmon Advisory Subpanel.	8 a.m.
Scientific and Statistical Committee.	8 a.m.
Legislative Committee ...	10 a.m.
Budget Committee	1 p.m.
Enforcement Consultants	2 p.m.

Day 2—Thursday, June 22, 2023:

California State Delegation.	7 a.m.
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SCHEDULE OF ANCILLARY MEETINGS—Continued

Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Coastal Pelagic Species Advisory Subpanel.	8 a.m.
Coastal Pelagic Species Management Team.	8 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Habitat Committee	8 a.m.
Scientific and Statistical Committee.	8 a.m.
Enforcement Consultants	As Necessary.
Day 3—Friday, June 23, 2023:	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Salmon Technical Team	8 a.m.
Enforcement Consultants	As Necessary.
Day 4—Saturday, June 24, 2023:	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m.
Highly Migratory Species Management Team.	8 a.m.
Enforcement Consultants	As Necessary.
Day 5—Sunday, June 25, 2023:	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Groundfish Advisory Subpanel.	8 a.m.
Groundfish Management Team.	8 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m.
Highly Migratory Species Management Team.	8 a.m.
Enforcement Consultants	As Necessary.
Day 6—Monday, June 26, 2023:	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.
Highly Migratory Species Advisory Subpanel.	8 a.m.
Highly Migratory Species Management Team.	8 a.m.
Enforcement Consultants	As Necessary.

SCHEDULE OF ANCILLARY MEETINGS—
Continued

Day 7—Tuesday, June 27, 2023:	
California State Delegation.	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation.	7 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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

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 business days prior to the meeting date.

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

Dated: May 30, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023-11818 Filed 6-2-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Trademark Trial and Appeal Board (TTAB) Actions

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

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651-0040 (Trademark Trial and Appeal Board (TTAB) Actions). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before August 4, 2023.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

- *Mail:* Justin Isaac, Information Collection Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to LaToya Brown, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 571-272-4283; or by email to LaToya.Brown@uspto.gov with “0651-0040 comment” in the subject line. Additional information about this information collection is also available at <http://www.reginfo.gov> under “Information Collection Review.”

SUPPLEMENTARY INFORMATION:

I. Abstract

The USPTO administers the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended, which provides for the Federal registration of trademarks, service marks, collective marks and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO.

Section 13 of the Trademark Act, 15 U.S.C. 1063, allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition, or an extension of time to file an opposition, to the registration of the mark. Section 14 of the Trademark Act, 15 U.S.C. 1064, allows individuals and entities to file a petition to cancel a registration of a mark. Section 20 of the Trademark Act, 15 U.S.C. 1070, allows individuals and entities to appeal any final decision of the examiner in charge of the registration of marks or a final decision by an examiner in an ex parte expungement proceeding or ex parte reexamination proceeding.

The USPTO administers certain provisions of the Trademark Act of 1946 through the regulations at 37 CFR part 2, which contains the various rules that govern the filings identified above and other submissions filed in connection with inter partes and ex parte

proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register and subsequently determine the validity of a trademark. The information in this collection must be submitted electronically through the TTAB’s electronic filing system. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases, they may use the forms provided through the TTAB’s electronic filing system.

This information collection includes the items needed for individuals or entities to file inter partes and ex parte proceedings regarding federal registration of their trademarks or service marks. Information is collected in view of the provisions of the Trademark Act of 1946. The responses in this information collection are a matter of public record, and are used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, as both common law trademark owners and federal trademark registrants must actively protect their own rights.

II. Method of Collection

Items in this information collection must be submitted through the TTAB’s electronic filing system. However, in certain circumstances, information may be submitted in paper form by mail or hand delivery.

III. Data

OMB Control Number: 0651-0040.
Forms:

- PTO 2120 (Notice of Opposition)
- PTO 2151 (Papers in Inter Partes Cases)
- PTO 2153 (Request for Extension of Time to File an Opposition)
- PTO 2188 (Petition for Cancellation)
- PTO 2189 (Ex Parte Appeal General Filing)
- PTO 2190 (Notice of Appeal)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent’s Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 41,300 respondents.

Estimated Number of Annual Responses: 76,650 responses.

Estimated Time per Response: The USPTO estimates that it will take the public from 10 minutes (0.17 hours) to

21 hours to complete, depending on the complexity of the situation and item, to gather the necessary information,

prepare the appropriate documents, and submit them to the USPTO.

Estimated Total Annual Respondent Hourly Cost Burden: \$303,314,124.

Estimated Total Annual Respondent Burden Hours: 1,038,747 hours.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO PRIVATE SECTOR RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Estimated responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hours) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate ¹ (\$/hour) (f)	Estimated annual respondent cost burden (e) × (f) = (g)
1	Petition to Cancel PTO-2188.	2,300	1	2,300	18	41,400	\$292	\$12,088,800
2	Notice of Opposition PTO-2120.	6,800	1	6,800	18	122,400	292	35,740,800
3	Request for Extension of Time to File an Opposition. PTO-2153.	10,000	1.75	17,500	0.3	5,250	292	1,533,000
4	Submissions in Inter Partes Cases • Answers. • Amendments to Pleadings. • Amendment of Application or Registration During Proceeding. • Motions (such as consent motions, motions to extend, motions to suspend, etc.). • Evidence. • Briefs. • Oral hearing requests. • Surrender of Registration. • Abandonment of Application. • Documents Related to Concurrent Use Applications. • Notice of Intent to Appeal a TTAB decision. PTO-2151.	18,200	2.25	40,950	21	859,950	292	251,105,400
5	Notice of Appeal PTO-2190.	3,400	1	3,400	1.20	4,080	292	1,191,360
6	Appeal Briefs PTO-2189.	600	1	600	8	4,800	292	1,401,600
7	Miscellaneous Ex Parte Submissions • Requests to extend time to file Appeal Briefs. • Oral hearing requests. PTO-2189.	Same as line 5	1.50	5,100	0.17	867	292	253,164
Totals		41,300		76,650		1,038,747		303,314,124

¹ The hourly rate for attorneys is \$435, published in the 2021 Report of the Economic Survey from the Law Practice Management Committee of the American Intellectual Property Law Association (AIPPLA). The hourly rate for paraprofessional/paralegals is \$149 as published in the 2020 Utilization and Compensation Survey by the National Association of Legal Assistants (NALA). After calculating the average of these rates, the USPTO estimates that the hourly rate will be \$292.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$9,080,047.

There are no capital start-up, maintenance, or record keeping costs associated with this information collection. However, the USPTO

estimates that the total annual (non-hour) cost burden for this information collection, in the form of, filing fees (\$9,079,500) and postage (\$547) is \$9,080,047.

Filing Fees

The 15 filing fees associated with this information collection are listed in the table below.

TABLE 2—FILING FEES

Item No.	Fee code	Item	Estimated annual responses (a)	Filing fee (\$) (b)	Total non-hour cost burden (\$) (a) × (b) = (c)
1	6401	Petition to Cancel (Paper Submission)	5	\$700	\$3,500
1	7401	Petition to Cancel	2,295	600	1,377,000
2	6402	Notice of Opposition (Paper Submission)	20	700	14,000
2	7402	Notice of Opposition	6,780	600	4,068,000
3	6405	Request for Extension of Time to File an Opposition under § 2.102(c)(3) (Paper Submission).	5	500	2,500
3	7405	Request for Extension of Time to File an Opposition under § 2.102(c)(3).	2,400	400	960,000
3	6404	Request for Extension of Time to File an Opposition under § 2.102(c)(1)(ii) or (c)(2) (Paper Submission).	5	400	2,000

TABLE 2—FILING FEES—Continued

Item No.	Fee code	Item	Estimated annual responses (a)	Filing fee (\$) (b)	Total non-hour cost burden (\$) (a) × (b) = (c)
3	7404	Request for Extension of Time to File an Opposition under § 2.102(c)(1)(ii) or (c)(2).	8,345	200	1,669,000
5	6403	Ex Parte Appeal to the Trademark Trial and Appeal Board Filed (Paper Submission).	10	325	3,250
5	7403	Ex Parte Appeal to the Trademark Trial and Appeal Board	3,390	225	762,750
6	6406	Brief in an Ex Parte Appeal to the Board, per Class (Paper Submission).	5	300	1,500
6	7406	Electronic Brief in an Ex Parte Appeal to the Board, per Class.	595	200	119,000
7	6407	Second or Subsequent Request for an Extension of Time to File an Appeal Brief, per Application (Paper Submission).	5	200	1,000
7	7407	Electronic Second or Subsequent Request for an Extension of Time to File an Appeal Brief, per Application.	335	100	33,500
7	7408	Request for an Oral Hearing	125	500	62,500
Total .....	.....	.....	24,320	.....	9,079,500

Postage Costs

Express or first-class mail through the United States Postal Service or hand delivery to the TTAB is only available under extraordinary circumstances. The USPTO estimates that the average postage cost for a mailed submission, using a Priority Mail flat rate legal envelope, will be \$9.95 and that approximately 55 submissions will be mailed to the USPTO per year. Therefore, the USPTO estimates that postage costs in this information collection will be \$547.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate 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;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the 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.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request

to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment—including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023-11889 Filed 6-2-23; 8:45 am]

BILLING CODE 3510-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Change

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Change to the Procurement List.

SUMMARY: This action changes information regarding a service on the Procurement List that is furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: Effective date of this action will be the date of allocation.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Michael R. Jurkowski, Telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions; Transfer

The Committee has authorized two changes to the Procurement List: authorization to transfer the Procurement List requirement described herein and authorized additional sources of supply. The Federal Government entity identified in this notice will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on any small entities. The major factors considered for this certification were:

1. The action did not result in any additional reporting, recordkeeping, or other compliance requirements for small entities other than the nonprofit agencies furnishing the services to the Government.

2. The action did result in authorizing nonprofit agencies to furnish the products to the Government.

3. There were no known regulatory alternatives which would have accomplished the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products added to the Procurement List.

End of Certification

The following are changes to the service currently on the Procurement List:

Service(s)

Service Type: Facilities Maintenance Services

Mandatory for: U.S. Army, Department of Public Works, Fort Knox, Ky

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), is announcing that the Committee approved the transfer of the Total Facilities Maintenance (TFM) Pilot Project at Fort Knox, KY from SourceAmerica to a participating nonprofit agency. Additionally, the Committee announces it approved and added Skookum Contract Services and Professional Contract Services, Inc. to the Procurement List as authorized sources for the TFM requirement.

As announced by the Committee on 3/23/23, 88 FR 17553, the TFM requirement consists of approximately 109,054 acres and 2,326 buildings and covers several functional areas, such as building and structure maintenance, snow and ice removal, landscaping services, utility system maintenance, and others. SourceAmerica is the incumbent TFM contractor, but the Pilot's short-term goal was to allocate the TFM requirement away from SourceAmerica to a participating nonprofit agency utilizing enhanced competitive procedures. SourceAmerica recommended both nonprofit agencies following completion of the Phase I evaluations. The Committee's decision to transfer this requirement and approve the authorized sources formally closes Phase I of the Pilot and authorizes SourceAmerica to commence Phase II.

The Committee has authorized a multi-factor evaluation process for Phase II that includes a price component. In accordance with a Memorandum of Agreement between the U.S. Army, the U.S. AbilityOne Commission (Committee) and SourceAmerica the multi-factor evaluation will assess the two authorized nonprofit agencies on technical capability, past performance, and price. Utilizing considerations of technical capability, past performance and price could require a trade-off analysis between the two nonprofit agencies. However, consistent with the Memorandum of Agreement, the Committee has determined that price may not be given greater weight than technical capability or have greater or equal weight as past performance.

The U.S. Army's Installation Management Command and the Army's Mission and Installation Contracting Command will provide technical support to SourceAmerica throughout the Phase II evaluation process. Because SourceAmerica is one of the central nonprofit agencies designated by the Committee under 41 U.S.C. 8503(c) to allocate orders from the Government, SourceAmerica will select and allocate the TFM requirement to the nonprofit agency proposing the best overall solution to the Army. After Phase II concludes, SourceAmerica will provide a recommended price to the Commission who will consider

that recommendation before establishing the fair market price.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023-11846 Filed 6-2-23; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Wednesday, June 7, 2023.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commodity Futures Trading Commission ("Commission" or "CFTC") will hold this meeting to consider the following matters:

- *Final Rule:* Governance Requirements for Derivatives Clearing Organizations;
- *Proposed Rule:* Derivatives Clearing Organizations Recovery and Orderly Wind-down Plans;
- *Proposed Rule:* Amendments to Part 17 Large Trader Reporting Requirements;
- *Proposed Order/Request for Comments:* European Union Non-Bank Swap Dealer Capital Comparability Determination; and
- *Amendment to DCO Order of Registration:* Cboe Clear Digital, LLC.

The agenda for this meeting will be available to the public and posted on the Commission's website at <https://www.cftc.gov>. Members of the public are free to attend the meeting in person, or have the option to listen by phone or view a live stream. Instructions for listening to the meeting by phone and connecting to the live video stream will be posted on the Commission's website.

In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's website.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, Secretary of the Commission, 202-418-5964.

Authority: 5 U.S.C. 552b.

Dated: May 31, 2023.

Christopher Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2023-11956 Filed 6-1-23; 11:15 am]

BILLING CODE 6351-01-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2023 for two types of grants: CSP Developer Grants, Assistance Listing Numbers 84.282B (for the opening of new charter schools) and 84.282E (for the replication and expansion of high-quality charter schools). This notice relates to the approved information collection under OMB control number 1810-0767.

DATES:

Applications Available: June 5, 2023.

Notice of Intent to Apply: Applicants are strongly encouraged but not required to submit a notice of intent to apply by June 30, 2023. Applicants who do not meet this deadline may still apply.

Deadline for Transmittal of Applications: July 7, 2023.

Deadline for Intergovernmental Review: September 5, 2023.

Pre-Application Webinar Information:

The Department will hold a pre-application meeting via webinar to provide technical assistance to prospective applicants. Detailed information regarding this webinar will be provided at <https://oese.ed.gov/offices/office-of-discretionary-grants-support-services/charter-school-programs/charter-schools-program-non-state-educational-agencies-non-sea-planning-program-design-and-initial-implementation-grant/applicant-info-and-eligibility/>.

Note: For new potential grantees unfamiliar with grantmaking at the Department, please consult our grantmaking basics resource: <https://www2.ed.gov/fund/grant/about/discretionary/index.html>.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/>

2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs. Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT:

Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202-5970. Telephone: 202-453-5563. Email: DeveloperCompetition2023@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly for *children with disabilities*,¹ *English learners*, and other traditionally *underserved students*, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; and support efforts to strengthen the charter school authorizing process (section 4301 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA)).

The CSP Developer Grant program (Assistance Listing Numbers 84.282B and 84.282E) is authorized under title IV, part C of the ESEA (20 U.S.C. 7221-7221j). Through CSP Developer Grants, the Department provides financial assistance to *charter school developers* to enable them to open and prepare for the operation of new or *replicated* charter schools or to *expand high-quality charter schools* in States that do not currently have a CSP State Entity grant under the ESEA. Charter schools that receive financial assistance through CSP Developer Grants provide programs of elementary or secondary education, or both, and may also serve students in

early childhood education programs or postsecondary students.

Background: This notice invites applications from eligible applicants for two types of grants: (1) Grants to Charter School Developers for the Opening of New Charter Schools (Assistance Listing Number 84.282B) and (2) Grants to Charter School Developers for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E). Under this competition, each Assistance Listing Number constitutes its own funding category. The Secretary intends to award grants under each Assistance Listing Number for applications that are sufficiently high quality.

On July 6, 2022, the Department published in the **Federal Register** a notice of final priorities, requirements, definitions, and selection criteria for this program (87 FR 40406) (2022 NFP), which supplements the program statute and notice of final priorities, requirements, definitions, and selection criteria for CSP Developer Grants published in the **Federal Register** on July 3, 2019 (84 FR 31726) (2019 NFP). The 2022 NFP is intended to help ensure the creation, replication, and expansion of high-quality charter schools that promote positive student outcomes, *educator* and community empowerment, promising practices, and school diversity. The 2022 NFP also promotes greater fiscal and operational transparency and accountability for CSP-funded charter schools. The priorities, application requirements, assurances, selection criteria, and definitions in this notice are designed to increase access to high-quality, diverse, and equitable learning opportunities, which should be a goal of all public schools.

Further, in a January 2023 speech, the Secretary encouraged all stakeholders to raise the bar in education. “Raise the Bar: Lead the World” is the Department’s call to action to transform P-12 education and unite around evidence-based strategies that advance educational equity and excellence for all students. When we raise the bar in education, all our Nation’s students will build the skills to thrive inside and outside of school. The Department is focusing on six strategies aimed at promoting academic excellence and wellness for every learner and better preparing our Nation for global competitiveness. This competition advances the call to raise the bar in education, particularly promoting the focus area to “achieve academic excellence.”

Priorities: This competition includes one competitive preference priority and

one invitational priority. In accordance with 34 CFR 75.105(b)(2)(iv), the competitive preference priority is from the 2022 NFP.

The invitational priority is intended to encourage collaborations between charter schools and traditional public schools or traditional school districts that benefit students and families across schools. Some of the most successful charter schools have collaborated with traditional schools and districts. We believe that these types of collaborations may improve outcomes for students in both charter schools and traditional public schools, including by sharing instructional materials, creating joint professional learning opportunities, and developing principal pipeline programs. Using an invitational priority allows the Department to encourage beneficial collaborations without giving applications that meet this priority preference over other applications.

Competitive Preference Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is a competitive preference priority.

For Assistance Listing Numbers 84.282B and 84.282E, under 34 CFR 75.105(c)(2)(i), we will award up to an additional 5 points to an application that meets the competitive preference priority, depending on how well the application meets the priority.

The priority is:

Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students (up to 5 points).

(a) Under this priority, an applicant must propose to open a new charter school, or to replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current or former teachers and other educators; and

(2) Using a community-centered approach that includes an assessment of *community assets*, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timeline for key milestones that span the course of planning, development, and implementation of the charter school.

¹ Terms defined in this notice are italicized the first time each term is used.

Invitational Priority: For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

The priority is:

Collaborations between Charter Schools and Traditional Public Schools or Districts that Benefit Students and Families across Schools.

(a) The Secretary is particularly interested in funding applications that propose a new collaboration, or the continuation of an existing collaboration, with at least one traditional public school or traditional school district that is designed to benefit students or families served by at least one member of the collaboration, is designed to lead to increased or improved educational opportunities for students served by at least one member of the collaboration, and includes implementation of one or more of the following—

(1) Co-developed or shared curricular and instructional resources or academic course offerings.

(2) Professional development opportunities for teachers and other educators, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high-need area or national board certification, and partnerships with educator preparation programs to support teaching residencies.

(3) Evidence-based (as defined in section 8101 of the ESEA) practices to improve academic performance for underserved students.

(4) Policies and practices to create safe, supportive, and inclusive learning environments, such as systems of positive behavioral intervention and support.

(5) Transparent enrollment and retention practices and processes that include clear and consistent disclosure to families of policies or requirements (e.g., discipline policies, purchasing and wearing specific uniforms and other fees, or family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (e.g., transportation services or participation in the National School Lunch Program).

(6) A shared transportation plan and system that reduces transportation costs for at least one member of the collaboration and takes into

consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(7) A shared special education collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in improving academic and developmental outcomes and services for students with disabilities (as defined in section 8101 of the ESEA).

(8) A shared English learner collaborative designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for English learners.

(9) Other collaborations, such as the sharing of innovative and best practices, designed to address a significant barrier or challenge faced by participating charter schools or traditional public schools in providing educational programs to improve academic outcomes for all students served by members of the collaboration.

(b) In its application, an applicant must provide a description of the collaboration that—

(1) Describes each member of the collaboration and whether the collaboration would be a new or existing commitment;

(2) States the purpose and duration of the collaboration;

(3) Describes the anticipated roles and responsibilities of each member of the collaboration;

(4) Describes how the collaboration will benefit one or more members of the collaboration, including how it will benefit students or families affiliated with a member and lead to increased educational opportunities for students, and meet specific and measurable, if applicable, goals;

(5) Describes the resources members of the collaboration will contribute; and

(6) Contains any other relevant information.

(c) Within 120 days of receiving a grant award or within 120 days of the date the collaboration is scheduled to begin, whichever is later, the grantee provides evidence of participation in the collaboration (which may include, but is not required to include, a memorandum of understanding).

Definitions:

The following definitions are from sections 4310 (20 U.S.C. 7221i) and 8101 (20 U.S.C. 7801) of the ESEA, 34 CFR 77.1, and the 2019 and 2022 NFPs.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a *performance target*, whether a performance target is ambitious depends upon the context of the relevant *performance measure* and the *baseline* for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency (SEA), local educational agency (LEA), or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a charter school. (Section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization (CMO) means a nonprofit organization that operates or manages a network of charter schools linked by centralized support, operations, and oversight. (Section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency*;

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;²

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972,

² The Department will apply this element of the definition of "charter school" consistent with applicable U.S. Supreme Court precedent, including *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S.Ct. 2012 (2017), *Espinoza v. Montana Department of Revenue*, 140 S.Ct. 2246 (2020), and *Carson v. Makin*, 142 S.Ct. 1987 (2022).

section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of GEPA (20 U.S.C. 1232g) (commonly referred to as the “Family Educational Rights and Privacy Act of 1974”), and part B of the Individuals with Disabilities Education Act (IDEA);

(8) Is a school to which *parents* choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A) of the ESEA, if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Child with a disability means—

(1) A child (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to as “emotional disturbance”), orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities; and (ii) who, by reason

thereof, needs special education and related services.

(2) For a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the LEA, include a child (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and (ii) who, by reason thereof, needs special education and related services. (Section 8101(4) of the ESEA)

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and local community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community; and

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities. (2022 NFP)

Demonstrates a rationale means a key *project component* included in the project’s *logic model* is informed by research or evaluation findings that suggest the project component is likely to improve *relevant outcomes*. (34 CFR 77.1)

Developer means an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out. (Section 4310(5) of the ESEA)

Disconnected youth means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution. (2022 NFP)

Early childhood education program means—

(1) A Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 *et seq.*), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;

(2) A State licensed or regulated childcare program;

(3) A program that—

(i) Serves children from birth through age 6 that addresses the children’s

cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and

(ii) Is (A) a State prekindergarten program; (B) a program authorized under section 619 (20 U.S.C. 1419) or part C of the IDEA; or (C) a program operated by an LEA. (ESEA section 8101(16))

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2019 NFP)

Educator means an individual who is an early learning educator, teacher, principal or other school or district leader, specialized instructional support personnel (e.g., school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty. (2022 NFP)

English learner, when used with respect to an individual, means an individual—

(1) Who is aged 3 through 21;

(2) Who is enrolled or preparing to enroll in an elementary school or secondary school;

(3)(i) Who was not born in the United States or whose native language is a language other than English;

(ii)(A) Who is a Native American or Alaska Native, or a native resident of the outlying areas; and

(B) Who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency; or

(iii) Who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

(4) Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

(i) The ability to meet the challenging State academic standards;

(ii) The ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) The opportunity to participate fully in society. (Section 8101(20) of the ESEA)

Expand, when used with respect to a high-quality charter school, means to significantly increase enrollment or add one or more grades to the high-quality

charter school. (Section 4310(7) of the ESEA)

High-quality charter school means a charter school that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school; and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4310(8) of the ESEA)

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active “ingredients” that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare). (Section 8101(38) of the ESEA)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.*, training teachers on instructional practices for English learners and follow-on coaching for these teachers). (34 CFR 77.1)

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to

improve, consistent with the specific goals of the program. (34 CFR 77.1)

Replicate, when used with respect to a high-quality charter school, means to open a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school, under an existing charter or an additional charter, if permitted or required by State law. (Section 4310(9) of the ESEA)

Underserved student means a student in one or more of the following subgroups:

(1) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(2) A student of color.

(3) A student who is a member of a federally recognized Indian Tribe.

(4) An English learner.

(5) A child or student with a disability.

(6) A disconnected youth.

(7) A migrant student.

(8) A student experiencing homelessness or housing insecurity.

(9) A student who is in foster care.

(10) A pregnant, parenting, or caregiving student.

(11) A student impacted by the justice system, including a formerly incarcerated student.

(12) A student performing significantly below grade level. (2022 NFP)

Application Requirements:

Applications for CSP Developer Grant funds must address the following application requirements. These requirements are from section 4303(f)³ of the ESEA and the 2019 and 2022 NFPs. The source of each requirement is provided in parentheses following each requirement. The Department will not fund an application that does not meet each applicable application requirement.

In addressing the application requirements, applicants must clearly identify which application requirement they are addressing. Except as otherwise provided, an applicant may choose to respond to each requirement separately or in the context of the applicant’s responses to the selection criteria in section V.1 of this notice.

Grants to Charter School Developers for the Opening of New Charter Schools

³ Under section 4305(c) of the ESEA, CSP Developer Grants must have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, with respect to requirements that derive from section 4303, the Department has, as applicable, omitted the term “State entity” or replaced it with “eligible applicant.” In addition, the Department has replaced “State entity’s program” and “subgrant,” respectively, with “program” and “grant.”

(*Assistance Listing Number 84.282B*) and for the *Replication and Expansion of High-Quality Charter Schools* (*Assistance Listing Number 84.282E*).

Applicants for grants under Assistance Listing Numbers 84.282B or 84.282E must address the following application requirements. An applicant must respond to the requirements in paragraph (a) in a stand-alone section of the application or in an appendix.

(a) Describe the eligible applicant’s objectives in running a quality charter school program and how the objectives of the program will be carried out, including—

(1) How the eligible applicant will ensure that charter schools receiving funds under this program meet the educational needs of their students, including children with disabilities and English learners (Section 4303(f)(1)(A)(x) of the ESEA);

(2) A description of the roles and responsibilities of eligible applicants, partner organizations, and *charter management organizations*, including the administrative and contractual roles and responsibilities of such partners (Section 4303(f)(1)(C)(i)(I) of the ESEA);

(3) A description of the quality controls agreed to between the eligible applicant and the authorized public chartering agency involved, such as a contract or performance agreement, how a school’s performance in the State’s accountability system and impact on student achievement (which may include student academic growth) will be one of the most important factors for renewal or revocation of the school’s charter, and how the authorized public chartering agency involved will reserve the right to revoke or not renew a school’s charter based on financial, structural, or operational factors involving the management of the school (Section 4303(f)(1)(C)(i)(II) of the ESEA);

(4) A description of how the autonomy and flexibility granted to a charter school is consistent with the definition of a charter school in section 4310 of the ESEA (Section 4303(f)(1)(C)(i)(III) of the ESEA);

(5) A description of how the eligible applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each charter school that will receive funds under the grant (Section 4303(f)(1)(C)(i)(IV) of the ESEA);

(6) A description of the eligible applicant’s planned activities and expenditures of grant funds to support the activities described in section 4303(b)(1) of the ESEA, and how the eligible applicant will maintain financial sustainability after the end of

the grant period (Section 4303(f)(1)(C)(i)(V) of the ESEA);

(7) A description of how the eligible applicant will support the use of effective parent, family, and community engagement strategies to operate each charter school that will receive funds under the grant (Section 4303(f)(1)(C)(i)(VI) of the ESEA); and

(8) A description of how the eligible applicant will ensure that each charter school receiving funds under this program has considered and planned for the transportation needs of the school's students (Section 4303(f)(1)(E) of the ESEA).

(b) Describe the educational program that the applicant will implement in the charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used. (2019 NFP)

(c) Describe how the applicant will ensure that the charter school that will receive funds will recruit, enroll, and retain students, including *educationally disadvantaged students*, which include children with disabilities and English learners. (2019 NFP)

(d) Describe the lottery and enrollment procedures that the applicant will use for the charter school if more students apply for admission than can be accommodated and, if the applicant proposes to use a weighted lottery, how the weighted lottery complies with section 4303(c)(3)(A) of the ESEA. (2019 NFP)

(e) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition. (2019 NFP)

(f) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities. (2019 NFP)

(g) If the applicant proposes to open a new charter school (Assistance Listing Number 84.282B) or proposes to replicate or expand a high-quality charter school (Assistance Listing Number 84.282E) that provides a single-sex educational program, demonstrate that the proposed single-sex educational programs are in compliance with the title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) (“Title

IX”) and its implementing regulations, including 34 CFR 106.34. (2019 NFP)

(h) Provide the applicant's most recent available independently audited financial statements prepared in accordance with generally accepted accounting principles. (2019 NFP)

(i) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the eligible entity believes are necessary for the successful operation of the charter school to be opened or to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to the school that will receive funds. (2019 NFP)

(j) Describe how each school that will receive funds meets the definition of charter school under section 4310(2) of the ESEA. (2019 NFP)

(k) For any existing or proposed contract with a for-profit management organization (including a nonprofit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization or its related entities exercise full or substantial administrative control over the charter school or the CSP project, provide the following information or equivalent information that the applicant has submitted to the authorized public chartering agency—

(1) A copy of the existing contract with the for-profit management organization or a description of the terms of the contract, including the name and contact information of the management organization; the cost (*i.e.*, fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such cost, and the percentage such cost represents of the school's total funding; the duration; roles and responsibilities of the management organization; and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(3) The name and contact information for each member of the governing board of the charter school and list of the management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(4) A description of how the applicant will ensure that members of the governing board of the charter school are not selected, removed, controlled, or employed by the management organization and that the charter school's legal, accounting, and auditing services will be procured independently from the management organization);

(5) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(6) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure of the charter school, in accordance with section 4308 of the ESEA (2022 NFP).

(l) Provide—

(1) The name and address of the authorized public chartering agency that issued the applicant's approved charter or, in the case of an applicant that has not yet received an approved charter, the authorized public chartering agency to which the applicant has applied;

(2) A copy of the approved charter or, in the case of an applicant that has not yet received an approved charter, a copy of the charter application that was submitted to the authorized public chartering agency, including the date the application was submitted, and an estimated date by which the authorized public chartering agency will issue its final decision on the charter application;

(3) Documentation that the applicant has provided notice to the authorized

public chartering agency that it has applied for a CSP grant; and

(4) A proposed budget, including a detailed description of any post-award planning costs and, for an applicant that does not yet have an approved charter, any planning costs expected to be incurred prior to the date the authorized public chartering agency issues a decision on the charter application. (2022 NFP)

Grants for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E).

In addition to the preceding application requirements, applicants for grants under Assistance Listing Number 84.282E must—

(a) For each charter school currently operated or managed by the applicant, provide—

(1) Information that demonstrates that the school is treated as a separate school by its authorized public chartering agency and the State, including for purposes of accountability and reporting under title I, part A of the ESEA;

(2) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(3) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended year adjusted cohort graduation rates; and

(4) Information on any significant compliance and management issues encountered within the last three school years by the existing charter school being operated or managed by the eligible entity, including in the areas of student safety and finance. (2019 NFP)

Assurances:

All applicants for CSP Developer Grants must provide the following assurances. These assurances are from section 4303(f)(2) of the ESEA and the 2022 NFP. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide assurances that—

(a) Each charter school receiving funds through this program will have a high degree of autonomy over budget and operations, including autonomy over personnel decisions (Section 4303(f)(2)(A) of the ESEA);

(b) The eligible applicant will support charter schools in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA (Section 4303(f)(2)(B) of the ESEA); and

(c) The eligible applicant will ensure that each charter school receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(i) Information on the educational program;

(ii) Student support services;

(iii) Parent contract requirements (as applicable), including any financial obligations or fees;

(iv) Enrollment criteria (as applicable); and

(v) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4303(f)(2)(G) of the ESEA)

(d) Each applicant must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, under which the management organization or its related entities exercises full or substantial administrative control over the charter school and, thereby, the CSP project. (2022 NFP)

(e) Each applicant must provide an assurance that any management contract between a charter school and a for-profit management organization, including a nonprofit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (e.g., food or payroll services) and that otherwise

comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the management organization, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization. (2022 NFP)

(f) Each applicant must provide an assurance that it will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a nonprofit management organization operated by or on behalf of a for-profit entity, and report information on such contract to the Department, including—

(1) A copy of the existing contract with the for-profit management organization or description of the terms of the contract, including the name and contact information of the management organization; the cost (i.e., fixed costs and estimates of any ongoing costs), including the amount of CSP funds proposed to be used toward such costs, and the percentage such cost represents of the charter school's total funding; the duration, roles and responsibilities of the management organization; the steps the charter will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization; and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(2) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(3) The names and contact information for each member of the governing boards of the charter school and a list of management organization's officers, chief administrator, and other administrators, and any staff involved in approving or executing the management contract; and a description of any actual or perceived conflicts of interest, including financial interests, and how the applicant resolved or will resolve any actual or perceived conflicts of

interest to ensure compliance with 2 CFR 200.318(c); and

(4) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close. (2022 NFP)

(g) Each applicant must provide an assurance that it will disclose, as part of the enrollment process, any policies and requirements (e.g., purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled in the school (e.g., transportation services or participation in the National School Lunch Program). (2022 NFP)

(h) Each applicant must provide an assurance that it will hold or participate in a public hearing in the local community in which the proposed charter school would be located to obtain information and feedback regarding the potential benefit of the charter school, which shall at least include how the proposed charter school will increase the availability of high-quality public school options for underserved students, promote racial and socio-economic diversity in such community or have an educational mission to serve primarily underserved students, and not increase racial or socioeconomic segregation or isolation in the school districts from which students would be drawn to attend the charter school (consistent with applicable laws). Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (i.e., provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (e.g., hold the hearing at a convenient time for families or provide virtual participation options), and submit a summary of the comments received as part of the application. The hearing may be conducted as part of the charter authorizing process, provided it meets the requirements above. (2022 NFP)

(i) Each applicant must provide an assurance that it will not use any implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate. Consistent with sections 4303(b)(1), 4303(h)(1)(B),

and 4310(6) of the ESEA, an eligible applicant may use CSP planning funds for post-award planning and design of the educational program of a proposed new or replicated high-quality charter school that has not yet opened, which may include hiring and compensating teachers, school leaders, and specialized instructional support personnel; providing training and professional development to staff; and other critical planning activities that need to occur prior to the charter school opening when such costs cannot be met from other sources. (2022 NFP)

Note: The Department recognizes that the charter approval process may exceed the 18-month planning period for CSP grants, as prescribed under section 4303(d)(1)(B) of the ESEA. In such a case, applicants may request approval from the Department to amend their application to request an extension of the 18-month planning period. Under section 4303(d)(5) of the ESEA, the Secretary, in his discretion, may waive any statutory or regulatory requirement over which he exercises administrative authority, except the requirements related to the definition of "charter school" in section 4310(2) of the ESEA, provided that the waiver is requested in an approved application and the Secretary determines that granting the waiver will promote the purposes of the CSP. A grantee also may request approval from the Department, as appropriate, to amend its approved application and budget to cover additional planning costs that it may incur due to an unexpected delay in the charter approval process.

Program Authority: Title IV, part C of the ESEA, as amended.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2019 and 2022 NFPs.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: \$4,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: \$200,000 to \$400,000 per year.

Estimated Average Size of Awards: \$300,000 per year.

Maximum Award: See Reasonable and Necessary Costs in section III.4 for information regarding the maximum amount of funds that may be awarded per charter school.

Estimated Number of Awards: 8–10.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

III. Eligibility Information

1. Eligible Applicants:

Eligible applicants are developers that have—

(a) Applied to an authorized public chartering authority to operate a charter school; and

(b) Provided adequate and timely notice to that authority. (Section 4310(6) of the ESEA).

Additionally, the charter school must be located in a State with a State statute specifically authorizing the establishment of charter schools (as defined in section 4310(2) of the ESEA) and in which a State entity currently does not have a CSP State Entity grant (Assistance Listing Number 84.282A) under section 4303 of the ESEA.⁴ (Section 4305(a)(2) of the ESEA).

As a general matter, the Secretary considers charter schools that have been in operation for more than five years to be past the initial implementation phase and, therefore, ineligible to receive CSP funds under Assistance Listing Number 84.282B to support the opening of a new charter school or under Assistance Listing Number 84.282E for the replication of a high-quality charter

⁴ States in which a State entity currently has an approved CSP State Entity grant application under section 4303 of the ESEA that is actively running subgrant competitions are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, and Washington. We will not consider applications from applicants in these States under either Assistance Listing Number 84.282B or 84.282E.

school; however, such schools may receive CSP funds under Assistance Listing Number 84.282E for the expansion of a high-quality charter school.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate; or (5) for an entity that holds a sincerely held religious belief that it cannot apply for a determination as an entity that is tax-exempt under section 501(c)(3) of the Internal Revenue Code, evidence sufficient to establish that the entity would otherwise qualify as a nonprofit organization under (1) through (4) above.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This competition does not involve supplement-not-supplant funding requirements.

c. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see www2.ed.gov/about/offices/list/ocfo/intro.html.

d. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to the Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be awarded for a new

charter school, or replicated, or expanded, high-quality charter school.

For this competition, the maximum limit of grant funds that may be awarded for a new, replicated, or expanded charter school is \$2,000,000.

In accordance with 2 CFR 200.404, applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

5. *Other CSP Grants:* A charter school that previously has received CSP funds for replication or expansion or for planning or initial implementation of a charter school under Assistance Listing Number 84.282A or 84.282M (under the ESEA) may not use funds under this grant for the same purpose. However, such charter school may be eligible to receive funds under this competition to expand the charter school beyond the existing grade levels or student count and beyond the grade levels or projected student count provided in the previous CSP award.

Likewise, a charter school that receives funds under this competition is ineligible to receive funds for the same purpose under section 4303(b)(1) or 4305(b) of the ESEA, including opening and preparing for the operation of a new charter school, opening and preparing for the operation of a replicated high-quality charter school, or expanding a high-quality charter school (*i.e.*, Assistance Listing Number 84.282A or 84.282M).

6. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. Application Submission

Instructions: Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045), and available at <https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs>, which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for

this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define “business information” and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended). Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under “Other Attachments Form,” please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Grantees must use the grant funds to open and prepare for the operation of a new charter school, to open and prepare for the operation of a replicated high-quality charter school, or to expand a high-quality charter school, as applicable. Grant funds must be used to carry out allowable activities, described in section 4303(h) of the ESEA, which include the following:

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the eligible applicant's planning period specified in the application for funds, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel.

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials).

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction).

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school.

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment.

(f) Providing for other appropriate, non-sustained costs related to the opening of new charter schools, or the replication or expansion of high-quality charter schools, as applicable, when such costs cannot be met from other sources.

A grant awarded by the Secretary under this competition may be for a period of not more than 5 years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA). Applicants may propose to support only one charter school per grant application.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit and English Language Requirement:* The project narrative is where you, the applicant, address the priority, selection criteria, and application requirements that peer reviewers use to evaluate your application. We recommend that you (1) limit the project narrative to no more than 50 pages, and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the project narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

Applications must be in English, and peer reviewers will only consider supporting documents submitted with the application that are in English.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the project narrative.

6. *Notice of Intent to Apply:* The Department will be able to review grant

applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **(FOR FURTHER INFORMATION CONTACT)** with the subject line “Intent to Apply,” and include the applicant’s name, a contact person’s name and email address, and the Assistance Listing Number. Applicants that do not submit a notice of intent to apply may still apply for funding.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for applicants submitting applications under Assistance Listing Numbers 84.282B and 84.282E are listed in paragraphs (a) and (b) of this section, respectively. The maximum possible score for addressing all the selection criteria is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion. These selection criteria are from the 2019 and 2022 NFPs and 34 CFR 75.210.

In evaluating an application for a CSP Developer Grant, the Secretary considers the following criteria:

(a) *Selection Criteria for Grants for the Opening of New Charter Schools (Assistance Listing Number 84.282B).*

(1) *Quality of the Charter School’s Management Plan (up to 40 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 10 points). (34 CFR 75.210(g)(2)(i))

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points). (34 CFR 75.210(f)(2)(iv))

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project (up to 5 points). (34 CFR 75.210(g)(2)(iv))

(iv) The qualifications, including relevant training and experience, of key project personnel (up to 5 points). (34 CFR 75.210(e)(3)(ii))

(v) The adequacy of the applicant’s plan to maintain control over all CSP grant funds (up to 5 points). (2022 NFP)

(vi) The adequacy of the applicant’s plan to make all programmatic decisions (up to 5 points). (2022 NFP)

(vii) The adequacy of the applicant’s plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 5 points). (2022 NFP)

(2) *Quality of the Continuation Plan (up to 20 points).*

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant’s application once the grant funds under this program are no longer available. (2019 NFP)

(3) *Quality of the Project Design (up to 10 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project *demonstrates a rationale* (as defined in 34 CFR 77.1(c)) (up to 5 points). (34 CFR 75.210(c)(2)(xxix))

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 5 points). (34 CFR 75.210(c)(2)(i))

(4) *Need for Project (up to 30 points).*

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(i))

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(ii))

(b) *Selection Criteria for Grants for the Replication and Expansion of High-Quality Charter Schools (Assistance Listing Number 84.282E).*

(1) *Quality of the Eligible Applicant (up to 20 points).*

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(i) The extent to which the academic achievement results (including annual student performance on statewide assessments and annual student attendance and retention rates and

where applicable and available, student academic growth, high school graduation rates, postsecondary enrollment and persistence rates, including in college or career training programs, employment rates, earnings and other academic outcomes) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (up to 5 points). (2019 NFP)

(ii) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (up to 5 points). (2019 NFP)

(iii) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (up to 5 points). (2019 NFP)

(iv) The extent to which the schools operated or managed by the applicant demonstrate strong results on measurable outcomes in non-academic areas such as, but not limited to, parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction (up to 5 points). (2019 NFP)

(2) Quality of the Charter School's Management Plan (up to 35 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (up to 5 points). (34 CFR 75.210(g)(2)(i))

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project (up to 5 points). (34 CFR 75.210(f)(2)(iv))

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the

proposed project (up to 5 points). (34 CFR 75.210(g)(2)(iv))

(iv) The qualifications, including relevant training and experience, of key project personnel (up to 5 points). (34 CFR 75.210(e)(3)(ii))

(v) The adequacy of the applicant's plan to maintain control over all CSP grant funds (up to 5 points). (2022 NFP)

(vi) The adequacy of the applicant's plan to make all programmatic decisions (up to 5 points). (2022 NFP)

(vii) The adequacy of the applicant's plan to administer or supervise the administration of the grant, including maintaining management and oversight responsibilities over the grant (up to 5 points). (2022 NFP)

(3) Quality of the Continuation Plan (up to 10 points).

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available. (2019 NFP)

(4) Quality of the Project Design (up to 10 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project demonstrates a rationale (as defined in 34 CFR 77.1(c)) (up to 5 points). (34 CFR 75.210(c)(2)(xxix))

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (up to 5 points). (34 CFR 75.210(c)(2)(i))

(5) Need for Project (up to 25 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project (up to 15 points). (34 CFR 75.210(a)(2)(i))

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project (up to 10 points). (34 CFR 75.210(a)(2)(ii))

2. Review and Selection Process: We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of

funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Risk Assessment and Specific Conditions: Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. Integrity and Performance System: If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

5. In General: In accordance with the Office of Management and Budget's

guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing

works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to www.ed.gov/fund/grant/apply/appforms/appforms.html.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* (a) For the purposes of Department reporting under 34 CFR 75.110 the Secretary has established two performance indicators: (1) the number of charter schools in operation around the Nation and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: The Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed performance measure would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed baseline is valid; or (ii) if the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) *Performance targets.* Why each proposed performance target is ambitious yet achievable compared to the baseline for the performance measure and when, during the project period, the applicant would meet the performance target(s).

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

7. *Project Directors' Meeting:* Applicants approved for funding under this competition must attend a meeting for project directors either virtually or at

a location to be determined in the continental United States during each year of the project. Applicants may include, if applicable, the cost of attending this meeting in their proposed budgets as allowable administrative costs.

8. *Technical Assistance:* Applicants approved for funding under this competition will be required to participate in all technical assistance offerings, to include project directors' meetings and other on-site gatherings sponsored by the Department and its contracted technical assistance providers and partners throughout the performance period.

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

James F. Lane,

Principal Deputy Assistant Secretary, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2023-11874 Filed 6-2-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2023-SCC-0054]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Grant Reallotment

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 5, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact David Steele, (202) 245-6520.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Grant Reallotment.

OMB Control Number: 1820-0692.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 323.

Total Estimated Number of Annual Burden Hours: 11.

Abstract: The Rehabilitation Act of 1973, as amended (the Act), authorizes the Rehabilitation Services Administration (RSA) Commissioner to reallot to other grant recipients that portion of a recipient's annual grant that cannot be used. To maximize the use of appropriated funds under the formula grant programs, RSA has established a reallotment process for the State Vocational Rehabilitation Services (VR); State Supported Employment Services (Supported Employment); Independent Living Services for Older Individuals Who Are Blind (OIB); Client Assistance Program (CAP); and Protection and Advocacy of Individual Rights (PAIR) programs. The authority for RSA to reallot formula grant funds is found at sections 110(b)(2) (VR), 622(b) (Supported Employment), 752(i)(4) (OIB), 112(e)(2) (CAP), and 509(e) (PAIR) of the Act.

The information will be used by the RSA State Monitoring and Program Improvement Division (SMPID) to reallot formula grant funds for the awards mentioned above.

Dated: May 31, 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. 2023-11876 Filed 6-2-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[ED-2023-FSA-0012]

Privacy Act of 1974; Matching Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a new computer matching agreement (CMA).

SUMMARY: This document provides notice of a new matching program between the Department of Education (ED) and the Department of Justice (DOJ). The current 18-month CMA was recertified for an additional 12 months on July 2, 2022 and will automatically expire on July 1, 2023.

DATES: Submit your comments on the proposed CMA on or before July 5,

2023. The CMA will be effective the later of: (1) July 2, 2023, or (2) July 3, 2023, unless comments have been received from interested members of the public requiring modification and republication of the notice. The CMA will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by email or by fax. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the “FAQ” tab.

Privacy Note: ED’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Gerard Duffey, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Philadelphia, PA 19107. Telephone: (215) 656-3249.

SUPPLEMENTARY INFORMATION: We provide this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101-508) (CMPPA); the Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818, June 19, 1989); and OMB Circular A-108, Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act (81 FR 94424, December 23, 2016).

Participating Agencies: The Department of Education (ED) and the Department of Justice (DOJ).

Authority for Conducting the Matching Program: Under section 421 of the Controlled Substances Act (21 U.S.C. 862) (originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 21 U.S.C. 853a, which was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Pub. L. 101-647) (hereinafter referred to as “section 5301”), an individual convicted of a Federal or State drug trafficking or possession offense may be denied, at the discretion of the court, certain Federal benefits, including those under the Federal Student Financial Assistance Programs authorized by title IV of the Higher Education Act (HEA) of 1965, as amended (title IV, HEA student financial assistance). The Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse Programs (DFB/DPPFD) database (formerly known as DEBARS) collects information regarding those individuals for whom benefits are denied and forwards this information to the General Services Administration (GSA) for inclusion in the publication “Lists of Parties Excluded from Federal Procurement or Non-procurement Programs,” more commonly known as the “Debarment List.” Federal agencies are required by law to consult the Debarment List, prior to the provision of certain benefits. However, ED and DOJ have determined that, for purposes of verifying title IV, HEA student financial assistance eligibility, direct access to the DFB/DPPFD database would be more useful than access to the GSA’s Debarment List because the DFB/DPPFD database contains information essential to the effective operation of the match that is not available in the GSA List.

By matching the names, dates of birth, and Social Security Number (SSNs) in the DFB/DPPFD database with ED’s student financial aid records, ED is able to identify students who do not qualify for Federal student financial assistance pursuant to section 5301. DOJ’s system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the period of ineligibility. DOJ will make available for the CMA the records of only those individuals who have been denied Federal benefits under one or more of the title IV, HEA programs. Thus, ED avoids the cost of disbursing student financial assistance funds to individuals who do not qualify for Federal student

financial assistance, but who would otherwise receive aid had the CMA not existed.

DOJ is the lead contact agency for information related to violations of section 5301 and, as such, provides this data to ED. The 18-month CMA was recertified for an additional 12 months on July 2, 2022 and will automatically expire on July 1, 2023.

Purpose(s): The purpose of this matching program is to ensure that the requirements of section 5301 are met.

DOJ is the lead contact agency for information related to section 5301 violations and, as such, provides this data to ED. ED seeks access to the information contained in the Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse program (DFB/DPPFD) database (formerly known as DEBARS) that is authorized under section 5301 for the purpose of ensuring that HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to the Denial of Federal Benefits Program.

Categories of Individuals: The individuals whose records are included in this matching program are individuals who are the subject of section 5301 denial of benefits court orders, and all students who complete a Free Application for Federal Student Aid. ED receives data from the DOJ DFB/DPPFD system that is used to match title IV, HEA applicant data in ED’s Aid Awareness and Application Processing System of Records (AAAP) (18-11-21)—published in the **Federal Register** on September 13, 2022 (87 FR 56026), and available at: <https://www.federalregister.gov/documents/2022/09/13/2022-19890/privacy-act-of-1974-system-of-records>.

Categories of Records: ED will use the SSN, date of birth, and the first two letters of an applicant’s last name for the match. These data elements are contained in ED’s Central Processing System (CPS) and Free Application for Federal Student Aid Processing System (FPS). The DOJ DFB/DPPFD system contains the names, SSNs, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only

those individuals who have been denied Federal benefits under one or more of the title IV, HEA programs.

System(s) of Records: DOJ system of records: DFB/DPFD (The most recent full DFB/DPFD system of records notice was published in the **Federal Register** on May 10, 1999, 64 FR 25071). ED system of records: Aid Awareness and Application Processing (18–11–21)—published in the **Federal Register** on September 13, 2022 (87 FR 56026), and available at: <https://www.federalregister.gov/documents/2022/09/13/2022-19890/privacy-act-of-1974-system-of-records>. (Note: The ED Central Processing System (CPS) and Free Application for Federal Student Aid (FAFSA) Processing System (FPS) are the ED information systems that process FAFSA data from the Aid Awareness and Application Processing system of records. CPS will process this data through September 30, 2024 for Award Year (AY) 2023–24. FPS will become operational on or after December 1, 2023 and begin processing FAFSA data for AY 2024–25. After September 30, 2024, CPS will be decommissioned and be fully replaced by FPS within AAAP. FPS will process data for all AYs thereafter.

Accessible Format: By request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Richard Cordray,
Chief Operating Officer, Federal Student Aid.
[FR Doc. 2023–11856 Filed 6–2–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0051]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 5, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate;

(4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form.

OMB Control Number: 1845–0127.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 296.

Total Estimated Number of Annual Burden Hours: 76.

Abstract: This is a request for an extension of Office of Management and Budget (OMB) approval of the Lender's Application for Insurance Claim Form (HEAL 510) and Request for Collection Assistance Form (HEAL 513). Section 525 of the Consolidated Appropriations Act of 2014 transferred the collection of the HEAL Program loans from the U.S. Department of Health and Human Services (HHS) to the U.S. Department of Education (the Department). The information collected on both forms is necessary to protect the financial interests of the Federal Government and to assure proper program administration by the current lenders/holders.

Dated: May 31, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–11865 Filed 6–2–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case Number 2022–009; EERE–2023–BT–WAV–0010]

Energy Conservation Program: Notification of Petition for Waiver of Samsung HVAC America LLC From the Department of Energy Central Air Conditioners and Heat Pumps Test Procedure and Notification of Grant of Interim Waiver

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

ACTION: Notification of petition for waiver and grant of an interim waiver; request for comments.

SUMMARY: This notification announces receipt of and publishes a petition for waiver and interim waiver from Samsung HVAC America LLC (“Samsung”), which seeks a waiver for specified basic models of central air conditioners (“CACs”) and heat pumps (“HPs”) (collectively, “CAC/HPs”) from the U.S. Department of Energy (“DOE”) test procedure used for determining the efficiency of CAC/HPs. DOE also gives notification of an Interim Waiver Order that requires Samsung to test and rate the specified CAC/HP basic models in accordance with the alternate test procedure set forth in the Interim Waiver Order. DOE solicits comments, data, and information concerning Samsung’s petition and its suggested alternate test procedure to inform DOE’s final decision on Samsung’s waiver request.

DATES: Written comments and information are requested and will be accepted on or before July 5, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number EERE–2023–BT–WAV–0010. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2023–BT–WAV–0010, by any of the following methods:

(1) *Email:*

Submit comments to SamsungCAC2023WAV0010@ee.doe.gov. Include the docket number EERE–2023–BT–WAV–0010 in the subject line of the message.

(2) *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

(3) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

SUPPLEMENTARY INFORMATION section of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at www.regulations.gov/docket?D=EERE-2023-BT-WAV-0010. All documents in the docket are listed in the www.regulations.gov index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page contains instruction on how to access all documents, including public comments, in the docket. See the **SUPPLEMENTARY INFORMATION** section for information on how to submit comments through www.regulations.gov.

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

Mr. Nolan Brickwood, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–4498. Email: nolan.brickwood@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE is publishing Samsung’s petition for waiver in its entirety, pursuant to 10 CFR 430.27(b)(1)(iv), absent any information for which petitioner requested treatment as confidential business information.¹ DOE is also publishing the Interim Waiver Order granted to Samsung, which serves as notification of DOE’s determination regarding Samsung’s petition for an interim waiver, pursuant to 10 CFR 430.27(e)(3). DOE invites all interested parties to submit in writing by July 5, 2023, comments and information on all aspects of the petition, including the alternate test procedure. Pursuant to 10 CFR 430.27(d), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is Chandra Gollapudi, cg.gollapudi@samsunghvac.com, Samsung HVAC America LLC, 776 Henrietta Creek Road, Suite 100, Roanoke, TX 76262.

¹ The petition did not identify any of the information contained therein as confidential business information.

Submitting comments via www.regulations.gov. The www.regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through www.regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that www.regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail.

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contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Case Number 2022-009

Interim Waiver Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended ("EPCA"),² authorizes the U.S. Department of Energy ("DOE") to regulate the energy efficiency of several consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B³ of EPCA, Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include CAC/HPs, the subject of this Interim Waiver Order. (42 U.S.C. 6292(a)(3))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the covered product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect the energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be

unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for CAC/HPs is contained in the Code of Federal Regulations ("CFR") at 10 CFR part 430, subpart B, appendix M1, *Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps* ("appendix M1").

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE's test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). A petitioner must include in its petition any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics of the basic model. 10 CFR 430.27(b)(1)(iii). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(f)(2).

As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 430.27(j) As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule to that effect. *Id.*

The waiver process also provides that DOE may grant an interim waiver if it appears likely that the underlying petition for waiver will be granted and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the underlying petition for waiver. 10 CFR 430.27(e)(3). Within one year of issuance of an interim waiver, DOE will either: (i) publish in the **Federal Register** a determination on the petition for waiver; or (ii) publish in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver. 10 CFR 430.27(h)(1).

If the interim waiver test procedure methodology is different than the decision and order test procedure methodology, certification reports to DOE required under 10 CFR 429.12 and

² All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

³ For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

any representations must be based on either of the two methodologies until 180 days after the publication date of the decision and order. Thereafter, certification reports and any representations must be based on the decision and order test procedure methodology, unless otherwise specified by DOE. 10 CFR 430.27(i)(1). When DOE amends the test procedure to address the issues presented in a waiver, the waiver or interim waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 429.27(h)(3).

II. Samsung's Petition for Interim Waiver

On December 16, 2022, DOE received from Samsung a petition for waiver and interim waiver from the test procedure for CAC/HPs set forth at 10 CFR part 430 subpart B, appendix M1.⁴ (Samsung, No. 1 at p. 2)⁵ Pursuant to 10 CFR 430.27(e)(i), DOE posted the petition on the DOE website. The petition did not identify any of the information contained therein as confidential business information.

In its petition, Samsung noted that the minimum external static pressure ("ESP") requirement for ducted blower coil systems, including for the basic models subject to the petition, increased from appendix M to subpart B of 10 CFR part 430 ("appendix M") to appendix M1. (Samsung, No. 1 at p. 1) Specifically, appendix M required a minimum ESP of 0.1 to 0.2 inches of water column ("in. wc."), depending on the cooling capacity of the system, for systems other than small-duct high velocity; whereas, appendix M1 requires a minimum ESP of 0.5 in. wc. for all conventional ducted blower coil systems.⁶ Samsung acknowledges that DOE increased the minimum ESP requirement for ducted systems in appendix M1 to better represent the ESP of homes with central ducted CAC/HP systems. *Id.* In its petition, Samsung asserts that the specified basic models cannot operate at the 0.5 in. wc. ESP requirement specified in appendix M1,

as these models are not designed for use in a traditional central ducted home, but rather are designed for use with short ducts and low static pressures and, thus, have a maximum operating ESP of 0.24 in. wc. *Id.* Because the models listed in its petition cannot operate at the 0.5 in. wc. condition specified by the test procedure, Samsung seeks to use an alternative test procedure that specifies testing these basic models at 0.1 in. wc. ESP, and in conjunction, adjusts the fan power and the resulting change in heating and cooling capacity in order to be equivalent to testing at 0.5 in. wc. ESP. *Id.*

Samsung also requested an interim waiver from the existing DOE test procedure, asserting that the petition for waiver is likely to be granted. Samsung stated that without the granting of a waiver and interim waiver, Samsung would suffer economic hardship by needing to withdraw these products from the market, which would result in loss of sales and reduced customer choice. In such case, Samsung also stated that consumers would need to seek alternate products that are not optimized for low static, short duct applications, which would lead to increased energy consumption. (Samsung, No. 1 at p. 5)

DOE will grant an interim waiver if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(e)(3).

III. Requested Alternate Test Procedure

EPCA requires that manufacturers use DOE test procedures when making representations about the energy consumption and energy consumption costs of covered products. (42 U.S.C. 6293(c)) Consistency is important when making representations about the energy efficiency of covered products, including when demonstrating compliance with applicable DOE energy conservation standards. Pursuant to 10 CFR 430.27, and after consideration of public comments on the petition, DOE may establish in a subsequent Decision and Order an alternate test procedure for the basic models addressed by the Interim Waiver Order.

As an alternate test procedure, Samsung seeks to test the specified basic models at 0.1 in. wc. ESP and to make proportional adjustments to fan power and capacity such that the results are equivalent to performance measured at 0.5 in. wc. ESP. (Samsung, No. 1 at p. 4)

Specifically, Samsung requests to use an alternate calculation of measured energy use. At all sections of appendix M1 where total cooling capacity, total heating capacity, sensible cooling capacity, and electrical power consumption is calculated, the measured indoor fan power would be increased by 87 watts per 1000 cubic feet per minute of standard air ("SCFM"). Samsung requests that for all tests the cooling capacity be decreased by the Btu/h equivalent of this fan power adjustment (*i.e.*, 297 Btu/h per 1000 SCFM); and the heating capacity increased by the same Btu/h equivalent. The test would otherwise be performed consistent with the requirements of appendix M1.

Samsung stated that it determined the proposed adjusted values for fan power based on the similar adjustment in fan wattage for coil-only systems in appendix M as compared to appendix M1. Specifically, Samsung noted that in the January 5, 2017 final rule that established appendix M1 ("January 2017 Final Rule"), DOE had determined that increasing the ESP from 0.15 in. wc.⁷ to 0.5 in. wc. corresponds to an increase in the indoor fan blower power of 76 watts/1000 SCFM.⁸ (*See* 82 FR 1426, 1451–1453). On this basis, Samsung extrapolated that changing the ESP from 0.1 in. wc. to 0.5 in. wc. equates to an increase in indoor fan blower power of 87 watts/1000 SCFM. (Samsung, No. 1 at p. 4) Samsung asserted that because these estimates of indoor fan blower power are based on mostly fixed speed motors, and the basic models in consideration use more efficient variable speed motors, this is a conservative approach in estimating revised fan power. *Id.*

IV. Interim Waiver Order

DOE has reviewed Samsung's application for an interim waiver, the alternate test procedure requested by Samsung, publicly available specification sheets and installation manuals relevant to these basic models, and the additional materials Samsung provided in support of its petition.

In appendix A to its petition, Samsung provided a submittal for one of the basic models for which it seeks to use its requested alternate test procedure. (Samsung, No. 1 at p. 6) The

⁷ DOE interprets Samsung's reference to 0.15 in. wc. in appendix M as referring to the average of the range of 0.1 to 0.2 in. wc. minimum ESP requirements for ducted blower coil systems specified in Table 4 of appendix M.

⁸ Appendix M specifies a default fan power of 365 watts/1000 SCFM; whereas appendix M1 specifies a default fan power of 441 watts/1000 SCFM, a difference of 76 watts/1000 SCFM.

⁴ The specific models for which the petition applies include Samsung Slim Duct CAC/HP outdoor models AC009BXADCH, AC012BXADCH, and AC018BXADCH, and indoor models AC009BNLDCH, AC012BNLDCH, and AC018BNLDCH. These models were provided by Samsung in its December 16, 2022 petition.

⁵ A notation in this form provides a reference for information that is in the docket for this test procedure waiver. This notation indicates that the statement preceding the reference is document number 1 in the docket and appears at page 2 of that document.

⁶ *See* Table 4 in section 3.1.4.1.1 of appendix M and Table 4 in section 3.1.4.1.1 for ducted blower coil systems.

submittal shows technical specifications that confirm to DOE the limited ESP operating range of 0.01–0.24 in. wc. used as grounds for waiver for the basic models subject to Samsung’s petition. Additionally, Figure 1 of Samsung’s petition provided the fan curves for the blower used in these basic models. (Samsung, No. 1 at p. 3) Figure 1 shows that at maximum speed of the motor of 1560 revolutions per minute and 0.5 in. wc. ESP (or 125 pascals) the air flow of these basic models is zero, and that, therefore, testing of the basic models with the appendix M1 test procedure is physically impossible. Samsung supported Figure 1 with the electrical and mechanical specifications of the indoor fan provided in appendix B to its petition. (Samsung, No. 1 at pp. 7–8)

For the basic models listed in Samsung’s petition, DOE’s review of technical specifications for the basic models subject to the petition indicates that the fan cannot operate at the minimum ESP of 0.5 in. wc. required to be tested by appendix M1. Since these basic models are physically incapable of operating at the minimum ESP required by the test procedure, DOE tentatively agrees that testing these basic models instead at a minimum ESP of 0.1 in. wc. with adjustments to ensure results are equivalent to performance measured at 0.5 in. wc. ESP is appropriate. DOE

tentatively agrees that the measured fan power, cooling capacity, and heating capacity should be adjusted to reflect performance equivalent to testing at 0.5 in. wc. ESP, as requested by Samsung. DOE also tentatively agrees that using the calculation methodology from the January 2017 Final Rule to determine the fan power adjustment for these basic models is appropriate, and DOE’s analysis confirms that this methodology yields an adjustment increase of 87 watts per 1000 SCFM. DOE notes that Samsung’s proposal to adjust cooling and heating capacity by the Btu/h equivalent of the fan power is consistent with fan power adjustments made for coil-only systems in appendix M1. (See, for example, Equation 3.3–5 in section 3.3.e.1 of appendix M1, in which the average total space cooling capacity, $\dot{Q}_c^k(T)$, is decreased by the Btu/h equivalent of the default fan power coefficient $DFPC_c$, in watts, for non-mobile, non-space-constrained home ducted coil-only system tests).

Based on this review, DOE has initially determined that the alternate test procedure requested by Samsung is appropriate and appears to allow for the accurate measurement of the energy efficiency of the specified basic models, while alleviating the testing problems cited by Samsung in implementing the DOE test procedure for these basic

models. Consequently, DOE has determined that Samsung’s petition for waiver likely will be granted. Furthermore, DOE has determined that it is desirable for public policy reasons to grant Samsung immediate relief pending a determination of the petition for waiver, and that Samsung may be likely to suffer economic hardship otherwise.

To maintain consistent units of measurement with the other sections of appendix M1 (specifically, the sections relevant to coil-only systems), DOE has converted Samsung’s suggested adjustments of cooling and heating capacities from units of Btu/h per watt of incremental fan power to units of Btu/h per 1000 SCFM. Samsung’s suggestions regarding adjustment of cooling and heating capacities correspond to decreasing cooling capacity by 297 Btu/h/1000 SCFM and increasing heating capacity by 297 Btu/h/1000 SCFM. These values are reflected in the alternate test procedure established by this notification.

For the reasons stated, it is *ordered* that:

(1) Samsung must test and rate the following CAC/HP basic models, which are comprised of the individual combinations listed below, using the alternate test procedure set forth in paragraph (2).

Brand series name	Outdoor unit model No.	Indoor unit model No.	Cooling capacity (95F)
Samsung Slim Duct	AC009BXADCH	AC009BNLDCH	9,000
	AC012BXADCH	AC012BNLDCH	12,000
	AC018BXADCH	AC018BNLDCH	18,000

(2) The alternate test procedure for the Samsung basic models identified in paragraph (1) of this Interim Waiver Order is the test procedure for CAC/HPs prescribed by DOE at 10 CFR part 430, subpart B, appendix M1, except that:

In 3.1.4, *Airflow Through the Indoor Coil*, test using a minimum external static pressure of 0.1 in. wc. rather than the 0.50 value listed in Table 4.

In 3.3, *Test Procedures for Steady-State Wet Coil Cooling Mode Tests (the A, A₂, A₁, B, B₂, B₁, E_v, and F₁ Tests)*, perform the following additional calculation:

g. For all steady-state wet coil tests (*i.e.*, the A₁, A₂, B₁, B₂, E_v, and F₁ tests), decrease $\dot{Q}_c^k(T)$ by the quantity calculated in Equation 3.3–9 to this appendix and increase $\dot{E}_c^k(T)$ by the quantity calculated in Equation 3.3–10 to this appendix.

$$\text{Equation 3.3-9} \quad \frac{297 \text{ Btu/h}}{1000 \text{ scfm}} * \dot{V}_s$$

$$\text{Equation 3.3-10} \quad \frac{87 \text{ Watts}}{1000 \text{ scfm}} * \dot{V}_s$$

Where:

\dot{V}_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

In 3.5.1, *Procedures When Testing Ducted Systems*, perform the following additional calculation:

e. For all cyclic dry-coil tests (*i.e.*, the D, D₁, D₂, and I₁ tests), decrease $\dot{Q}_c^k(T)$ by the quantity calculated in Equation 3.5–10 to this appendix and increase $\dot{E}_h^k(T)$ by the quantity calculated in Equation 3.5–11 to this appendix.

$$\text{Equation 3.5-10} \quad \frac{297 \text{ Btu/h}}{1000 \text{ scfm}} * \dot{V}_s$$

$$\text{Equation 3.5-11} \quad \frac{87 \text{ Watts}}{1000 \text{ scfm}} * \dot{V}_s$$

Where:

\dot{V}_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

In 3.7, *Test Procedures for Steady-State Maximum Temperature and High Temperature Heating Mode Tests (the H0₁, H1, H1₂, H1₁, and H1_N tests)*, perform the following additional calculation:

g. For all steady-state maximum temperature and high temperature tests (*i.e.*, the H0₁, H1, H1₂, H1₁, and H1_N tests), increase $\dot{Q}_h^k(T)$ by the quantity calculated in Equation 3.7–9 to this appendix and increase $\dot{E}_h^k(T)$ by the quantity calculated in Equation 3.7–10 to this appendix.

$$\text{Equation 3.7-9} \quad \frac{297 \text{ Btu/h}}{1000 \text{ scfm}} * \dot{V}_S$$

$$\text{Equation 3.7-10} \quad \frac{87 \text{ Watts}}{1000 \text{ scfm}} * \dot{V}_S$$

Where:

\dot{V}_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

In 3.9.1, *Average Space Heating Capacity and Electrical Power Calculations*, under paragraph (b) perform the following additional calculation:

(3) For all frost accumulation tests (*i.e.*, the H2₁, H2₂, and H2_v tests), increase $\dot{Q}_h^k(35)$ by the quantity calculated in Equation 3.9.1-9 to this appendix and increase $\dot{E}_h^k(35)$ by the quantity calculated in Equation 3.9.1-10 to this appendix.

$$\text{Equation 3.9.1-9} \quad \frac{297 \text{ Btu/h}}{1000 \text{ scfm}} * \dot{V}_S$$

$$\text{Equation 3.9.1-10} \quad \frac{87 \text{ Watts}}{1000 \text{ scfm}} * \dot{V}_S$$

Where:

\dot{V}_s is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

(3) *Representations*. Samsung may not make representations about the efficiency of a basic model listed in paragraph (1) for compliance, marketing, or other purposes unless that basic model has been tested in accordance with the provisions set forth in this alternate test procedure and such

representations fairly disclose the results of such testing.

(4) This Interim Waiver Order shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This Interim Waiver Order is issued on the condition that the statements, representations, test data, and documentary materials provided by Samsung are valid. 10 CFR 430.27(k)(1). If Samsung makes any modifications to the controls or configurations of a basic model subject to this Interim Waiver Order, such modifications will render the waiver invalid with respect to that basic model, and Samsung will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for the Interim Waiver Order is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. *Id.* Likewise, Samsung may request that DOE rescind or modify the Interim Waiver Order if Samsung discovers an error in the information provided to DOE as part of its petition, determines that the interim waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Issuance of this Interim Waiver Order does not release Samsung from the applicable requirements set forth at 10 CFR part 429.

DOE makes decisions on waivers and interim waivers for only those basic models specifically set out in the petition, not future models that may be

manufactured by the petitioner.

Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional basic models of CAC/HPs. Alternatively, if appropriate, Samsung may request that DOE extend the scope of a waiver or an interim waiver to include additional basic models employing the same technology as the basic model(s) set forth in the original petition consistent with 10 CFR 430.27(g).

Signing Authority

This document of the Department of Energy was signed on May 30, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 30, 2023.

Treena V. Garrett.

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

BILLING CODE 6450-01-P

Date: 12/16/2022

U.S. Department of Energy
Building Technologies Program
Test Procedure Waiver
1000 Independence Avenue, SW., Mailstop EE-58
Washington, DC 20585-0121

Re: Petition for Waiver and Interim Waiver on Test Procedure for Certain Ducted Mini Split Heat Pumps

Dear Ms. Julia Hegarty,

Samsung HVAC America LLC ("Samsung") respectfully submits petitions for test procedure waiver and interim waiver to the Department of Energy ("DOE") from certain provisions in the future test procedure for central air conditioners and heat pumps set forth in Appendix M1 to Subpart B of 10 CFR Part 430 ("Appendix M1") applicable from January 1, 2023, specifically for certain ducted variable speed mini split heat pumps designed specifically for low static and short duct applications ("Low Static VSMSHP").

Samsung HVAC is a leading manufacturer of Variable-speed Mini-splits and Multi-splits (VSMS) and Variable Refrigerant Flow (VRF) heating and cooling systems. VRF and VSMS use inverter driven technology and hence are very efficient and save considerable amount of energy in air conditioning and space heating.

I. Introduction

While the current test procedure for Low Static VSMSHP specifies how to set the external static pressure for ducted systems in Appendix M to Subpart B of 10 CFR Part 430 ("Appendix M") this test procedure is changing from 1 Jan 2023 when the effective test procedure changes to Appendix M1 to Subpart B of 10 CFR Part 430 ("Appendix M1"). The minimum external static pressure cited in Table 4 of section 3.1.4.1 of Appendix M1 for ducted blower coil systems is changing. While this change is appropriate for most ducted blower coil systems, for ducted Low Static VSMSHP basic models that are subject of this petition the external static pressure changes from 0.10 in. wc. (Appendix M) to 0.50 in. wc. (Appendix M1). This change in external static pressure creates a problem for the concerned basic models as they are designed for short ducts and low static pressures. These models have a maximum operating external pressure of 0.24 in. wc. and cannot operate at 0.5 in. wc. This design feature of the equipment prevents their operation at the new external static pressure required by Appendix M1 and thus these basic models cannot be tested as per Appendix M1. Without a waiver and interim waiver Samsung's Low Static VSMSHP basic models cannot be manufactured after 1 Jan, 2023.

DOE increased the minimum static pressure requirement for ducted systems in Appendix M1 to better align with higher static pressure in central ducted homes. However, the Low Static VSMSHP in scope of this waiver petition is not used in traditional central ducted homes. These products are specifically designed for short duct and low static applications. Samsung is proposing as alternate test procedure in this petition to continue to test at 0.1 in. wc. external static pressure but adjust the fan power and the resulting heating and cooling But/h from fan power change to be equivalent to 0.5 in. wc. external static pressure.

This change allows to the subject basic models to be continued to be offered to consumer and not create an undue advantage over conventional ducted blower coil systems tested at 0.5 in. wc. external static pressure.

II. Models for which Waiver and interim waiver is requested

The basic models for which the test procedure waiver and interim waiver is requested are Samsung's Low Static VSMS products branded as Slim Duct product line presented in Table 1 of this section. The Slim Duct indoors are only 7-7/8 inches tall allowing for installation in tight spaces and reduces ceiling height loss. They are single zone systems that can be installed with or without ducts. Ducted applications are designed for short ducts with low static capability ranging from 0.01-0.24 inches of water. The submittals with technical specification is included in Appendix A for all Basic Models included in this petition.

Table 1: Basic Models for which waiver is sought

Brand Series Name	Outdoor Unit Model	Indoor Unit Model	Cooling Capacity (95F)
Samsung Slim Duct	AC009BXADCH	AC009BNLDCH	9000
Samsung Slim Duct	AC012BXADCH	AC012BNLDCH	12000
Samsung Slim Duct	AC018BXADCH	AC018BNLDCH	18000

III. Grounds for Petition of Waiver

Samsung requests test procedure waiver for the basic models in Table 1, on the grounds that the change in test procedure to Appendix M1 makes it impossible to test these basic models. This is explained in detail in the following paragraphs. The minimum external static pressure used to set the Full Load Cooling Air Flow changed in Appendix M1 for all ducted systems. While this change was a recommendation in the ASRAC term sheet¹ to better represent the real external static pressure for ducted units in central air conditioning systems, the change also had the unintended consequence affecting the ducted Low Static VSMSHP, which are designed to operate in short low static ducted applications and by design cannot operate at 0.5 in. wc. external static pressure.

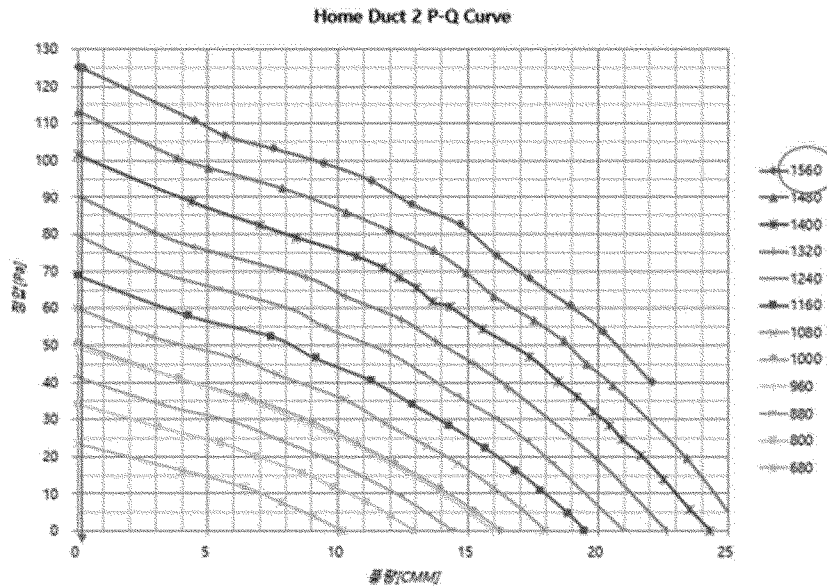
The minimum external static pressure to set the Cooling Full-Load air volume in current test procedure is specified in 10 CFR Part 430 Appendix M Section 3.1.4.1.1, Table 4. Appendix M, Table 4 requires the minimum external static pressure for the basic models in scope of this petition to be tested at min. of 0.1 inches of Water. However, starting 1 Jan, 2023, the test procedure is changing to Appendix M1. The minimum external static pressure is specified in Appendix M1 Table 4. This table specifies the required minimum external static pressure based on Product Variety as defined in Section 1.2 of Appendix M1. As per these definitions the Basic Models in Table 1 are classified as "Conventional" and these models are

¹ 2016 ASRAC Working Group Term Sheet for CAC and HP - <https://www.regulations.gov/document/EERE-2013-BT-NOC-0005-0070>

to be tested with a minimum external static pressure of 0.5 in. wc. However, 0.5 in. wc. external static pressure is outside the operating envelop of the Basic Models in Table 1. Appendix A of this petition shows the operating range of the Basic Models. The operating range of external static pressure of these models is 0.01-0.24 inches of water.

Figure 1 shows the fan curves for the blower used in the basic models. The graph shows that at maximum speed of the motor of 1560 rpm and 0.5 in water external static pressure or 125Pa the air flow is zero. The indoor fan electrical and mechanical specification is provided in Appendix B.

Figure 1: Blower Curves



This design feature prevents the testing of the basic models with Appendix M1 test procedure. 10 CFR 430.27 paragraph (a) (1) ² allows submitting a request for waiver upon the grounds that one or more design features does not allow testing of the basic model according to the prescribed test procedure. We believe we have sufficiently explained in this paragraph how the design features of the Basic Models prohibit testing as per Appendix M1, whereby, we meet the requirements for grounds for waiver in 10 CFR 430.27 (b) (1) (i) ³.

Low Static VSMS products meet specific customer needs in applications where the conditioned space may have space constraints and a short duct is required to locate the indoor unit in a suitable location in proximity. These products provide a unique solution that is a compromise between central ducted system and ductless systems. Without a waiver and interim waiver to test these basic models to meet

² [https://www.ecfr.gov/current/title-10/section-430.27#p-430.27\(a\)\(1\)](https://www.ecfr.gov/current/title-10/section-430.27#p-430.27(a)(1))
³ [https://www.ecfr.gov/current/title-10/section-430.27#p-430.27\(b\)\(1\)\(i\)](https://www.ecfr.gov/current/title-10/section-430.27#p-430.27(b)(1)(i))

efficiency standards as per 10 CFR 430.32, they will have to be discontinued. If these systems are discontinued customers will have to adopt non optimized solutions that will increase the energy consumption causing undue burden to consumers and loss of sales to Samsung.

As alternate test procedure Samsung is proposing test at 0.1 in. wc. and adjust the calculations to estimate performance at 0.5 in. wc. external static pressure. In the Jan 2017 Final Rule⁴ DOE ascertained that increasing the external static pressure from 0.15 in. wc. to 0.5 in. wc. will result in the indoor fan blower watts to increase by 76 Watts per 1000 SCFM. Thus, changing external static from 0.1 in. wc. to 0.5 in. wc. equates to an increase of 87 watts per 1000 SCFM. Considering that this data is based on mostly fixed speed motors and the basic models in consideration use more efficient variable speed motors this is a very conservative approach in estimating revised fan power. Similarly, DOE determined that the added heat capacity from the additional fan motor power is calculated at 3.142 Btu/h power per watt.

Based on Jan 2017 Test Procedure Final Rule, Samsung would like to propose as the alternate test procedure to test the basic models at 0.1 in. wc. external static pressure and make proportional adjustment to fan power and capacity for estimated performance at 0.5 in. wc. For all test conditions in Appendix M1 test procedure the Indoor Fan Power shall be increased by 87 Watts/1000 SCFM, the cooling capacity shall be decreased by 3.412 Btu/h per watt of incremental fan power, and the heating capacity shall be increased by 3.412 Btu/h per watt of incremental fan power.

IV. Proposed Alternate Test Procedure

10 CFR 430 Appendix M1 Table 4 - Minimum External Static Pressure for Ducted Blower Coil Systems shall not apply to the basic models subject of this petition. Applicable Min. External Static Pressure for the basic models in lieu of Table 1 shall be 0.1 in. wc. This value will be used wherever appendix M1 Table 4 min. external static pressure is referenced.

In all sections of Appendix M1 where Total Cooling Capacity $\dot{Q}_c^k(T)$, Sensible Cooling Capacity $\dot{Q}_{sc}^k(T)$, and Electrical Power Consumption $\dot{E}_c^k(T)$ is calculated make the following adjustments;

For all tests increase the Electrical Power Consumption as follows;

$$\text{Indoor Fan Electric Power} - E_{fan,s} = E_{fan,m} + (87 \text{ Watts}) * V_s / (1000 \text{ SCFM})$$

Where, $E_{fan,s}$ is adjusted Indoor Fan blower Watts, $E_{fan,m}$ is the measured Indoor Fan blower Watts, V_s is the measured air flow rate in SCFM

For all tests the Cooling Capacity (Btu/h) shall be decreased by

$$(E_{fan,s} - E_{fan,m}) * 3.412$$

⁴ [2017-01-05 Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps: Final Rule](#)

For all tests the Heating Capacity (Btu/h) shall be increased by

$$(E_{fan,s} - E_{fan,m}) * 3.412$$

Except for the above changes all provisions of 10 CFR 430 Appendix M1 shall be applicable without modification.

V. Petition for Interim Waiver

Pursuant to 10 C.F.R. Part 430.27(b)(2), Samsung also hereby applies for an interim waiver of the applicable test procedure requirements for the models listed in Table 1 of this petition. This petition for Interim Waiver is in reference to the petition for waiver covered by Section I through IV of this petition.

Samsung believes the petition for waiver is likely to be granted, as evidenced in Section I and Section III of this document. Without waiver Samsung will be forced to withdraw these products from the market which were legally allowed under the current test procedure. This results in loss of sales to Samsung and will also lead to reduced customer choice. Consumer will be forced to use non optimized alternate solutions for low static short duct applications that will lead to increased energy consumption contrary to DOE goals and EPCA direction. This adequately proves the economic disadvantage and hardship caused by non-approval of the interim waiver as required by 10 CFR 430.27 (b) (2).

VI. List of Manufacturers

As required by 10 CFR 430.27 (b)(ii), Samsung is providing in Appendix C of this petition, a list of manufacturers, known to us, that offer products like those that are subject of the petition in the United States.

VII. Conclusion


Samsung understands that the new external static pressure in Table 4 of Appendix M1 is from the term sheet of ASRAC working group and it seems that this product type was overlooked. However, as described in this petition these products meet unique needs of consumers and without an approval of this petition for waiver and interim waiver this product type will be eliminated from the market because of the change in test procedure. Samsung requests DOE to approve the petition for test procedure waiver and interim waiver. If you have any questions or require follow up information, we will be happy to work with DOE for an expeditious resolution.

Sincerely,



Chandra Gollapudi
Regulatory Affairs and Compliance Manager
Cg.gollapudi@samsunghvac.com

Appendix A: Submittal of the 18K Model



SUBMITTAL AC018BNLDCH/AA / AC018BXADCH/AA (CNH18LDB / CXH18ADB) Page 1 of 4

Samsung Slim Duct, Single Zone Duct, Split System

Job Name _____

Purchaser _____

Submitted to _____

Unit Designation _____

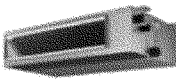
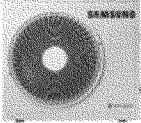
Location _____

Engineer _____

Reference Approval Construction

Schedule # _____

Specifications		
Model	Indoor Unit Model Number (US Code)	AC018BNLDCH/AA (CNH18LDB)
	Outdoor Unit Model Number (US Code)	AC018BXADCH/AA (CXH18ADB)
Performance 1	Nominal Capacity	Cooling / Heating (Btu/h)
	Capacity Range	Cooling (Btu/h)
	SEER / EER	Heating (Btu/h)
	COP (nominal heating)	
	HSPF	
	AHRI Certification Number	322464540
Power	Voltage	1 / 208-230 / 55
	Working Voltage Range (VAC)	179-264 (max. 75% load on fan coil)
	Operating Current (min. / max.)	Cooling (A)
		Heating (A)
	Max. Breaker	Amps
Dimensions	W x H x D (in.)	Indoor Unit
		Outdoor Unit
	Duct Connections (W x H)	Supply (in.)
		Return (in.)
	Weight (lbs.)	Indoor Unit
	Outdoor Unit	
Sound Pressure Level	Indoor Unit (dB(A))	L / M / H
	Outdoor Unit (dB(A))	Cooling / Heating (High)
Operating Temperatures	Outdoor	Cooling
		Heating
	Indoor	Cooling
		Heating
Pipe Connections	Indoor & Outdoor	High side (flare)
		Low side (flare)
	Maximum (ft.)	
	Maximum Vertical Separation (ft.)	
Refrigerant	Type	R410A
	Control Method	Electronic Expansion Valve
	Factory Charge (lb.)	2.6
	Additional Refrigerant	0.11 (add. cost: 24.6 \$)
Compressor	Manufacturer	Samsung
	Type	Inverter Drive, BLDC Rotary
Evaporator Fan	Type	BLDC (1) With Spruced Fan (2)
	Air Volume (CFM) (ASHRAE)	
	Output (W) / FLA (A)	
	Static Pressure (Standard / W/C)	
Condenser Fan	Motor	BLDC With Axial Type Fan (1)
	FLA / Watts / CFM (max.)	
Safety	Certifications	EPL 24, 1995
	Notes:	PCB free, indoor unit terminal block thermal fuse, current transformer, over-voltage protection, condensate heating, temperature limit protection (high), compressor overheat warning

General Information

- The outdoor unit shall supply power to indoor unit via 14 AWG X 3 power wire
- High-voltage terminal block temperature sensor to disable unit in the event of power connection overheating
- Integral condensate pump with maximum 20" lift from bottom of the unit with check valve and float switch that disables indoor should condensate overflow be detected
- Auto-restart after power loss
- Soft-start compressor minimizing current inrush
- All heat exchangers shall be mechanically bonded aluminum fin to copper tube
- The condensing unit heat exchanger shall spray test method: ASTM-B117-10 - the heat exchanger showed no unusual rust or corrosion development to 2,200 hours
- Base pan heaters equipped as standard

Option settings

- The outdoor unit shall have snow accumulation prevention option setting to prevent snow drifting against an idle outdoor unit
- High-time Quiet Mode: reduction of operational sound during (automatic or manual activations)
- Emergency Temperature Output (ETO) function: when indoor unit is in error status or when room temperature exceeds configurable temperature level, the system outputs a signal to an external source, e.g., backup system, building management system, alert device (ex: status light, warning lamp, buzzer)
- System can be set up as heating/cooling, cooling only, or heating only via outdoor unit option setting
- Maximum Current Control configurable from 50% - 100% via outdoor unit, wired controller or central control

Indoor Fan

- Indoor fan is sirocco type
- Three fan speed settings and auto setting
- Washable filter as standard

Construction

- Outdoor unit shall be galvanized steel with a baked-on powder coated finish for durability
- Indoor Unit: Insulated, galvanized steel.

Controls

- Control wiring shall be 2 X 16 AWG wire
- No additional interface modules/adapters are required when connecting to Samsung central control options.
- The unit shall be operated via a wireless or wired remote control with DDC type signal
- Dual set temperature support when connected to MWR-WG00UN Advanced Wired Controller or central control options.
- Wired or wireless controllers must be purchased separately

Refrigerant System

- The compressor shall be hermetically sealed, Inverter-controlled BLDC rotary type.
- Refrigerant flow shall be controlled by an electronic expansion valve at outdoor unit

Warranty



10 Years compressor, 10 years parts, 1 year limited labor when registered

ATTENTION

This air handling unit is intended for free-air discharge or for connection to a duct supplying only one room. Improper installation could contribute to the spread of smoke or flame in the event of a fire.

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Appendix B: Indoor Fan Motor Specification for 18K Model

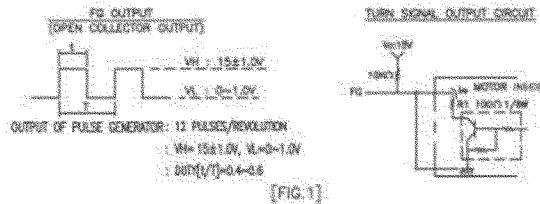
전동기 사양서
MOTOR SPECIFICATION
MODEL:DL-89824SSBB

1. (주)SPG 모델명 : DL-89824SSBB
MOTOR MODEL
2. 적용범위
APPLICATION
본 사양서는 (주)삼성전자에 (주)에스피지가 제조,공급하는 에어컨에 적용되는 고휘압 DC BRUSHLESS MOTOR로 (주)삼성전자와 도면의 차이가 있는 경우에는 (주)삼성전자에서 승인한 (주)에스피지 도면을 우선으로 한다. 또한, (주)삼성전자와 사전 승인없이 내부 또는 외부의 구조변경 및 재질 변경등을 하지 않는다.
THE APPROVAL SHEET BEING SPECIFIED ABOUT THE HIGH VOLTAGE DC BRUSHLESS MOTOR, WHICH [REDACTED] MANUFACTURES AND SUPPLIES TO BE USED FOR A PART OF THE AIR CONDITIONER OF SAMSUNG IN CASE OF ANY DISCREPANCIES BETWEEN THE DRAWING OF [REDACTED] AND SAMSUNG, THE DRAWING OF [REDACTED] AS THE PRIORITY TO BE APPLIED TO THE PRODUCTION, ANY OF REVISIONS OR CHANGES ON THE INTERNAL/EXTERNAL STRUCTURE, OR MATERIAL WITHOUT ANY CONSENT OF SAMSUNG ARE NOW ALLOWED.

3. 형식
TYPE
 - 1) BUYER 모델 : DB31-00671A
CUSTOMER'S P/N
 - 2) 구동제어방식 : 3상 전파방식 BRUSHLESS DC MOTOR
DRIVE CONTROL METHOD : 3PHASE BIPOLAR DRIVE, DC BRUSHLESS MOTOR
 - 3) MAGNET 극수 : 8POLES
NUMBER OF MAGNET POLES
 - 4) 회전방향 : LEAD WIRE 방향에서 보았을때 반시계방향(C.C.W)
ROTATION DIRECTION : C.C.W DIRECTION WHEN VIEWED FROM THE LEAD WIRE
 - 5) FG 출력 : 12 (PULSES/REV)
REVOLUTION SIGNAL FG OUTPUT
 - 6) 사용지세 : 출력축 수평
POSTURE : OUTPUT SHAFT HORIZONTAL

4. 전기적 사양
ELECTRIC SPECIFICATION
 - 1) 무부하특성
NO LOAD CHARACTERISTICS

NO	항목 ITEM	규격 STANDARD	비고 NOTE
A	정격전압 RATED VOLTAGE	VM = DC310 Vcc = DC15 Vsp = DC0-5.4	V V V
B	무부하 회전수 NO LOAD SPEED	1000±20	[r/min] 참고치 NORMAL
C	무부하 입력 NO LOAD INPUT	20±10%	[W] 참고치 NORMAL



Rohs

2) 정격부하특성
RATED LOAD CHARACTERISTICS

NO	항목 ITEM	규격 STANDARD	비고 NOTE
A	정격전압 RATED VOLTAGE	VM = DC310 Vcc = DC15 Vsp = DC4.2±0.3	참고치 NORMAL
B	사물전압범위 SUPPLY VOLTAGE RANGE	VM = DC280~DC340 Vcc = DC13.5~16.5 Vsp = DCD-5.4	참고치 NORMAL
C	정격부하 RATED LOAD	3.5 [kg.cm]	참고치 NORMAL
D	정격회전수 RATED SPEED	1500±50 [r/min]	참고치 NORMAL
E	정격전류 RATED CURRENT	360±30 [mA]	참고치 NORMAL
F	정격의 종류 RATED OPERATING	CONTINUOUS	
G	절연등급 INSULATION CLASS	CLASS E	
H	정격출력 RATED OUTPUT	84 [W]	참고치 NORMAL

ER OF SAMSUNG.
ALLOWED.

3) 전기적특성
ELECTRIC CHARACTERISTICS

NO	항목 ITEM	규격 STANDARD	비고 NOTE
A	전류 CURRENT	IM = 360±30 [mA]	3.5[kgf.cm] VM=310[V]
B	회전수 SPEED	1500±50 [r/min]	Vcc=15[V] Vsp=4.2[V]
C	전류한계 CURRENT LIMIT	0.69 [A]MAX	참고치 NORMAL
D	회전신호펄스(FG) REVOLUTION SIGNAL (FG) OUTPUT	12 [PULSES/REV] (NUMBER OF OUTPUT PULSES)	[그림 1] [FIG. 1]
E	Vsp 최소 동작 전압 RE MINIMUM OPERING VOLTAGE (Vsp)	Vsp = 0.5 [V]	참고치 NORMAL



DATE		SIGN		NOTE		REVISION	
MATERIAL		SURFACE FINISH		SCALE		TOLERANCE	
DESIGN	CHECK	APPR	MOTOR SPECIFICATION (1/5)				
DRAWN		NAME		DL-89824SSBB			
DATE		DWG NO.		7-189-0132-00			

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A3(420*297)

Appendix C: List of Manufacturers

Manufacturers of single zone ducted mini splits registered on AHRI are below;

Carrier Corporation

Daikin Manufacturing Company, L.P.

Fujitsu General America, Inc.

GD Midea Air-Conditioning Equipment Co., Ltd.

Gree Electric Appliances, Inc. of Zhuhai

Haier US Appliance Solutions, Inc, d/b/a GE Appliances, a Haier Company

Hisense (Guangdong) Air Conditioning Co., Ltd.

LG Electronics, Inc.

Mitsubishi Electric Cooling & Heating

Panasonic Corporation of North America

Qingdao Haier Air-conditioning Electronic Co.,Ltd

Samsung Electronics Co., Ltd.

TCL Air Conditioner (ZhongShan) Co.,Ltd.

DEPARTMENT OF ENERGY**Notice of Intent to Prepare an Environmental Impact Statement for High-Assay Low-Enriched Uranium (HALEU) Availability Program Activities in Support of Commercial Production of HALEU Fuel**

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of intent.

SUMMARY: In the Energy Act of 2020, the Secretary of Energy is charged with establishing and carrying out, through the Office of Nuclear Energy, a program to support the availability of uranium enriched to greater than 5 and less than 20 weight percent uranium-235 (U-235) (*i.e.*, high-assay low-enriched uranium [HALEU]), for civilian domestic research, development, demonstration, and commercial use. Consistent with the objectives of, and direction in the Energy Act of 2020, the Department of Energy (DOE) proposes to take actions to establish a temporary domestic demand for HALEU to stimulate a diverse, domestic commercial HALEU supply that could ultimately lead to a competitive HALEU market and a more certain domestic HALEU demand. To this end, DOE intends to prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations that will analyze the impacts of DOE's Proposed Action to facilitate the domestic commercialization of HALEU production and to acquire HALEU for ultimate commercial use or demonstration projects.

DATES: DOE invites public comment on the scope of the EIS during a 45-day public scoping period commencing on June 5, 2023, and ending on July 20, 2023. DOE will hold webcast scoping meetings on June 21, 2023, at 6:00 p.m. ET, on June 21, 2023, at 8:00 p.m. ET, and on June 21, 2023, at 10:00 p.m. ET. In defining the scope of the EIS, DOE will consider all comments received or postmarked by the end of the scoping period. Comments received or postmarked after the scoping period end date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the scope of the EIS should be sent to Mr. James Lovejoy, DOE EIS Document Manager, by mail to: U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS 1235, Idaho Falls, Idaho 83415; or by email to HALEU-EIS@nuclear.energy.gov.

FOR FURTHER INFORMATION CONTACT: Further information including public

meeting and registration information is available on the project website, <https://www.energy.gov/ne/haleu-environmental-impact-statement>. All requests for additional information including requests to be placed on the email list for project information should be sent to HALEU-EIS@nuclear.energy.gov.

For information regarding the HAP or the EIS, contact Mr. James Lovejoy, lovejob@id.doe.gov, (208) 526-4519. For general information on DOE's NEPA process, contact Mr. Jason Anderson, andersjl@id.doe.gov, (208) 526-0174.

SUPPLEMENTARY INFORMATION:**Background**

DOE has an overall uranium strategy that covers a variety of enriched uranium needs, including civilian and commercial needs supported by the Office of Nuclear Energy and national security, nonproliferation, and defense needs supported by the National Nuclear Security Administration's Defense Programs, Defense Nuclear Nonproliferation, and Naval Reactors programs. Section 2001(a) of the Energy Act of 2020 (42 U.S.C. 16281; 134 Stat. 2453; Pub. L. 116-260 Div Z) charges the Secretary of Energy with establishing and carrying out, through the Office of Nuclear Energy, a program to support the availability of HALEU for civilian domestic research, development, demonstration, and commercial use. HALEU (or "HA-LEU") is defined under the Energy Act of 2020 as "uranium having an assay greater than 5.0 weight percent and less than 20.0 weight percent of the uranium-235 isotope." 42 U.S.C. 16281(d)(4). DOE's activities to implement Section 2001(a), generally referred to as the HALEU Availability Program (HAP), include several elements, such as conducting biennial surveys of industry stakeholders to estimate the amount of HALEU needed for domestic commercial use for the subsequent 5 years; establishing a consortium of entities involved in the nuclear fuel cycle to support the availability of HALEU (including by providing survey information and purchasing HALEU made available by the Secretary for commercial use); and acquiring or providing HALEU from a stockpile of uranium owned by the Department or using enrichment technology to supply members of the consortium with HALEU for commercial use or demonstration projects.

The focus of this NOI and related EIS is DOE's implementation of Section 2001(a)(2)(D)(v) of the Energy Act of 2020 for the acquisition of HALEU

produced by a commercial entity using enrichment technology and making it available for commercial use or demonstration projects. The Inflation Reduction Act (section 50173) [Pub. L. 117-169] provided \$700 million in support of various HALEU program activities directed in the Energy Act of 2020. From these funds, \$500 million is being considered for use in stimulating a diverse commercial supply chain for HALEU. The establishment of this commercial supply of enriched uranium is a key element of DOE's uranium strategy.

The current U.S. commercial power reactor fuel cycle is based on reactor fuel that is enriched to no more than 5 weight percent U-235 (low-enriched uranium [LEU]), but many advanced reactor designs require HALEU, which is enriched to greater than 5 and less than 20 weight percent U-235. Using HALEU fuel allows advanced reactor designers to create smaller reactors that produce more power with less fuel than the current fleet of reactors. HALEU will also allow developers to optimize their systems for longer life cores, increased safety margins, and other increased efficiencies. Although some advanced reactor technologies are currently under development, there is no domestic commercial source of HALEU available to fuel them. The lack of such a source could impede both the demonstration of these technologies being developed and the development of future advanced reactor technologies. Initial sources of uranium to meet the requirements of the HAP could be existing DOE stockpiles of highly enriched uranium (HEU) that would be processed or down-blended into HALEU (*e.g.*, activities conducted outside of the Proposed Action and that are covered by separate existing or pending NEPA documentation). As DOE stockpiles are depleted, production would need to be supplemented by or transition to commercially-operated facilities.

To accelerate development of a sustainable commercial HALEU supply capability, an initial public/private partnership is recommended to address the high-fidelity (high-confidence demand) HALEU market (*e.g.*, fuel for demonstration reactors) plus a percentage of the projected commercial demand for power reactors. The private sector could incrementally expand the capacity in a modular fashion to establish HALEU enrichment and supply that are sufficient to meet future needs as a sustainable market develops.

The development of a commercial HALEU fuel cycle would involve: (1) uranium ore production (*e.g.*, in situ-recovery), (2) conversion of the uranium

ore into enrichment feed (converting the uranium ore into hexafluoride suitable for enrichment), (3) enrichment to HALEU (in particular, HALEU enriched to at least 19.75 and less than 20 weight percent U-235), (4) deconversion (conversion of the uranium hexafluoride into forms suitable for fuel fabrication), (5) transportation services for HALEU (e.g., from the enrichment site to the deconversion site), and (6) storage capability. The EIS will evaluate implementation of the Proposed Action of facilitating the commercialization of HALEU production and DOE's acquisition of HALEU, including the direct and reasonably foreseeable indirect effects of that acquisition.

Certain activities related to the Proposed Action are regulated by other agencies, including, but not limited to the Nuclear Regulatory Commission (NRC) and the Department of Transportation. DOE expects that permits, license amendments, and/or licenses may be required for activities such as mining/recovery; the operation of a conversion facility; the construction and operation of enrichment facilities, a deconversion facility, and HALEU storage facilities; and HALEU transportation. DOE will coordinate with Agreement States¹ and agencies with regulatory authority, utilize existing and related analyses of other agencies, and incorporate, as appropriate, information to ensure a robust and efficient DOE NEPA analysis, as well as to streamline and inform the process at DOE and with other entities with NEPA responsibilities related to the Proposed Action.

Purpose and Need for Agency Action

One of the aspects of a clean energy future is sustainment and expanded development of safe and affordable nuclear power. One key element of that goal is the availability of fuel to power advanced reactors. DOE is committed to support the development and deployment of the HALEU fuel cycle and to acquire and provide HALEU as authorized by Congress in Section 2001 of the Energy Act of 2020.

Development of innovative technologies, including the next generation of advanced reactors, and advanced fuels, will help ensure that nuclear power continues to bolster America's energy security by providing a source of resilient, carbon-free power in the United States.

¹ An Agreement State is a State that has entered into an agreement with the NRC that gives the State the authority to license and inspect byproduct, source, or special nuclear materials used or possessed within their borders.

There is currently insufficient private incentive to invest in commercial HALEU production due to the current market base. There is also insufficient incentive to invest in the necessary commercial deployment of advanced reactors because the domestic fuel supply chain does not exist. The Energy Act of 2020 aims to stimulate HALEU supply to support the development, demonstration, and deployment of advanced reactors in a manner that establishes a diversity of supply and healthy market forces for the future. This concern is a consistent theme in the industry responses to DOE's *Request for Information Regarding the Establishment of a Program to Support the Availability of High-Assay Low-Enriched Uranium* (the "RFI") (86 FR 71055-71058; December 14, 2021). These responders emphasized the importance of the HALEU consortium that is called for in the Energy Act of 2020 and that DOE established on December 7, 2022 (87 FR 75048). Responders also emphasized the opportunity for DOE to be an agent for stability (both in assuring HALEU availability and market price certainty) during the initial phase of HALEU fuel production.

DOE predicts that by the mid-2020s, approximately 22 metric tons of uranium (MTU) of HALEU will be needed for initial core loadings to support DOE's reactor demonstrations and research reactors that were converted from highly enriched uranium fuel with a high-fidelity HALEU (up to 19.75 weight percent U-235 enrichment) with demand of between 8 and 12 MTU annually for the next 10 years and increasing to over 50 MTU by 2035. Additionally, the Nuclear Energy Institute (NEI) surveyed its utility members that plan to utilize HALEU to identify their estimated annual needs through 2035. This survey estimated industry requirements could be as high as 600 MTU of HALEU at between 10.9 and 19.75 weight percent enriched U-235 per year by 2035.

Both DOE and industry groups have recognized that DOE action is needed to facilitate the development of the infrastructure that would support the availability of HALEU fuel to support both near-term research and demonstration needs and to support the U.S. commercial nuclear industry. DOE and the NEI recognize that the main challenge to establishing a commercial HALEU-based reactor economy is the upfront capital investment of more than \$500 million (an NEI estimate and consistent with the Inflation Reduction Act funds appropriated to DOE) required to establish the capability of

producing quantities of HALEU suitable for commercial fuel fabrication facilities needed for the various types of HALEU reactors proposed.

Proposed Action

The Proposed Action is to acquire, through procurement from commercial sources, HALEU enriched to at least 19.75 and less than 20 weight percent U-235 over a ten-year period of performance, and to facilitate the establishment of commercial HALEU fuel production. The Proposed Action implements Section 2001(a)(2)(D)(v) of the Energy Act of 2020 for the acquisition of HALEU produced by a commercial entity using enrichment technology and making it available for commercial use or demonstration projects. The Proposed Action would be conducted in a manner that prioritizes social equities and the constructive engagement with disadvantaged communities.

Given the variety of HALEU applications, the initial capability is intended to be flexible and able to accommodate:

- Enrichments of U-235 to greater than 5 and less than 20 weight percent;
- Production of between 5 and 145 MTU of HALEU;
- Modular HALEU fuel cycle facility design concepts to accommodate future growth; and
- Deconversion of uranium hexafluoride to forms suitable for production of a variety of uranium fuels, to include oxides and metal.

The NEPA coverage for the Proposed Action will address a broad range of activities. The EIS will analyze reasonable alternatives and the no action alternative, and address the following activities facilitating the commercialization of HALEU fuel production and acquisition of HALEU:

- Extraction and recovery of uranium ore (from domestic and/or foreign sources);
- Conversion of the uranium ore into uranium hexafluoride;
- Enrichment (possibly in up to three steps)
 - Enrichment to LEU to no more than 5 weight percent U-235,
 - Enrichment to HALEU greater than 5 and less than 10 weight percent U-235, and
 - Enrichment to HALEU from 10 to less than 20 weight percent U-235 in an NRC Category II facility;²

² NRC classifies special nuclear materials (SNM) and the facilities that possess them into three categories based upon the materials' potential for use in nuclear weapons, or their "strategic significance." The NRC's physical security requirements differ by category, from least stringent

- Deconversion of the uranium hexafluoride to uranium oxide, metal, and potentially other forms in an NRC Category II facility;
- Storage in an NRC Category II facility;
- DOE acquisition of HALEU; and
- Transportation of uranium/HALEU between facilities.

In addition to the activities above, there are several reasonably foreseeable activities that could result from implementation of the Proposed Action. They include:

- Fuel fabrication for a variety of fuel types in an NRC Category II facility;
- Reactor (demonstration and test, power, isotope production) operation; and
- Spent fuel storage and disposition.

While not specifically a part of the Proposed Action, the impacts from these reasonably foreseeable activities would be acknowledged and addressed to the extent practicable.

Potential Environmental Issues for Analysis

DOE proposes to address the issues listed in this section when considering the potential impacts of the Proposed Action:

- Potential effects on public health from exposure to radionuclides under routine and credible accident scenarios, such as natural disasters (floods, hurricanes, tornadoes, and seismic events).
- Potential impacts on surface and groundwater, floodplains and wetlands, and on water use and quality.
- Potential impacts on air quality (including climate change) and noise.
- Potential impacts on plants, animals, and their habitats, including species that are Federal- or state-listed as threatened or endangered, or of special concern.
- Potential impacts on geology and soils.
- Potential impacts on cultural and historic resources.
- Socioeconomic impacts on potentially affected communities.
- Potential disproportionately high and adverse effects on minority and low-income populations.

for Category III facilities to most stringent for Category I facilities. NRC Category III Facility (low strategic significance), includes facilities containing uranium at enrichments of less than 10 weight percent U-235. NRC Category II Facility (moderate strategic significance), include facilities containing uranium at enrichments from 10 weight percent to less than 20 weight percent U-235. NRC Category I Facility (strategic special nuclear material), include facilities containing uranium at enrichments equal to or greater than 20 weight percent U-235.

- Potential impacts on land-use plans, policies and controls, and visual resources.
- Potential impacts on waste management practices and activities.
- Potential impacts from the transportation of HALEU-related radioactive materials.
- Potential impacts of intentional destructive acts, including sabotage and terrorism.
- Unavoidable adverse impacts and irreversible and irretrievable commitments of resources.
- Potential cumulative environmental effects of past, present, and reasonably foreseeable future actions.
- Compliance with all applicable Federal, state, and local statutes and regulations, and with international agreements, and required Federal and state environmental permits, consultations, and notifications.

Public Scoping Process

NEPA implementing regulations require an early and open process for determining the scope of an EIS and for identifying the significant issues related to a proposed action. To ensure that a full range of issues related to the Proposed Action are addressed, DOE invites Federal agencies, state, local, and tribal governments, the general public, and the commercial community to comment on the scope of the EIS. Specifically, DOE invites comment on the identification of reasonable alternatives and information and analyses relevant to the Proposed Action and specific environmental issues to be addressed. Analysis of written and oral public comments provided during the scoping period will help DOE further identify concerns and potential issues to be considered in the Draft EIS.

Virtual Scoping Meeting Information

DOE will host three interactive webcasts during the scoping period as listed under the **DATES** section. The purpose of the webcasts is two-fold: the first is to provide the public with information about the NEPA process and the Proposed Action and the second is to invite public comments on the scope of the EIS.

The webcasts will begin with presentations on the NEPA process and the Proposed Action. Following the presentations, there will be a moderated session during which members of the public can provide oral comments on the scope of the EIS. Commenters will be allowed 3 minutes to provide comments. Comments will be recorded.

DOE recommends that members of the public who would like to provide oral

comments pre-register for the virtual scoping meetings. Although pre-registration is not required, pre-registered attendees will have prioritized oral comments in the limited 50-minute comment period. Those who attend as a guest will also be able to provide comments but will be added to the end of the comment queue during the meeting. In addition to prioritized comments, advanced registration will allow attendees to receive meeting reminders about their registered event(s). Upon registration, an email containing a unique link to join the meeting will be provided. All links to pre-register for the event will close at noon (ET), June 21, 2023. Parties interested in attending as a guest will not receive email reminders on their chosen event, but the links to attend as a guest will remain open until the meeting concludes. To obtain additional information, meeting links, and audio-only call-in options, please visit <https://www.energy.gov/ne/haleu-environmental-impact-statement>. Written comments will be accepted by mail and email at the addresses identified in the **ADDRESSES** section.

Projected EIS Schedule

DOE expects to announce the availability of the Draft EIS in the **Federal Register** by the end of 2023. This will initiate the public comment period on the Draft EIS during which DOE will hold public hearings. DOE will consider all comments on the Draft EIS received during the public comment period (and to the extent practicable, comments received or postmarked after the public comment period end date) in developing the Final EIS. Availability of the Final EIS is planned to be announced in the **Federal Register** in mid-2024. Publication of the Record of Decision (ROD) will follow no sooner than 30 days after publication of the Final EIS.

Signing Authority

This document of the Department of Energy was signed on May 24, 2023, by Dr. Kathryn Huff, Assistant Secretary for Nuclear Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by the Department of Energy. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned Department of Energy Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This

administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 31, 2023.

Treena V. Garrett,

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

[FR Doc. 2023-11877 Filed 6-2-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR23-53-000.
Applicants: Public Service Company of Colorado.

Description: § 284.123(g) Rate Filing: Gas Statement of Rates_5.1.23 to be effective 5/1/2023.

Filed Date: 5/26/23.

Accession Number: 20230526-5183.

Comment Date: 5 p.m. ET 6/16/23.

284.123(g) Protest: 5 p.m. ET 7/25/23.

Docket Numbers: PR23-54-000.

Applicants: Louisville Gas and Electric Company.

Description: § 284.123(g) Rate Filing: Revised Statement of Operating Conditions Exhibit A Statement of Rates to be effective 5/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5023.

Comment Date: 5 p.m. ET 6/20/23.

284.123(g) Protest: 5 p.m. ET 7/31/23.

Docket Numbers: RP23-794-000.

Applicants: Elba Express Company, L.L.C.

Description: Compliance filing: Annual Cashout True-Up 2023 to be effective N/A.

Filed Date: 5/26/23.

Accession Number: 20230526-5182.

Comment Date: 5 p.m. ET 6/7/23.

Docket Numbers: RP23-795-000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: CIG Qly LUF Filing May 2023 to be effective 7/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5050.

Comment Date: 5 p.m. ET 6/12/23.

Docket Numbers: RP23-796-000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: § 4(d) Rate Filing: TC Quarterly FL&U Update May 2023 to be effective 7/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5116.

Comment Date: 5 p.m. ET 6/12/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP23-241-002.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Compliance filing: Motion Revised & Cancelled Tariff Records RP23-241-000 to be effective 6/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5106.

Comment Date: 5 p.m. ET 6/12/23.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: May 30, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-11886 Filed 6-2-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23-90-000.

Applicants: Three Corners Solar, LLC, Three Corners Prime Tenant, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Three Corners Solar, LLC, et al.

Filed Date: 5/26/23.

Accession Number: 20230526-5253.

Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: EC23-91-000.

Applicants: Entergy Louisiana, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Entergy Louisiana, LLC.

Filed Date: 5/26/23.

Accession Number: 20230526-5258.

Comment Date: 5 p.m. ET 6/16/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23-72-000.

Applicants: Payton Solar, LLC v. PJM Interconnection, L.L.C., et al.

Description: Complaint of Payton Solar, LLC v. PJM Interconnection, L.L.C. et al.

Filed Date: 5/18/23.

Accession Number: 20230518-5229.

Comment Date: 5 p.m. ET 6/7/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22-424-002.

Applicants: Assembly Solar III, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22-424 to be effective 2/1/2022.

Filed Date: 5/30/23.

Accession Number: 20230530-5018.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER22-1136-002.

Applicants: Sac County Wind, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22-1136 to be effective 5/1/2022.

Filed Date: 5/30/23.

Accession Number: 20230530-5008.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER22-1610-003.

Applicants: Big River Solar, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22-1610 to be effective 9/1/2022.

Filed Date: 5/30/23.

Accession Number: 20230530-5007.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER22-1815-002.

Applicants: Mulligan Solar, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22-1815 to be effective 8/1/2022.

Filed Date: 5/30/23.

Accession Number: 20230530-5005.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER22-2385-003.

Applicants: Panorama Wind, LLC.

Description: Compliance filing: Compliance Filing Under Docket ER22-2385 to be effective 7/16/2022.

Filed Date: 5/30/23.

Accession Number: 20230530-5006.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-973-001.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: Tariff Amendment: Niagara Mohawk Power Corporation submits tariff filing per 35.17(b): NMPC filing of deficiency response re: SPC project cost allocation and recovery to be effective 4/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5178.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1978-000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023-05-26 Recollation-Assigning New Collation Values (no tariff changes) 2 of 2 to be effective 7/3/2010.

Filed Date: 5/26/23.

Accession Number: 20230526-5172.

Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: ER23-1979-000.

Applicants: Generate NB Fuel Cells, LLC.

Description: Baseline eTariff Filing: Generate NB Fuel Cells, LLC Facilities Operating Agreement to be effective 5/27/2023.

Filed Date: 5/26/23.

Accession Number: 20230526-5193.

Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: ER23-1980-000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Depreciation Rate Update Associated with Rate Schedule No. 18 to be effective 8/1/2023.

Filed Date: 5/26/23.

Accession Number: 20230526-5194.

Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: ER23-1981-000.

Applicants: Cleco Power LLC, Louisiana Generating LLC, Cleco Support Group LLC.

Description: Request for Limited Waiver, et al. of Cleco Support Group LLC under ER23-1981.

Filed Date: 5/26/23.

Accession Number: 20230526-5250.

Comment Date: 5 p.m. ET 6/16/23.

Docket Numbers: ER23-1982-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Pechanga Western Electric Export IFA & DSA (WDT1453EXP/SA1231-1232) to be effective 5/31/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5071.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1983-000.

Applicants: MFT Energy US Power LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 7/31/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5078.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1984-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 356 to be effective 4/28/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5119.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1985-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 27 to be effective 7/31/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5121.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1986-000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement No. 410, Nextera LGIA to be effective 4/30/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5124.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1987-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 22 to be effective 7/31/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5128.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1988-000.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Service Agreement No. 393, Notice of Cancellation to be effective 7/30/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5132.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1989-000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: § 205(d) Rate Filing: Non-Conforming LGIA with Silver Sage Windpower, LLC to be effective 5/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5140.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1990-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-BRP Antlia BESS 2nd A&R Generation Interconnection Agreement to be effective 5/11/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5157.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1991-000.

Applicants: CenterPoint Energy Houston Electric, LLC.

Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT to be effective 5/24/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5158.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1993-000.

Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Pintail Pass BESS Generation Interconnection Agreement to be effective 5/16/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5172.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1994-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-BRP Carina BESS 2nd A&R Generation Interconnection Agreement to be effective 5/16/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5174.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1995-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Third Coast BESS Generation Interconnection Agreement to be effective 5/17/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5182.

Comment Date: 5 p.m. ET 6/20/23.

Docket Numbers: ER23-1996-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Update the Definition of Emergency Action—Request Shortened Comment Period to be effective 6/1/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5201.

Comment Date: 5 p.m. ET 6/9/23.

Docket Numbers: ER23-1997-000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 4592, Queue No. AC1-182 to be effective 5/31/2023.

Filed Date: 5/30/23.

Accession Number: 20230530-5213.

Comment Date: 5 p.m. ET 6/20/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF18-491-000;

QF21-113-000; QF18-492-000.

Applicants: C2 MA Swansea, LLC, C2 MA ADAMS II, LLC, C2 MA Adams 1, LLC.

Description: Refund Report of C2 MA Adams I, LLC, et al.

Filed Date: 5/26/23.

Accession Number: 20230526–5247.

Comment Date: 5 p.m. ET 6/16/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 30, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–11890 Filed 6–2–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1967–000]

Three Corners Prime Tenant, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Three Corners Prime Tenant, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of

future issuances of securities and assumptions of liability, is June 19, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Dated: May 30, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023–11891 Filed 6–2–23; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on an Exposure Draft Technical Release: Leases Implementation Guidance Updates

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards

Advisory Board (FASAB) has released an exposure draft Technical Release titled *Leases Implementation Guidance Updates*. Respondents are encouraged to comment on any part of the exposure draft.

DATES: Written comments are requested by June 30, 2023.

ADDRESSES: Written comments should be sent to fasab@fasab.gov or Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

The exposure draft is available on the FASAB website at <https://www.fasab.gov/documents-for-comment/>. Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

(Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014)

Dated: May 30, 2023.

Monica R. Valentine,
Executive Director.

[FR Doc. 2023–11836 Filed 6–2–23; 8:45 am]

BILLING CODE 1610–02–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 July 5, 2023.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309; Comments can also be sent electronically to Applications.Comments@atl.frb.org:

1. *Community Bancshares of Mississippi, Inc. Employee Stock Ownership Plan, Flowood, Mississippi*; to acquire additional voting shares of Community Bancshares of Mississippi, Inc., and thereby indirectly acquire voting shares of Community Bank of Mississippi, both of Flowood, Mississippi.

B. 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. *Wells Bancshares, Inc, Platte City, Missouri*; to merge with Connections Bancshares, Inc., Ashland, Missouri, and thereby indirectly acquire Connections Bank, Kirksville, Missouri.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023-11888 Filed 6-2-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Challenge Competition: Announcement of AHRQ Challenge on the Impact of AHRQ's Patient Safety Tools

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is announcing a challenge competition to better understand how using an AHRQ patient safety tool has resulted in safer care, as evidenced by associated process and/or outcome measures. AHRQ would like to use this information as an example of the type of return on

investment an organization might expect when using the tool. This challenge competition will be completed in one phase, with a cash prize awarded to up to 10 winners.

DATES: The submission deadline is October 5, 2023.

ADDRESSES: Submit your responses electronically via: <https://www.challenge.gov/>.

FOR FURTHER INFORMATION CONTACT: Emily Chew, Health Scientist Administrator, Email: AHRQChallenges@ahrq.hhs.gov, Telephone: 301-427-1305.

SUPPLEMENTARY INFORMATION:

Problem Statement

The Agency for Healthcare Research and Quality (AHRQ) offers many practical tools and resources to help a variety of healthcare organizations, providers, and others make patient care safer in all healthcare settings. These tools are based on research, and they are intended to help staff in hospitals, emergency departments, long-term care facilities, and ambulatory settings to prevent avoidable complications of care. Patient Safety tools can be found on the AHRQ website at Patient Safety and Quality Improvement | Agency for Healthcare Research and Quality (ahrq.gov) under "Patient Safety Resources by Setting."

AHRQ seeks to better understand how using an AHRQ patient safety tool has resulted in safer care, as evidenced by associated process and/or outcome measures. AHRQ would like to use this information as an example of the type of return on investment an organization might expect when using the tool.

Challenge Goal

The purpose of this challenge goal is to elicit new narratives and measures (process and outcome) that AHRQ is not already aware of regarding the use of specific AHRQ Patient Safety tools (listed below). Use of the tool means use in its entirety or use of a specific part. These success stories may be posted on the AHRQ website and used for promotion of corresponding tools.

Tools for consideration:

1. *Guide to Patient and Family Engagement in Hospital Quality and Safety* helps hospitals work as partners with patients and families to improve quality and safety. Includes an implementation handbook and tools for patients, families, and clinicians.

2. *Medications at Transitions and Clinical Handoffs (MATCH) Toolkit* features strategies from the field that can help hospitals improve medication reconciliation processes for patients as

they move through the healthcare system.

3. *Preventing Falls in Hospitals: A Toolkit for Improving Quality of Care* focuses on overcoming the challenges associated with developing, implementing, and sustaining a fall prevention program. Includes an implementation guide to help put prevention strategies into practice.

4. *Preventing Hospital-Associated Venous Thromboembolism: A Guide for Effective Quality Improvement* outlines the latest evidence on how to lead a quality improvement effort to prevent hospital-acquired venous thromboembolism.

5. *Preventing Pressure Ulcers in Hospitals* is a toolkit that assists hospital staff in implementing effective pressure ulcer prevention practices through an interdisciplinary approach to care.

6. *Community-Acquired Pneumonia Clinical Decision Support Implementation Toolkit* is a resource to help clinicians and clinical informaticians in primary care and other ambulatory settings implement and adopt the community-acquired pneumonia clinical decision support alert for the management of community-acquired pneumonia.

7. *Guide to Improving Patient Safety in Primary Care Settings by Engaging Patients and Families* offers four interventions and four case studies designed to improve patient safety by meaningfully engaging patients and families in their care.

8. *Improving Your Laboratory Testing Process: A Step-by-Step Guide for Rapid-Cycle Patient Safety and Quality Improvement* can increase the reliability of the testing process in your office by helping you examine how tests are managed.

9. *Toolkit to Engage High-Risk Patients in Safe Transitions Across Ambulatory Settings* is designed to help staff actively engage patients and their care partners to prevent errors during transitions of care.

10. *Falls Management Program: A Quality Improvement Initiative for Nursing Facilities* is an interdisciplinary quality improvement initiative to assist nursing facilities in providing individualized, person-centered care and improving their fall care processes and outcomes through educational and quality improvement tools.

11. *Improving Patient Safety in Long-Term Care Facilities* is a training curriculum for front-line personnel in nursing home and other long-term care facilities to help them detect and communicate changes in a resident's condition and prevent and manage falls.

Includes an Instructor Guide and separate student workbooks.

12. *Safety Program for Nursing Homes: On-Time Pressure Ulcer Prevention* is a team training curriculum to help nursing homes with electronic medical records reduce the occurrence of pressure ulcers.

13. *Communication and Optimal Resolution (CANDOR) Toolkit* enables healthcare organizations to implement an AHRQ-developed process. Like similar programs in place in other organizations, CANDOR gives hospitals and health systems the tools to respond immediately when a patient is harmed and to promote candid, empathetic communication and timely resolution for patients and caregivers.

14. *Making Healthcare Safer III* offers a critical analysis of existing and emerging patient safety practices reviews 47 practices that target patient safety improvements in hospitals, primary care practices, long-term care facilities, and other healthcare settings.

Timeline and Prize Amounts

Timeline

June 5, 2023—Challenge launch.

October 5, 2023—Submissions are due. AHRQ will complete the review of the submissions within 6 weeks of closing the announcement.

November 10, 2023—AHRQ will announce the winners.

Prize Amounts

Up to 10 winners who have described how the use of patient safety resources demonstrated measurable improvement in associated process and/or outcome measures will receive \$10,000 each.

How To Enter the Challenge

Participants can enter their submissions by visiting the *Challenge.gov* website. Submission requirements and Challenge information, including the judging criteria, are also provided on the site. Participants are encouraged to follow the Challenge on *Challenge.gov* to obtain any updates and reminders of upcoming deadlines. Information on the Challenge can also be found on the AHRQ website: <https://www.ahrq.gov/challenges/patient-safety-tools/index.html>.

Submission Requirements

Submissions for narratives and measures related to the use of AHRQ Patient Safety Tools and Resources must be in English and submitted using the online platform by October 5, 2023. AHRQ will not accept submissions from an organization whose improvement story related to this specific tool has

already been featured in an AHRQ Impact Case Study.

Challenge submissions must describe, in a written document that must be no more than 3 pages, double spaced, 12-point Times New Roman or Arial font, with 1-inch margins, a narrative that includes, but is not limited to:

- The specific patient safety tool, information about the organization that implemented it (for example, hospital, primary care clinic, etc.).

- How it was implemented (for example, hospital-wide, on select units, etc.).

- Timeline for implementation (for example, implemented over a 6-month period).

- Support for implementation (for example, overseen by the quality improvement department, led by the unit nurse champion).

- Positive changes in associated process and/or outcome measures.

Please see the Challenge Goal section for the list of applicable patient safety resources.

For examples of high-quality impact stories, please reference the following case studies from the AHRQ Impact Case Studies website:

- Georgia Hospitals Improve Medication Reconciliation Process With AHRQ Toolkit | Agency for Healthcare Research and Quality
- Tennessee Hospital Association Uses AHRQ Tools To Boost Patient Safety, Saving \$17 Million | Agency for Healthcare Research and Quality
- AHRQ's Toolkit Helped Vanderbilt University Hospital Substantially Reduce Patient Falls | Agency for Healthcare Research and Quality

Review Process

All submissions will be reviewed by at least two AHRQ patient safety subject matter expert staff who will score them based on the review criteria and provide a brief comment about the submission. The scores/comments on submissions will be compiled and a ranked summary provided to AHRQ Challenge staff.

Evaluation Criteria for Selecting Winning Applications

Overall Approach (35pts)—Does the submission sufficiently describe the use of the tool? Does the submission provide sufficient detail about the selected tool, organizational characteristics, tool implementation, timeline, support, and improvement in measures as indicated in the Submission Requirements? Does the submission include a compelling narrative about the positive use of the tool? Is the information organized and shared in a logical, thoughtful way, that can be repurposed to demonstrate how

other organizations could replicate its successful impact?

Impact (35pts)—Does the submission demonstrate positive changes in both process and outcome measures, as a result of using the specific tool? Does the submission tell a compelling and impactful story to demonstrate that the AHRQ Patient Safety Tool utilized has made a positive impact?

Innovation (10pts)—Does the submission include innovative methods for implementing the specific tool? While the primary focus of the submission should be use of the tool as designed, innovative implementation methods to optimize impact will also be considered.

Addressing Unique Healthcare needs (20pts)—Does the proposal demonstrate how the use of the specific tool equitably addresses unique healthcare needs of the population being served (e.g., clinic or hospital setting), current environment (e.g., patient and family engagement), and emerging trends (e.g., artificial intelligence in healthcare, telemedicine)?

Eligibility Rules for Participating in the Challenge

To be eligible under this Challenge, an individual (whether participating singly or in a group) or entity:

1. Shall have registered to participate in the Challenge.

2. Shall have complied with the rules set forth in this announcement for participation in this Challenge.

3. Shall be incorporated and maintain a primary place of business in the United States (in the case of a private entity), and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.

4. May not be a Federal entity or Federal employee acting within the scope of their employment. (All Federal employees should consult with their agency Ethics Official to determine whether the federal ethics rules will limit or prohibit the acceptance of a prize.)

5. May not be an employee of AHRQ or any other company, organization, or individual involved with the design, production, execution, judging, or distribution of the Challenge, or their immediate family (spouse, parents and step-parents, siblings and step-siblings, and children and step-children), or household members (people who share the same residence at least 3 months out of the year).

6. May not use Federal funds from a grant to develop Challenge applications unless consistent with the purpose of the grant award.

7. May not use Federal funds from a contract to develop Challenge applications or to fund efforts in support of a Challenge submission.

8. Shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made equitably available to all individuals and entities participating in the competition.

9. Shall not be required to purchase liability insurance as a condition of participation in this competition.

Additional Rules of Participation

By participating in this Challenge, each individual (whether participating singly or in a group) or entity:

1. Agrees to follow all applicable federal, state, and local laws, regulations, and policies.

2. Agrees to comply with all terms and conditions of participation in this Challenge.

3. Agrees that the submission will not use HHS or AHRQ logos or official seals and will not claim endorsement by HHS or AHRQ.

4. Understands that all materials submitted to AHRQ as part of a submission become AHRQ records.

5. Agrees that the submission must not infringe upon copyright or any other rights of any third party.

6. Agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

7. Agrees to indemnify the Federal Government against third-party claims for damages arising from or related to Challenge activities.

8. Understands that AHRQ reserves the right to cancel, suspend, and/or modify this prize contest, or any part of it, for any reason, at AHRQ's sole discretion. AHRQ also reserves the right not to award any prizes if no entries are deemed worthy.

9. Understands that AHRQ will not select a winner that is named on the Excluded Parties List System (EPLS).

Intellectual Property (IP) Rights

1. Each participant retains title and full ownership in and to their submission. Participants expressly reserve all intellectual property rights not expressly granted.

2. By participating in the Challenge, each participant (whether participating

singly or in a group) acknowledges that he or she is the sole author or owner of, or has a right to use, any copyrightable works that the submission comprises, that the works are wholly original with the participant (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware. In addition, each participant (whether participating singly or in a group) grants to the U.S. Government a paid-up, nonexclusive, royalty-free, irrevocable worldwide license and the right to reproduce, publish, post, link to, share, display publicly (on the web or elsewhere) and prepare derivative works, including the right to authorize others to do so on behalf of the U.S. Government.

3. If the submission includes any third party works (such as third party content or open source code), the participant must be able to provide, upon request, documentation of all appropriate licenses and releases for use of such third-party works. If the participant cannot provide documentation of all required licenses and releases, AHRQ reserves the right, in its sole discretion, to disqualify the submission.

Dated: May 31, 2023.

Marquita Cullom,
Associate Director.

[FR Doc. 2023-11869 Filed 6-2-23; 8:45 am]

BILLING CODE 4160-90-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-23FJ; Docket No. CDC-2023-0042]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information

collection project titled Evaluating Deep Learning Algorithm Assessment of Digital Photographs for Dental Public Health Surveillance. This project entails one-time data collection of oral health data from 1,000 school students to examine the feasibility and validity of using digital photos taken by non-dental professionals, which are analyzed by deep learning algorithms to assess youth's oral health status.

DATES: CDC must receive written comments on or before August 4, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0042 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7118; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Evaluating Deep Learning Algorithm Assessment of Digital Photographs for Dental Public Health Surveillance—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

By age 19, 57% of U.S. adolescents have experienced tooth decay and 17% have at least one decayed tooth needing treatment. Prevalence of untreated tooth decay among non-Hispanic Black and Mexican American adolescents is about 30% higher than among non-Hispanic White adolescents, and among low-income, almost twice the prevalence of higher-income adolescents. Untreated tooth decay will not resolve and can cause pain, infection, and difficulties in learning. Poor oral health in youth is associated with both lower school attendance and grades. More than 34 million school hours are lost annually due to unplanned dental visits for acute care needs. Reducing the percentage of youths who have experienced tooth decay and the percentage with untreated tooth decay are national health goals (Healthy People 2030).

There are two highly effective interventions to prevent tooth decay. Dental sealants prevent about 80% of cavities over two years in the permanent molars where about 90% of tooth decay occurs. Fluoride can prevent decay in permanent teeth by 15% to 43% per year depending on mode of delivery. Although the American Dental Association recommends dentists provide topical fluoride and dental sealants to youth at risk for caries, uptake of these services is low with about 20% of low-income youth

receiving them during an annual dental visit. Access to these preventive services as measured by dental sealant prevalence and receipt of preventive dental services among low-income children are national health goals.

The Centers for Disease Control and Prevention (CDC) has collected national data on caries, sealant, and fluorosis prevalence in the National Health and Nutrition Examination Survey (NHANES) for over 30 years and has supported state oral health programs to collect data on caries and sealant prevalence through cooperative agreements since 2001. Twenty states are currently funded from September 2018 to August 2023 by *Actions to Improve Oral Health Outcomes*, CDC–RFA–DP18–1810. Collecting these data can be resource intensive as they are obtained through visual/tactile examinations conducted by dental professionals. These data, however, have enabled federal and state agencies to: (1) prioritize groups at elevated risk for enhanced prevention efforts; (2) monitor trends in children's oral health status and disparities; (3) inform planning, implementation and evaluation of effective oral health interventions, programs, and policies; (4) measure progress toward Healthy People objectives; and (5) educate the public and policy makers regarding cross-cutting public health programs. Having local estimates of these measures would enable decision-makers to better prioritize communities for programs that increase access to preventive dental services.

CDC is examining the feasibility and validity of using digital photos taken by non-dental professionals, which in turn would be analyzed by deep learning algorithms to assess youth's oral health status in lieu of human examination. This deep learning assessment tool ultimately could be used by public health officials for dental public health surveillance at the local, state, and national level. It is anticipated that obtaining information on dental conditions via deep learning assessment of digital images as opposed to human assessment will: (1) be more cost-effective as it would not require dental personnel; and (2) improve the accuracy of assessment due to minimal bias and less confounding factors associated with the examiner (e.g., subjective index and thresholding). This tool also would offer mobility, simplicity, and affordability for rapid and scalable adaptation in community-based settings.

In order to train and test the deep learning algorithms to identify caries, sealants, and fluorosis, data on these

conditions as assessed by standardized examiners and corresponding photos are required. The CDC requests a one-year OMB approval for the one-time collection of oral health data from 1,000 middle- and high-school students in Colorado communities with naturally occurring fluoride in the tap water at or exceeding one part per million. The Colorado State Health Department will implement the collection by recruiting selected schools and dental examiners, gaining consent, arranging logistics, and collecting data from dental examination and photos taken by the dental examiners. CDC will provide dental examination and photo taking protocols and train the examiners. Data collected for each student will include: (1) human assessment of fluorosis severity in the six upper anterior teeth, and caries/sealant assessment of the occlusal surfaces of the eight permanent molars; and (2) nine smartphone digital photos of the upper anterior teeth and 24 intraoral camera digital photos of the occlusal surfaces of the eight permanent molars. Only de-identified data will be collected. All de-identified data—digital photos of the teeth and the completed paper screening form—will be uploaded to a HIPAA compliant cloud storage box that can only be accessed by examiners and designated CDC researchers with administrative rights. CDC is authorized to collect this information under the Public Health Service Act, title 42, section 247b–14, Oral health promotion and disease prevention; and the Public Health Service Act, title 42, section 301.

CDC proposes using data collected from 750 students to train the deep learning algorithms to assess caries, sealants, and fluorosis and data from 250 students to evaluate the accuracy of the algorithms in terms of agreement with standardized examiner assessment. Manuscripts on: (1) the methodologies used to ensure sufficient photo quality when taken under field conditions; and (2) the performance of the deep learning algorithms will be submitted to peer-reviewed journals. The deep learning tool if sufficiently accurate will be piloted in one data collection cycle of NHANES that is administered by the National Centers for Health Statistics (NCHS). Ultimately, the tool would be shared with the state and local oral health programs, the Association of State and Territorial Dental Directors, and other pertinent partners.

The CDC requests OMB clearance for data collection for one year. The total estimated annualized burden hours are 827. There are no costs to student respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Child	Screening/photo/form	1,000	1	16/60	270
Parent or caretaker	Consent	1,000	1	1/60	17
Screener	Screening/photo form includes training, travel, screening and photos, and ongoing technical assistance.	6	1	90	540
Total					827

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023-11859 Filed 6-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-1289; Docket No. CDC-2023-0041]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Sealant Efficiency Assessment for Locals and States (SEALS). This data will be collected from local school sealant programs to generate efficiency performance measures, which will allow CDC to identify feasible benchmarks and best practices contributing to school sealant program efficiency.

DATES: CDC must receive written comments on or before August 4, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0041 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Sealant Efficiency Assessment for Locals and States (SEALS) (OMB Control No. 0920-1289)—Reinstatement with change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

By age 19, 67% of U.S. adolescents living in poverty have experienced tooth decay and 27% have at least one decayed tooth needing treatment. School sealant programs provide dental sealants, which protect against 80% of cavities for two years, and continue to protect against 50% of cavities for up to four years. CDC requests information from states regarding children's cavity risk, one-year sealant retention rate, sealant program services delivered, and school sealant program cost and quantity of resources used at each school event. This data will allow CDC and states to monitor the performance and efficiency of their school sealant programs, which will improve and extend program delivery to more children.

CDC requests OMB approval for a Reinstatement of a previously approved data collection. The total estimated

annualized burden hours requested are 1,392. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Sealant Administrator	Add Program and Add User	18	1	45/60	14
SSP Local Administrator	Add User and Add School	162	1	45/60	122
SSP Local Administrator	Program Options and Cost Options	162	1	45/60	122
SSP Local Administrator	Add Event	162	20	21/60	1,134
Total .....	.....	.....	.....	.....	1,392

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023-11855 Filed 6-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Advisory Committee on Immunization Practices (ACIP)

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the ACIP. The ACIP consists of up to 20 experts in fields associated with immunization practices and public health, use of vaccines and other immunobiologic agents in clinical practice or preventive medicine, clinical or laboratory vaccine research, assessment of vaccine efficacy and safety, or have knowledge about consumer perspectives and/or social and community aspects of immunization programs.

DATES: Nominations for membership on the ACIP must be received no later than August 1, 2023. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations must be completed online at <https://www.cdc.gov/vaccines/acip/apply-for-membership/index.html>.

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, Committee Management Specialist, Advisory Committee on Immunization Practices, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road NE, Mailstop H24-8, Atlanta,

Georgia 30329-4027. Telephone: (404) 639-8836; Email: ACIP@cdc.gov.

SUPPLEMENTARY INFORMATION: ACIP members are selected by the Secretary of the U.S. Department of Health and Human Services to provide advice and guidance to the Secretary, the Assistant Secretary for Health, and the CDC on the control of vaccine-preventable diseases. The role of the ACIP is to provide advice that will lead to a reduction in the incidence of vaccine preventable diseases in the United States, and an increase in the safe use of vaccines and related biological products. The Committee also establishes, reviews, and as appropriate, revises the list of vaccines for administration to children eligible to receive vaccines through the Vaccines for Children (VFC) Program.

Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of immunization practices; multi-disciplinary expertise in public health; expertise in the use of vaccines and immunologic agents in both clinical and preventive medicine; knowledge of vaccine development, evaluation, and vaccine delivery; or knowledge about consumer perspectives and/or social and community aspects of immunization programs. Members shall be deemed Special Government Employees. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of ACIP objectives (<https://www.cdc.gov/vaccines/acip/index.html>).

The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity,

gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for ACIP membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- Two letters of recommendation from professional colleagues familiar with the candidate's work. A maximum of four letters of recommendation will be accepted.
 - Letters of recommendation should not come from current ACIP members.
 - At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted

by a person not employed by an HHS agency (e.g., NIH, FDA, etc.). CDC employees should not provide letters of recommendation.

- A cover letter that includes the candidate's statement of interest in serving on the ACIP, the qualifications and expertise that the candidate would bring, and written evidence to support how the candidate meets all relevant criteria.

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention

[FR Doc. 2023-11857 Filed 6-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD); Correction

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Advisory Committee to the Director (ACD). The ACD consists of up to 15 experts knowledgeable in areas pertinent to the CDC mission, such as public health, global health, health disparities, biomedical research, and other fields, as applicable.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the solicitation of nominations for appointment to Advisory Committee to the Director (ACD), CDC; due on June 5, 2023, as published in the original FRN on May 5, 2023 to July 5, 2023.

The solicitation of nominations for appointment to ACD CDC was

published in the **Federal Register** on May 5, 2023, Volume 88, Number 87, pages 29130-29131.

The solicitation of nominations for appointment to the ACD CDC is being corrected to extend the request for nominations to close on July 5, 2023, and should read as follows:

DATES: Nominations for membership on the ACD CDC must be received no later than July 5, 2023.

FOR FURTHER INFORMATION CONTACT: Bridget Richards, MPH, Centers for Disease Control and Prevention, Office of the Chief of Staff, 1600 Clifton Road NE, MS H21-10, Atlanta, Georgia 30329-4027, Telephone: (404) 718-5028; Email Address: ACDDirector@cdc.gov.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention

[FR Doc. 2023-11854 Filed 6-2-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-0621; Docket No. CDC-2023-0043]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Youth Tobacco Surveys (NYTS), which aims to

collect data on tobacco use among middle- and high school students.

DATES: CDC must receive written comments on or before August 4, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC-2023-0043 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.

- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- 3. Enhance the quality, utility, and clarity of the information to be collected;
- 4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
- 5. Assess information collection costs.

Proposed Project

National Youth Tobacco Survey (NYTS) (OMB Control No. 0920–0621, Exp. 1/31/2024)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use is the leading cause of preventable disease and death in the United States, and nearly all tobacco use begins during youth and young adulthood. A limited number of health risk behaviors, including tobacco use, account for most immediate and long-term sources of morbidity and mortality. Because many health risk behaviors are established during adolescence, there is a critical need for public health programs directed towards youth, and for information to support these programs.

Since 2004, the Centers for Disease Control and Prevention (CDC) has

periodically collected information about tobacco use among adolescents (National Youth Tobacco Survey (NYTS) 2004, 2006, 2009, 2011–2023 (OMB Control No. 0920–0621, Exp. 01/31/2024). This surveillance activity builds on previous surveys funded by the American Legacy Foundation in 1999, 2000, and 2002.

At present, the NYTS is the most comprehensive source of nationally representative tobacco data among students in grades 9–12, moreover, the NYTS is the only source of such data for students in grades 6–8. The NYTS has provided national estimates of tobacco use behaviors, information about exposure to pro- and anti-tobacco influences, and information about racial and ethnic disparities in tobacco-related topics. Information collected through the NYTS is used to identify trends over time, to inform the development of tobacco cessation programs for youth, and to evaluate the effectiveness of existing interventions and programs.

CDC plans to request OMB approval to conduct additional cycles of the NYTS in 2024, 2025, and 2026. The survey will be conducted among nationally representative samples of students attending public and private schools in grades 6–12. The survey will be digital, web-based, self-administered, and will be taken on school or personal computers, tablets, or mobile devices. Information supporting the NYTS also will be collected from state-, district-, and school-level administrators and

teachers. During the 2024–2026 timeframe, changes will be incorporated that reflect CDC’s ongoing collaboration with FDA and the need to measure progress toward meeting strategic goals established by the Family Smoking Prevention and Tobacco Control Act.

The survey will examine the following topics: Use of e-cigarettes, cigarettes, cigars, smokeless tobacco, hookahs, roll-your-own cigarettes, pipes, snus, dissolvable tobacco, bidis, heated tobacco products, and nicotine pouches; knowledge and attitudes; media and advertising; access to tobacco products and enforcement of restrictions on access; second-hand smoke and e-cigarette aerosol exposure; and cessation.

Results of the NYTS will continue to be used to inform and evaluate the National Comprehensive Tobacco Control Program, provide data to inform the Department of Health and Human Service’s Tobacco Control Strategic Action Plan, and provide national benchmark data for state-level Youth Tobacco Surveys. Information collected through the NYTS is also expected to provide multiple measures and data for monitoring progress on seven tobacco-related objectives for Healthy People 2030.

OMB approval will be requested for three years. CDC requests OMB approval for an estimated 22,327 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State administrators	State-level Recruitment Script for the NYTS	42	1	30/60	21
District administrators	District-level Recruitment Script for the NYTS	308	1	30/60	154
School administrators	School-level Recruitment Script for the NYTS	285	1	30/60	143
Teachers	Data Collection Checklist	1,217	1	15/60	304
Students	National Youth Tobacco Survey	28,613	1	45/60	21,460
	Screening for Cognitive Interviews	300	1	10/60	50
	Cognitive Interviews	60	1	120/60	120
	Pilot Testing	100	1	45/60	75
Total .....	.....	.....	.....	.....	22,327

Jeffrey M. Zirger,
*Lead, Information Collection Review Office,
 Office of Public Health Ethics and
 Regulations, Office of Science, Centers for
 Disease Control and Prevention.*

[FR Doc. 2023–11858 Filed 6–2–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare and Medicaid Services, Center for Medicaid and CHIP Services has modified its organizational structure.

SUPPLEMENTARY INFORMATION: Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare &

Medicaid Services (CMS) (last amended at **Federal Register**, Vol. 87, No. 205, pp. 64492–64494, dated March 27, 2023) is amended to reflect the establishment of the Managed Care Group and rename the Disabled and Elderly Health Programs Group to Medicaid Benefits and Health Programs Group within the Center for Medicaid and CHIP Services (CMCS).

Part F, Section FC. 10 (Organization) is revised as follows:

Center for Medicaid and CHIP Services,
Managed Care Group
Managed Care Group, Division of
Managed Care Policy
Managed Care Group, Division of
Managed Care Operations
Division of Managed Care Operations,
Branch A through D
Center for Medicaid and CHIP Services,
Medicaid Benefits and Health
Programs Group

Part F, Section FC. 20 (Functions) for the new organization is as follows:

Managed Care Group

- Provides national leadership in the development and management of Medicaid program policy and operations regarding managed care programs and provides technical assistance to States and other stakeholders.
 - Establishes Medicaid program policy around access, and accountability for all managed care programs regardless of authority used and including all populations (*e.g.*, Temporary Assistance for Needy Families, dually eligible, foster care children, individuals who need long-term services and supports).
 - Provides Medicaid managed care policy and operational guidance to States as well as internal and external stakeholders to ensure appropriate application of the policy.
 - Provides subject matter expertise and technical support/assistance in the review, approval, and oversight of managed care in Section 1115 demonstrations.
 - Supports delivery systems reform through the development and implementation of policy around state directed payments including technical assistance to states, review and approval of 438.6(c) preprints, and responding to external inquires related to the 438.6(c) approval process.
 - Establishes and reviews policy and performs operations related to 1915(b) waivers and 1932(a) SPAs, including the review and approval of new managed care programs, renewals and amendments to ensure appropriate application of Medicaid managed care policy in state Medicaid programs.

- Leads reviews of state contracts and amendments with managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans, primary care case management entities, enrollment brokers and external quality review organizations to confirm that contracts and capitation rates, when applicable, satisfy federal laws and regulations and are consistent with the Federal managed care authority(ies) approved by CMS.

- Reviews at-risk capitation rates for consistency between the rate certification, the contract provisions, and the Federal managed care authority(ies) approved by CMS.

- Reviews and approves state plan amendments and capitation rates for Programs of All-Inclusive Care of the Elderly.

- Reviews States' risk mitigation strategies for consistency between the contract and the rate certification and tracks the status of risk mitigation reconciliation activities.

- Conducts readiness assessment reviews and ongoing monitoring and oversight of Medicaid managed care programs.

- Collaborates with States in their implementation of approved managed care programs.

- Serve as the policy lead and liaison with the Office of the Actuary in the review and approval of effective and efficient rate methodologies.

- The primary point of contact for policy questions on Mental Health Parity and the application of that policy in the review of documents provided by States.

Authority: 44 U.S.C. 3101.

Xavier Becerra,

Secretary of Health and Human Services.

[FR Doc. 2023–11901 Filed 6–2–23; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority. The Administration for Children and Families (ACF) has renamed the Office of Child Support

Enforcement. This notice changes the name of the program from Office of Child Support Enforcement (OCSE) to Office of Child Support Services (OCSS).

FOR FURTHER INFORMATION CONTACT:

Tangler Gray, Office of Child Support Services, 330 C Street SW, Washington, DC 20201, 202–260–4090.

SUPPLEMENTARY INFORMATION: This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, ACF, as follows: Chapter KF, Office of Child Support Services, as last amended 85 FR 78856–78859, December 1, 2020.

I. Amend Chapter KF, Office of Child Support Enforcement, to delete every instance of the program name, Office of Child Support Enforcement, in its entirety and replace it with Office of Child Support Services.

Mission: Change the name of the program to Office of Child Support Services.

KF.20 Functions. A. Input New Functions

II. Continuation of Policy. Except as inconsistent with this reorganization, all statements of policy and interpretations with respect to organizational components affected by this notice within ACF heretofore issued and in effect on this date of this reorganization are continued in full force and effect.

III. Delegation of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

IV. Funds, Personnel, and Equipment. Transfer of organizations and functions affected by this reorganization shall be accompanied in each instance by direct and support funds, positions, personnel, records, equipment, supplies, and other resources.

This reorganization will be effective upon date of publication.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2023–11815 Filed 6–2–23; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2020-D-1480]

Drug-Drug Interaction Assessment for Therapeutic Proteins; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Drug-Drug Interaction Assessment for Therapeutic Proteins.” With the continued market growth and increased clinical use of therapeutic proteins, it is important to understand the nature of and the potential for drug-drug interactions (DDIs) with these products. The purpose of this guidance is to help sponsors of investigational new drug applications (INDs) and applicants of biologics license applications (BLAs) determine the need for DDI studies for a therapeutic protein by providing a systematic, risk-based approach. This guidance finalizes the draft guidance of the same title issued on August 10, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on June 5, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2020-D-1480 for “Drug-Drug Interaction Assessment for Therapeutic Proteins.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Elimika Pfuma Fletcher, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2162, Silver Spring, MD 20993, 301-796-3473; or Diane Maloney, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-8113.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “Drug-Drug Interaction Assessment for Therapeutic Proteins.” With the continued market growth and increased clinical use of therapeutic proteins, it is important to understand the nature of and the potential for DDIs with these products. This guidance supplements the final FDA guidances for industry entitled “In Vitro Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions” and “Clinical Drug Interaction Studies—Cytochrome P450 Enzyme- and Transporter-Mediated Drug Interactions” (January 2020) by providing recommendations for a systematic, risk-based approach to determining the need for DDI studies for therapeutic proteins. This guidance discusses considerations for assessing DDIs for therapeutic proteins, including situations where determining the DDI potential of a therapeutic protein is warranted. The guidance also discusses various types of DDI assessments,

considerations for study design, and recommendations for labeling.

This guidance finalizes the draft guidance entitled “Drug-Drug Interaction Assessment for Therapeutic Proteins” issued on August 10, 2020 (85 FR 48259). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include: (1) clarifying that FDA review divisions should be consulted related to novel modalities, and that limitations exist in knowledge related to effect of therapeutic proteins on transporters; (2) including more literature references; (3) limiting the text related to antibody-drug conjugates (ADCs) because a draft guidance on clinical pharmacology considerations for ADCs has been published; and (4) including language about potential use of various modeling approaches on a case by case basis. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Drug-Drug Interaction Assessment for Therapeutic Proteins.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information for the submission of investigational new drug applications in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information for the submission of new drug applications in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information for the submission of biologics license applications in 21 CFR part 601 have been approved under OMB control 0910–0338. The collections of information pertaining to the submission of prescription drug labeling under 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: May 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–11900 Filed 6–2–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5607]

Nonclinical Evaluation of the Immunotoxic Potential of Pharmaceuticals; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Nonclinical Evaluation of the Immunotoxic Potential of Pharmaceuticals.” This guidance finalizes the draft guidance entitled “Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics” issued on February 20, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on June 5, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2019–D–5607 for “Nonclinical Evaluation of the Immunotoxic Potential of Pharmaceuticals.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you

must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Ronald Wange, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3342, Silver Spring, MD 20993-0002, 301-796-1304.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled “Nonclinical Evaluation of the Immunotoxic Potential of Pharmaceuticals.” The purpose of this guidance is to assist sponsors in the nonclinical safety evaluation of the immunotoxic potential of pharmaceuticals, which for purposes of the guidance is defined to encompass drug products, including small molecule drugs, and oligonucleotides, as well as certain biological products, such as biotechnology-derived therapeutic proteins. Immunotoxicity is any adverse unintended immunosuppression or stimulation, which can be the result of off-target effects or exaggerated pharmacology of pharmaceuticals that are intended to act as immunomodulators.

This guidance finalizes the draft guidance entitled “Nonclinical Safety Evaluation of the Immunotoxic Potential of Drugs and Biologics” issued February 20, 2020 (85 FR 9784). FDA considered comments received on the draft guidance as the guidance was finalized. Changes made in the draft guidance in response to public comment were focused on placing this guidance within the appropriate context as it relates to other guidances relevant to the assessment of immunotoxicity. Additionally, the scope was rewritten to better clarify the types of products that were to be considered within or outside of the scope.

Although the 2020 draft guidance was issued by the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research, the finalized guidance is being issued by CDER only.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Nonclinical Evaluation of the Immunotoxic Potential of Pharmaceuticals.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910-0014 and 0910-0001, respectively.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: May 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-11898 Filed 6-2-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2019-D-4656]

Interstitial Cystitis/Bladder Pain Syndrome: Establishing Drug Development Programs for Treatment; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled “Interstitial Cystitis/Bladder Pain Syndrome: Establishing Drug Development Programs for Treatment.” This draft guidance is intended to revise and replace the current draft guidance for industry entitled “Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment” issued on December 5, 2019. This draft guidance provides recommendations for drug development programs for drugs intended to treat patients with interstitial cystitis/bladder pain syndrome (IC/BPS).

DATES: Submit either electronic or written comments on the draft guidance by August 4, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2019-D-4656 for “Interstitial Cystitis/Bladder Pain Syndrome: Establishing Drug Development Programs for Treatment.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Jeannie Roule, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5332, Silver Spring, MD 20993-002, 301-796-3993.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled “Interstitial Cystitis/Bladder Pain Syndrome: Establishing Drug Development Programs for Treatment.” IC/BPS is a complex, poorly understood heterogeneous syndrome of unknown etiology. This draft guidance provides recommendations to assist applicants in developing products intended for treatment of IC/BPS. As with the 2019 draft guidance, this draft guidance incorporates advice FDA received at a December 2017 advisory committee meeting on appropriate patient selection criteria and trial design features, including enrollment criteria and acceptable efficacy endpoints for drugs intended to treat IC/BPS.

This draft guidance encourages sponsors to assess dosing strategies, explore multiple efficacy endpoints, and collect safety information during early drug development to inform design strategy and selection of clinically meaningful endpoints for later clinical trials. This draft guidance also provides advice on enrollment criteria, efficacy endpoints, and other considerations for

clinical trials to support an IC/BPS indication. This draft guidance provides recommendations based on the Agency’s current thinking on the development of patient-reported outcomes to evaluate patient symptoms to demonstrate a clinically meaningful change with treatment for this condition.

This draft guidance revises and provides updates to the draft guidance entitled “Interstitial Cystitis/Bladder Pain Syndrome (IC/BPS): Establishing Effectiveness of Drugs for Treatment” issued on December 5, 2019 (84 FR 66681). FDA considered comments received on the 2019 draft guidance in revising the draft guidance. Changes from the 2019 draft guidance include discussion of early drug development considerations, selection of patient outcomes for development, and clarification of evaluation of Hunner’s lesions. In addition, editorial changes made to improve clarity include revised references to current Agency guidances on patient-reported outcomes and updated clinical considerations.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). This draft guidance, when finalized, will represent the current thinking of FDA on “Interstitial Cystitis/Bladder Pain Syndrome: Establishing Drug Development Programs for Treatment.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 312 relating to investigational new drug applications, including clinical trial design and study protocols, have been approved under OMB control number 0910-0014.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda->

guidance-documents, or <https://www.regulations.gov>.

Dated: May 30, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-11899 Filed 6-2-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-0577]

Authorization of Emergency Use of a Drug Product During the COVID-19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for use during the COVID-19 pandemic. FDA has issued an Authorization for the drug product GOHIBIC (vilobelimab) as requested by InflaRx GmbH's (InflaRx). The 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 a novel (new) coronavirus. The virus, now named SARS-CoV-2, causes the illness COVID-19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of April 4, 2023.

ADDRESSES: Submit written requests for a single copy of the EUA to the Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor,

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:

Johanna McLatchy, Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, 6th Floor, Silver Spring, MD 20993-0002, 301-796-3200 (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 public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. 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 biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives (among other criteria).

II. Criteria for EUA Authorization

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, 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 FDA's website. 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 in an actual or potential emergency 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 sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 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

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.

circumstances), FDA² 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

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.

in section 564(b)(1)(B)(ii) of the FD&C Act, 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.

III. The Authorization

The Authorization follows the February 4, 2020, determination by the Secretary of 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 a novel (new) coronavirus. The virus, now named SARS-CoV-2, causes the illness COVID-19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316) and notice of the Secretary's amended determination was provided in the **Federal Register** on March 20, 2023 (88 FR 16644). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued

under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, on April 4, 2023, FDA issued an EUA to InflaRx for the drug product GOHIBIC (vilobelimab), subject to the terms of the Authorization. The initial Authorization, which is included below in its entirety after section IV of this document (not including the authorized versions of the fact sheets and other written materials), provides an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent reissuance of the Authorization can be found on FDA's web page at: <https://www.fda.gov/drugs/emergency-preparedness-drugs/emergency-use-authorizations-drugs-and-non-vaccine-biological-products>.

IV. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet at: <https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization>.

BILLING CODE 4164-01-P



April 12, 2023

InflaRx GmbH
c/o Dunn Regulatory Associates, LLC
Dana Dunn, MS
President, Dunn Regulatory Associates, LLC
2709 Silkwood Court
Oakton, VA 22124

RE: Emergency Use Authorization 118

Dear Ms. Dunn:

This letter is in response to InflaRx GmbH's (InflaRx) request that the Food and Drug Administration (FDA or Agency) issue an Emergency Use Authorization (EUA) for the emergency use of GOHIBIC (vilobelimab) for the treatment of coronavirus disease 2019 (COVID-19) in certain hospitalized adult patients, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, as amended on March 15, 2023, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined 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 United States citizens living abroad, and that involves the virus that causes coronavirus disease 2019 (COVID-19).¹ On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the Act (21 U.S.C. 360bbb-3), subject to terms of any authorization issued under that section.²

¹ U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, February 4, 2020; U.S. Department of Health and Human Services, *Amended Determination of a Public Health Emergency or Significant Potential for a Public Health Emergency Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3(b)*, March 15, 2023. 88 FR 16644 (March 20, 2023) ("Amended Determination").

² U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020). See Amended Determination ("The declarations issued pursuant to section 564(b)(1) of the FD&C Act that circumstances exist justifying the authorization of emergency use of certain in vitro diagnostics, personal respiratory protective devices, other medical devices and drugs and biological products, as set forth in those declarations, and that are based on the February 4, 2020 determination, remain in effect until those declarations are terminated in accordance with section 564 of the FD&C Act.").

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On April 4, 2023, FDA issued an EUA for emergency use of GOHIBIC for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving invasive mechanical ventilation (IMV), or extracorporeal membrane oxygenation (ECMO).

GOHIBIC is a recombinant chimeric monoclonal IgG4 antibody that specifically binds to the soluble human complement split product C5a after cleavage from C5 to block its interaction with the C5a receptor, both of which are components of the complement system thought to contribute to inflammation and worsening of COVID-19. GOHIBIC is not FDA-approved for any indication, including for the treatment of COVID-19.

On April 12, 2023, having concluded that revising this EUA is appropriate to protect the public health or safety under Section 564(g)(2) of the Act, FDA is reissuing the April 4, 2023 letter in its entirety, to revise condition H to include additional language on product recall and to incorporate condition J detailing requirements on registration and listing.

Based on the totality of scientific evidence available to FDA, including data from the Phase 3 portion of the clinical trial, PANAMO (NCT04333420): a randomized, double-blind, placebo-controlled study to evaluate the safety and efficacy of GOHIBIC in adult (≥ 18 years) patients with COVID-19 pneumonia who required IMV or ECMO, it is reasonable to believe that GOHIBIC may be effective for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO, as described in the Scope of Authorization (Section II), and when used under the conditions described in this authorization, the known and potential benefits of GOHIBIC outweigh the known and potential risks of such product.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of GOHIBIC for the treatment COVID-19 in certain hospitalized adults, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of GOHIBIC for the treatment of COVID-19, when administered as described in the Scope of Authorization (Section II), meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

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 GOHIBIC may be effective for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO, as described in the Scope of Authorization (Section II), and that, when used under the conditions described in this authorization, the known and potential benefits of GOHIBIC outweigh the known and potential risks of such product; and

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3. There is no adequate, approved, and available alternative to the emergency use of GOHIBIC for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO.^{3,4}

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

- GOHIBIC may only be used by healthcare providers for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO.
- The use of GOHIBIC covered by this authorization must be in accordance with the authorized Fact Sheets.

Product Description

GOHIBIC 200 mg/20 mL (10 mg/mL) is a clear to slightly opalescent, colorless solution that is supplied in a single-dose vial (NDC 83000-110-04) for intravenous administration after dilution.

The authorized storage and handling information for GOHIBIC is included in the authorized Fact Sheet for Healthcare Providers.

GOHIBIC is authorized for emergency use with the following product-specific information required to be made available to healthcare providers and to patients and caregivers, respectively, through InflaRx's website at www.gohibic.com (referred to as the "authorized labeling"):

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) for GOHIBIC
- Fact Sheet for Patients and Caregivers: Emergency Use Authorization (EUA) of GOHIBIC for Coronavirus Disease 2019 (COVID-19)

³ No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

⁴ Veklury (remdesivir), a SARS-CoV-2 nucleotide analog RNA polymerase inhibitor, is an FDA-approved alternative for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO. Veklury has demonstrated antiviral activity against SARS-CoV-2; whereas GOHIBIC acts by binding to C5a to block its interaction with the C5a receptor, both of which are components of the complement system thought to contribute to inflammation and worsening of COVID-19, offering a different mechanism of action. Olumiant (baricitinib), a Janus kinase (JAK) inhibitor, is an FDA-approved alternative for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of requiring IMV, or ECMO. As noted, GOHIBIC offers a different mechanism of action. In addition, GOHIBIC has an intravenous route of administration; whereas, Olumiant is available as tablets, offering an alternative route of administration to adult patients who are mechanically ventilated or on ECMO. Actemra, an interleukin-6 (IL-6) receptor antagonist, is also an FDA-approved alternative for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO. As noted, GOHIBIC offers a different mechanism of action.

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I have concluded, pursuant to Section 564(d)(2) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the known and potential benefits of GOHIBIC, when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh the known and potential risks, pursuant to Section 564(c)(2)(B) of the Act.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that GOHIBIC may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that GOHIBIC (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of GOHIBIC under this EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), GOHIBIC is authorized for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO, as described in the Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

InflaRx and Authorized Distributors⁵

- A. InflaRx and authorized distributor(s) will ensure that GOHIBIC is distributed and the authorized labeling (i.e., Fact Sheets) will be made available to healthcare facilities and/or healthcare providers as described in Section II of this Letter of Authorization.
- B. InflaRx and authorized distributor(s) will ensure that appropriate storage is maintained until the product is delivered to healthcare facilities and/or healthcare providers.
- C. InflaRx and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving GOHIBIC. InflaRx will provide to all relevant stakeholders a copy of this Letter of Authorization and communicate any subsequent

⁵ "Authorized Distributor(s)" are identified by InflaRx as an entity or entities allowed to distribute the authorized GOHIBIC.

amendments that might be made to this Letter of Authorization and its authorized accompanying materials (i.e., Fact Sheets).

- D. InflaRx may request changes to this authorization, including to the authorized Fact Sheets for GOHIBIC. Any request for changes to this EUA must be submitted to the Office of Immunology and Inflammation/Office of New Drugs/Center for Drug Evaluation and Research. Such changes require appropriate authorization prior to implementation.⁶
- E. InflaRx may develop and disseminate instructional and educational materials (e.g., materials providing information on product administration and/or patient monitoring) that are consistent with the authorized emergency use of GOHIBIC as described in this Letter of Authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs. Any instructional and educational materials that are inconsistent with the authorized labeling for GOHIBIC are prohibited. If the Agency notifies InflaRx that any instructional and educational materials are inconsistent with the authorized labeling, InflaRx must cease distribution of such instructional and educational materials. Furthermore, as part of its notification, the Agency may also require InflaRx to issue corrective communication(s).
- F. InflaRx will report to FDA all serious adverse events and medication errors potentially related to GOHIBIC use that are reported to InflaRx using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the [FDA SRP](#) web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the [FAERS electronic submissions](#) web page.

Submitted reports under both options must state: "GOHIBIC use for COVID-19 under Emergency Use Authorization (EUA)." For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

- G. All manufacturing, packaging, and testing sites for both drug substance and drug product used for EUA supply will comply with current good manufacturing practice requirements of Section 501(a)(2)(B) of the Act.

⁶ The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

H. InflaRx will submit information to the Agency within three working days of receipt of any information concerning significant quality problems with drug product distributed under this EUA for GOHIBIC that includes the following:

- Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article; or
- Information concerning any microbiological contamination, or any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the product to meet the established specifications.

If a significant quality problem affects unreleased product and may also impact product(s) previously released and distributed, then information must be submitted for all potentially impacted lots.

InflaRx will include in its notification to the Agency whether the batch, or batches, in question will be recalled. If FDA requests that these, or any other batches, at any time, be recalled, InflaRx must recall them.

If not included in its initial notification, InflaRx must submit information confirming that InflaRx has identified the root cause of the significant quality problems, taken corrective action, and provide a justification confirming that the corrective action is appropriate and effective. InflaRx must submit this information as soon as possible but no later than 45 calendar days from the initial notification.

- I. InflaRx will manufacture GOHIBIC to meet all quality standards and per the manufacturing process and control strategy as detailed in InflaRx's EUA request. InflaRx will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product, without notification to and concurrence by the Agency as described under Condition D.
- J. InflaRx will list each presentation of GOHIBIC with a unique product NDC under the marketing category of Emergency Use Authorization. Further, the listing will include each establishment where manufacturing is performed for the drug and the type of operation performed at each such establishment.
- K. Through a process of inventory control, InflaRx and authorized distributor(s) will maintain records regarding distribution of GOHIBIC (i.e., lot numbers, quantity, receiving site, receipt date).
- L. InflaRx and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

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Healthcare Facilities to Whom GOHIBIC Is Distributed and Healthcare Providers Administering GOHIBIC

- M. Healthcare facilities and healthcare providers will ensure that they are aware of the Letter of Authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means, prior to administration of GOHIBIC as described in the Scope of Authorization (Section II) under this EUA.
- N. Healthcare facilities and healthcare providers receiving GOHIBIC will track all serious adverse events and medication errors that are considered to be potentially related to GOHIBIC use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports must state, “GOHIBIC use for COVID-19 under Emergency Use Authorization” at the beginning of the question “Describe Event” for further analysis. A copy of the completed FDA Form 3500 must also be provided to InflaRx per the instructions in the authorized labeling.
- O. Healthcare facilities and healthcare providers will ensure that appropriate storage is maintained until the product is administered consistent with the terms of this letter and the authorized labeling.
- P. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensing and administration of GOHIBIC for the use authorized in this letter (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).
- Q. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by InflaRx and/or FDA. Such records will be made available to InflaRx, HHS, and FDA for inspection upon request.

Conditions Related to Printed Matter, Advertising, and Promotion

- R. All descriptive printed matter, advertising, and promotional materials relating to the use of GOHIBIC under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in Section 502(a) and (n) of the Act, as applicable, and FDA implementing regulations. References to “approved labeling”, “permitted labeling”, or similar terms in these requirements shall be understood to refer to the authorized labeling for the use of GOHIBIC under this authorization. In addition, such materials shall:
- Be tailored to the intended audience.

Page 8 – InflaRx GmbH

- Not take the form of reminder advertisements, as that term is described in 21 CFR 202.1(e)(2)(i), 21 CFR 200.200 and 21 CFR 201.100(f).
 - Present the same risk information relating to the major side effects and contraindications concurrently in the audio and visual parts of the presentation for advertising and promotional materials in audio-visual format.
 - Be accompanied by the authorized labeling, if the promotional materials are not subject to Section 502(n) of the Act.
 - Be submitted to FDA accompanied by Form FDA-2253 for consideration at least 14 calendar days prior to initial dissemination or first use.
- S. InflaRx may disseminate descriptive printed matter, advertising, and promotional materials relating to the emergency use of GOHIBIC that provide accurate descriptions of safety results and efficacy results on a clinical endpoint(s) from the clinical trial(s) summarized in the authorized labeling. Such materials must include any limitations of the clinical trial data as described in the authorized labeling. InflaRx may not imply that GOHIBIC is FDA-approved for its authorized use by making statements such as “GOHIBIC is safe and effective for the treatment of COVID-19.”
- T. All descriptive printed matter, advertising, and promotional material, relating to the use of GOHIBIC under this authorization clearly and conspicuously shall state that:
- GOHIBIC has not been approved, but has been authorized for emergency use by FDA under an EUA, for the treatment of COVID-19 in hospitalized adults when initiated within 48 hours of receiving IMV, or ECMO; and
 - The emergency use of GOHIBIC is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization revoked sooner.

If the Agency notifies InflaRx that any descriptive printed matter, advertising, or promotional materials do not meet the terms set forth in Conditions R through T of this EUA, InflaRx must cease distribution of such descriptive printed matter, advertising, or promotional materials in accordance with the Agency’s notification. Furthermore, as part of its notification, the Agency may also require InflaRx to issue corrective communication(s).

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Page 9 – InflaRx GmbH

Sincerely,

Patrizia A.
Cavazzoni -S

Digitally signed by Patrizia A.
Cavazzoni -S
Date: 2023.04.12 09:27:59 -04'00'

Patrizia Cavazzoni, M.D.
Director
Center for Drug Evaluation and Research
U.S. Food and Drug Administration

Reference ID: 5156878

Dated: May 31, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023-11852 Filed 6-2-23; 8:45 am]

BILLING CODE 4164-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice To Announce NIH Updated Policy Guidance for Subaward/ Consortium Written Agreements

AGENCY: National Institutes of Health, HHS.

ACTION: Request for comments.

SUMMARY: The National Institutes of Health (NIH) is seeking public comment on updates to the NIH Grants Policy Statement (GPS), Section 15.2, which outlines the requirements for consortium/subaward agreements on NIH-funded grants.

DATES: To ensure that your comments will be considered, please submit your response to this Request for Comments no later than July 5, 2023 to ensure consideration. The planned effective date of this guidance is October 1, 2023, and updated language will be incorporated into the GPS in the FY24 publication.

ADDRESSES: Comments may be submitted online at <https://rfi.grants.nih.gov/?s=646e6654a8ba09024f09e852>.

FOR FURTHER INFORMATION CONTACT: Xanthia James, Director, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge I, Suite 350, Bethesda, MD 20817. Email: Xanthia.James@nih.gov. Phone number (301) 435-0949.

SUPPLEMENTARY INFORMATION:

Request for Comments

NIH encourages the public to provide comments on any aspect of the updated guidance outlined below.

Submitting a Response

Comments should be submitted electronically to the following web page <https://rfi.grants.nih.gov/?s=646e6654a8ba09024f09e852> by the comment due date. Unedited comments will be compiled and may be posted, along with the submitter's name and affiliation, on the NIH Office of Extramural Research website after the public comment period closes. Submitted comments are considered public information. Please do not include any proprietary, classified, confidential, or sensitive information in your response.

Updated Guidance

2 CFR 200.332(a)(5) at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/subject-group-ECFR031321e29ac5bbd/section->

200.332 states that subaward agreements must include, "a requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part." In response to the Department of Health and Human Services (HHS), Office of Inspector General and Government Accountability Office audits, NIH has determined that to assure that this requirement is met, NIH finds it necessary to impose a requirement that foreign subrecipients turn over all records to the primary recipient at an agreed upon frequency (e.g., once a quarter, once a month). Therefore, section 15.2 is updated as follows (changes are **bold** and **italicized**).

15.2 ADMINISTRATIVE AND OTHER REQUIREMENTS

The following highlights several areas within the consortium relationship that the recipient needs to address with consortium organizations receiving subawards under a grant to ensure compliance with NIH requirements. The requirement for a written agreement addressing these and other areas is specified in this section. ***NIH will not support any agreement that does not meet the minimum requirements outlined in the written agreement section below (15.2.1). NIH reserves the right to request copies of the written agreement and relevant supporting documentation as needed, as part of its oversight responsibilities. Failure to provide requested documentation may lead to remedies for noncompliance and potential enforcement actions (see 8.5, Specific award conditions and remedies for noncompliance).***

NIH encourages recipients to ask potential subrecipients, at the application stage, to submit language in their letters of support indicating their awareness of these requirements and the subrecipient's willingness to abide by all requirements should an award be issued.

Note that most of these requirements only apply to a recipient's consortium relationships with sub-recipients. When the relationship is with a vendor that is providing routine goods and services within normal business operations that are ancillary to the operation of the research program, the public policy requirements listed below do not apply. The vendor must also be providing similar goods and services to many different purchasers and provide them in a competitive environment.

15.2.1 Written Agreement

The recipient must enter into a formal written agreement, ***signed, and agreed to by both parties***, with each consortium participant/***subrecipient*** that addresses the negotiated arrangements for meeting the scientific, administrative, financial, and reporting requirements of the grant, including those necessary to ensure compliance with all applicable Federal regulations and policies and facilitate an efficient collaborative venture. ***If a subrecipient is unwilling to accept the requirements outlined in this section, by signing a written agreement, then an agreement cannot be issued.*** At a minimum, this agreement must include the following:

- Identification of the individual who will serve as the consortium lead investigator and other individuals responsible for the research activity at each consortium participant along with their roles and responsibilities.

- When multiple Program Directors/ Principal Investigators (PDs/PIs) are involved at different organizations, only the Contact PD/PI is required to have the official relationship with the applicant organization. PDs/PIs in the leadership team at other organizations must have a documented relationship with a consortium organization but need not be employees. Any **consortium agreement** must address the unique aspects to these individuals holding the PD/PI role including the requirement for the prime institution to secure and retain all PD/PI signatures for all applications, progress reports, and post-award **prior approval** requests. Further, such signatures must be made available to NIH or other authorized HHS or Federal officials upon request. See Multiple Program Director/Principal Investigator Applications and Awards at https://grants.nih.gov/grants/policy/nihgps/HTML5/section_9/9_multiple_program_director_principal_investigator_applications_and_awards.htm for additional information.

- Procedures for directing and monitoring the research effort.

- Procedures to be followed in reimbursing each consortium participant for its effort, including dollar ceiling, method and schedule of reimbursement, type of supporting documentation required, procedures for review and approval of expenditures of grant funds at each organization and timing of applicable reporting requirements. This includes provisions on access to core facilities and resources and whether access will be provided as a fee-for-service.

- If different from those of the recipient, a determination of policies to be followed in such areas as travel reimbursement and salaries and fringe benefits (the policies of the consortium participant may be used as long as they meet NIH requirements).
- Terms that establish whether the Financial Conflict of Interest (FCOI) policy of the prime Institution or that of the subrecipient will apply to the subrecipient's Investigators.
- If the subrecipient's Investigators must comply with the prime Institution's FCOI policy, the subrecipient shall certify as part of the written agreement that its policy complies with the 2011 revised FCOI regulation (42 CFR part 50 Subpart F). If the subrecipient cannot provide such certification, the agreement shall state that subrecipient Investigators are subject to the FCOI policy of the prime Institution for disclosing Significant Financial Interests that are directly related to the subrecipient's work for the prime Institution.
- If the subrecipient's Investigators must comply with the subrecipient's FCOI policy, the written agreement shall specify time period(s) for the subrecipient to report all identified FCOI to the prime Institution. Such time period(s) shall be sufficient to enable the prime Institution to provide timely FCOI reports, as necessary, to the Public Health Service (PHS) as required by the regulation.
- Alternatively, if the subrecipient's Investigators must comply with the prime Institution's FCOI policy, the written agreement shall specify time period(s) for the subrecipient to submit all Investigator disclosures of Significant Financial Interests to the prime Institution. Such time period(s) shall be sufficient to enable the prime Institution to comply timely with its review, management, and reporting obligations under the 2011 revised FCOI regulation.
- A provision addressing ownership and disposition of data produced under the **consortium agreement**. This includes whether cell lines, samples or other resources will be freely available to other investigators in the scientific community or will be provided to particular investigators only.
- **For foreign subrecipients, a provision requiring the foreign subrecipient to provide copies of all lab notebooks, all data, and all documentation that supports the research outcomes as described in the progress report. These supporting materials must be provided to prime recipient with each scientific update (no less than**

once every six months, or more frequently based on risks) in line with the timelines outlined in the agreement.

- A provision making NIH data sharing and inventions and patent policy, including a requirement to report inventions to the recipient (see Administrative Requirements-Availability of Research Results: Publications, Intellectual Property Rights, and Sharing Research Resources at https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.2_availability_of_research_results_publications_intellectual_property_rights_and_sharing_research_resources.htm in IIA), applicable to each consortium participant and its employees in order to ensure that the rights of the parties to the **consortium agreement** are protected and that the recipient can fulfill its responsibilities to NIH.

- Expectations for authorship and co-authorship on publications.

- Provisions regarding property (other than intellectual property), program income, publications, reporting, and audit necessary for the recipient to fulfill its obligations to NIH.

- Provisions regarding compliance with requirements for a Unique Entity Identifier (UEI) and subrecipient reporting under the Federal Funding Accountability and Transparency Act (FFATA) (see Recipient Reporting of Subrecipient Data and Executive Compensation Information for FFATA at https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.4.1_reporting.htm#Recipient). Note, the recipient must provide the Federal Award Identification Number (FAIN) at https://grants.nih.gov/grants/policy/nihgps/HTML5/section_1/1.1_abbreviations.htm#FAIN to all subrecipients to aid in this requirement.

- Incorporation of applicable public policy requirements and provisions indicating the intent of each consortium participant to comply, including submission of applicable assurances and certifications (see Public Policy Requirements, Objectives, and Other Appropriation Mandates at https://grants.nih.gov/grants/policy/nihgps/HTML5/section_4/4_public_policy_requirements_objectives_and_other_appropriation_mandates.htm in IIA).

See NIH Guide Notice NOT-OD-23-133 at <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-133.html>.

Dated: May 30, 2023.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2023-11897 Filed 6-2-23; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Pain, Olfactory, and Motor Neuroscience.

Date: June 27, 2023.

Time: 10:00 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: Brian H. Scott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-7490, brianscott@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biomedical Data Repositories and Knowledgebases.

Date: June 28, 2023.

Time: 9:30 a.m. to 7:30 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: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301-408-9694, petersonjt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.

Date: June 29-30, 2023.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Eileen Marie Moore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-8928, eileen.moore@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: June 29, 2023.

Time: 9:00 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: Allison N. Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594-1814, kurtian@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Advancing Therapeutics.

Date: June 29-30, 2023.

Time: 9:30 a.m. to 8:00 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: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-402-4809, lystranne.maynard-smith@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA: Alzheimer's Disease and its Related Dementias.

Date: June 29-30, 2023.

Time: 9:30 a.m. to 7:30 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: Mariam Zaka, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1009J, Bethesda, MD 20892, (301) 435-1042 zakam2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: NIH Research Enhancement Award (R15) Review.

Date: June 29, 2023.

Time: 10:00 a.m. to 8:00 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: Zubaida Saifudeen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD

20892, (301) 827-3029, zubaida.saifudeen@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurological and Neuropsychological Injuries and Disorders.

Date: June 29, 2023.

Time: 10:00 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: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-3962, todd.white@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Social and Community Influences Across the Lifecourse.

Date: June 29, 2023.

Time: 10:30 a.m. to 6:00 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: Maria De Jesus Diaz Perez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000G, Bethesda, MD 20892, (301) 496-4227, diazperez2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Therapeutics and Biology.

Date: June 29, 2023.

Time: 1:00 p.m. to 8:00 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: Gloria Huei-Ting Su, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867-5309, sug2@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Antiviral Drug Discovery and Molecular Pharmacology.

Date: June 30, 2023.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Shinako Takada, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301-827-5997, shinako.takada@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology of the Eye.

Date: June 30, 2023.

Time: 11:00 a.m. to 4:00 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: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6107 Rockledge Drive, Bethesda, MD 20892, (301) 402-8559, jimok.kim@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Structure and Function.

Date: June 30, 2023.

Time: 3:00 p.m. to 6:00 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: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301-435-1022, balasundaramd@csr.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: May 31, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-11871 Filed 6-2-23; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).

Date: June 27, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Room 31118F, Hamilton, MT 59840 (Virtual Meeting).

Contact Person: Kristin L. McNally, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, Room 31118F, Hamilton, MT 59840 mcnallyk@niaid.nih.gov.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Therapeutics for Eliminating Hepatitis B Virus cccDNA (R21/R33 Clinical Trial Not Allowed).

Date: June 30, 2023.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892, (240) 669-5178, saadisoh@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 31, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-11847 Filed 6-2-23; 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 Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review

Group; Cellular Immunotherapy of Cancer Study Section.

Date: June 26–27, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shahana Majid, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867-5309, shahana.majid@nih.gov.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: June 26–27, 2023.

Time: 9:00 a.m. to 5:00 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: Laura Asnaghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockville Drive Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443-1196, laura.asnaghi@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral Processes.

Date: June 26–27, 2023.

Time: 9:00 a.m. to 8:00 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: Jeanne M. McCaffery, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301-594-3854, jeanne.mccaffery@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: June 26–27, 2023.

Time: 10:00 a.m. to 8:00 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: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301-435-1180, ruvinser@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Innate and Adaptive Immunity to Pathogens.

Date: June 26, 2023.

Time: 1:00 p.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: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301-443-5779, prasads@csr.nih.gov.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Biochemical and Cellular Oncogenesis Study Section.

Date: June 27–28, 2023.

Time: 9:00 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: Jian Cao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-5902, caojn@csr.nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.

Date: June 27–28, 2023.

Time: 9:00 a.m. to 8:00 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: Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480-6893, karobi.moitra@nih.gov.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Muscle and Exercise Physiology Study Section.

Date: June 27–28, 2023.

Time: 9:00 a.m. to 7:30 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: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, (301) 496-8551, ingrahamrh@mail.nih.gov.

Name of Committee: Biology of Development and Aging Integrated Review Group; Advancing Therapeutics A Study Section.

Date: June 27–28, 2023.

Time: 9:30 a.m. to 8:00 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: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480-4097, maureen.shuh@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Interspecies Microbial Interactions and Infections.

Date: June 27, 2023.

Time: 10:00 a.m. to 9:00 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: Subhamoy Pal, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301-594-0926, subhamoy.pal@nih.gov.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Pathophysiology of Obesity and Metabolic Disease Study Section.

Date: June 27–28, 2023.

Time: 10:00 a.m. to 8:00 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: Heather Marie Brockway, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 813H, Bethesda, MD 20892, (301) 594-5228, brockwayhm@csr.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: May 31, 2023.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023-11870 Filed 6-2-23; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2021-0345]

Port Access Route Study: The Pacific Coast From Washington to California

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of study.

SUMMARY: The Coast Guard announces the availability of the study results of the Pacific Coast Port Access Route Study. This study evaluated safe access routes for the movement of vessel traffic proceeding to or from ports or places along the western seaboard of the United States. As a result of the study data and public input, the Coast Guard recommends the establishment of voluntary shipping fairways (“fairway”) for coastwise and nearshore vessel traffic to promote the safe, unobstructed navigation of vessels in the study area.

FOR FURTHER INFORMATION CONTACT: For information about this document call or

email LCDR Sara Conrad, Coast Guard Pacific Area (PAC-54), U.S. Coast Guard; telephone (510) 437-3813, email Sara.E.Conrad@uscg.mil or Mr. Tyrone Conner, Eleventh Coast Guard District (dpw), U.S. Coast Guard; telephone (510) 437-2968, email Tyrone.L.Conner@uscg.mil or Mr. John Moriarty, Thirteenth Coast Guard District (dpw), U.S. Coast Guard; telephone (206) 220-7274, email John.F.Moriarty@uscg.mil.

SUPPLEMENTARY INFORMATION:

Background

The Ports and Waterways Safety Act, (PWSA)(46 U.S.C. 70003(c)(1)), authorizes the Commandant of the Coast Guard to designate necessary fairways and traffic separations schemes (TSSs) to provide safe access routes for vessels proceeding to and from United States ports. The designation of fairways and TSSs recognizes the paramount right of navigation over all other uses in the designated areas.

Before establishing or adjusting fairways, 46 U.S.C. 70003(c)(1) requires the Coast Guard to study potential traffic density and assess the need for safe access routes for vessels. During this process, the Coast Guard considers the views of the maritime community, environmental groups, and other stakeholders to reconcile the need for safe access routes with reasonable waterway uses. See 46 U.S.C. 70003(c)(3).

On July 28, 2021, the Coast Guard announced that the Coast Guard Pacific Area Command would conduct a Pacific Coast Port Access Route Study (PAC-PARS). 86 FR 40791. The study area encompassed all vessel traffic patterns approaching and departing major ports along the west coast to include all current Traffic Separation Schemes and vessel maneuvering along the Pacific Coast from Washington to California and all federal navigable waters out to the EEZ. The PAC-PARS was focused on vessel traffic and navigation mitigation techniques to improve and support safe navigation transits within the major Pacific Coast Ports and the United States EEZ.

The PAC-PARS aimed to enhance navigational safety by examining existing shipping routes and waterway uses and, to the extent practicable, reconciling the paramount right of navigation within designated port access routes with other waterway uses such as the development of aquaculture farms, offshore renewable energy, commercial space ports/re-entry sites, marine sanctuaries, ports supporting Panamax vessels, potential LNG ports

and additional commercial vessel traffic.

On August 26, 2022, the Coast Guard published a draft study containing recommended routing measures and requested public comments. After examining stakeholder responses to the draft recommendations, analyzing current and historical vessel traffic, fishing vessel information, agency and stakeholder experience in vessel traffic management, navigation, ship handling, and effects of weather, the study determined that there is a need to establish voluntary fairways for coastwise and nearshore vessel traffic to promote safety of navigation in the study area. As part of the PAC-PARS Final Report, which is available for public review in this docket, charts of the recommended fairways are included as Appendices I, II, and III. Examples of public notice and outreach documents are included in Appendices IV–X. Two vessel traffic analyses, for coastal waters and port approaches, are included as Enclosures 1 and 2, respectively. Earlier **Federal Register** announcements associated with this effort are included as Enclosures 3–5. Enclosure 6 contains the Public Comments adjudication included in the Draft Study. Finally, the three recommendation memorandums from each Coast Guard command involved in this study are provided in Enclosures 7, 8, and 9.

The Final Study, appendices, and enclosures can also be found at the Coast Guard Navigation Center website Port Access Route Studies | Navigation Center (uscg.gov).

This notice is issued under authority of 46 U.S.C. 70003(c)(1).

Dated: May 25, 2023.

A.J. Tionson,

Vice Admiral, U.S. Coast Guard, Commander, Pacific Area.

[FR Doc. 2023-11878 Filed 6-2-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0002; Internal Agency Docket No. FEMA-B-2343]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations,

which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before September 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2343, to Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be

considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,
Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Weld County, Colorado and Incorporated Areas Project: 19-08-0010S Preliminary Date: September 17, 2020 and March 23, 2022	
City of Longmont	Development Services Center, 385 Kimbark Street, Longmont, CO 80501.
Town of Firestone	Town Hall, 9950 Park Avenue, Firestone, CO 80504.
Town of Frederick	Town Hall, 401 Locust Street, Frederick, CO 80530.
Town of Mead	Town Hall, 441 3rd Street, Mead, CO 80542.
Unincorporated Areas of Weld County	Weld County Administrative Building, 1150 O Street, Greeley, CO 80631.
Klamath County, Oregon and Incorporated Areas Project: 17-10-0391S Preliminary Date: April 30, 2020 and February 01, 2023	
City of Klamath Falls	Land Use Planning Office, 226 South 5th Street, Klamath Falls, OR 97601.
City of Merrill	City Hall, 301 East 2nd Street, Merrill, OR 97633.
Unincorporated Areas of Klamath County	Klamath County Government Center—Community Development Office, 305 Main Street, Klamath Falls, OR 97601.

[FR Doc. 2023–11812 Filed 6–2–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2222]

Proposed Flood Hazard Determinations for McIntosh County, North Dakota and Incorporated Areas

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed notice concerning proposed flood hazard determinations, which may include the addition or modification of any Base Flood Elevation, base flood depth, Special Flood Hazard Area boundary or zone designation, or regulatory floodway (herein after referred to as proposed flood hazard determinations) on the Flood Insurance Rate Maps and, where applicable, in the supporting Flood Insurance Study reports for McIntosh County, North Dakota and Incorporated Areas.

DATES: This withdrawal is effective June 5, 2023.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–2222, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: On March 15, 2022, FEMA published a proposed notice at 87 FR 14550, proposing flood hazard determinations for McIntosh County, North Dakota and Incorporated Areas. FEMA is withdrawing the proposed notice.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–11811 Filed 6–2–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2344]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before September 5, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2344, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an

appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://>

hazards.fema.gov/femaportal/prelimdownload and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each

community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,
Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Franklin County, Florida and Incorporated Areas Project: 12-04-0465S Preliminary Date: February 23, 2023	
City of Apalachicola	Planning and Community Development Department, 192 Coach Wagoner Boulevard, Apalachicola, FL 32320.
Unincorporated Areas of Franklin County	Franklin County Emergency Management Department, 28 Airport Road, Apalachicola, FL 32320.

[FR Doc. 2023-11809 Filed 6-2-23; 8:45 am]
BILLING CODE 9110-12-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2023-0087;
FXES1114080000-234-FF08EVEN00]

Endangered and Threatened Wildlife and Plants; Draft Habitat Conservation Plan and Draft Categorical Exclusion; Monterey County Water Resources Agency Salinas River Lagoon and Sandbar Management Project, Monterey County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) and draft low effect screening form and environmental action statement (draft screening form) for activities associated with an application for an incidental take permit (ITP) under the Endangered Species Act. The ITP would authorize take of the tidewater goby and western snowy plover incidental to activities associated with management of the Salinas River Lagoon in Monterey County, California. The applicant developed the draft HCP as part of their application for an ITP. The Service prepared a draft low-effect screening form and environmental action statement in accordance with the National Environmental Policy Act to evaluate the potential effects to the natural and human environment resulting from issuing an ITP to the applicant. We invite the public and

local, State, Tribal, and Federal agencies to comment on these documents.

DATES: Written comments should be received on or before July 5, 2023.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS-R8-ES-2023-0087 at <https://www.regulations.gov>.

Submitting Written Comments: Please send us your written comments using one of the following methods:

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2023-0087.
- *U.S. mail:* Public Comments Processing; Attn: FWS-R8-ES-2023-0087; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041-3803.

FOR FURTHER INFORMATION CONTACT: Mark Ogonowski, Senior Fish and Wildlife Biologist, by email or U.S. mail (see **ADDRESSES**), or via phone at (805) 677-3350. 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), announce the availability of a draft habitat conservation plan (HCP) and draft low-effect screening form and environmental action statement (draft screening form) for activities associated with an application for an incidental

take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The ITP would authorize take of the tidewater goby (*Eucyclogobius newberryi*) and the Pacific Coast distinct population segment (DPS) of the western snowy plover (*Charadrius nivosus nivosus*) incidental to activities associated with management of the Salinas River Lagoon and sandbar in Monterey County, California, to prevent flooding of adjacent lands. The applicant developed the draft HCP as part of their application for an ITP. In addition, the HCP anticipates impacts to the federally threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*), and proposes avoidance and minimization measures for all three covered species and mitigation for unavoidable temporary loss of suitable habitat. The Service prepared a draft screening form in accordance with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) to evaluate the potential effects to the natural and human environment resulting from issuing an ITP and implementing the draft HCP in order to determine if the action fits within the criteria for a categorical exclusion under NEPA. We invite public comment on all of these documents.

Background

The Service listed the Monterey spineflower as threatened on February 4, 1994 (59 FR 5499), tidewater goby as endangered on March 7, 1994 (59 FR 5494), and Pacific Coast DPS of the western snowy plover as threatened on March 5, 1993 (58 FR 12864). Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered (16 U.S.C. 1538), where take is defined to

include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). The take prohibitions of section 9 are extended to species listed as threatened at the discretion of the Secretary of the Department of the Interior and were extended at listing to the western snowy plover DPS.

Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. Issuance of an ITP also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The Service designated revised critical habitat for the tidewater goby on February 6, 2013 (78 FR 8746). The project site includes 131.7 acres (ac) of tidewater goby critical habitat unit MN–2, representing approximately 28 percent of unit MN–2 and 1 percent of critical habitat designated for the species rangewide. The Service designated revised critical habitat for the Pacific Coast DPS of the western snowy plover on June 19, 2012 (77 FR 36728). The project site includes 95.2 ac of western snowy plover critical habitat unit CA–22, representing approximately 10 percent of unit CA–22 and less than 1 percent of critical habitat designated for the Pacific Coast DPS rangewide. The Service designated revised critical habitat for the Monterey spineflower on January 9, 2008 (73 FR 1525). There is no Monterey spineflower critical habitat within the project site.

Proposed Activities

The applicant has applied for a permit for incidental take of the tidewater goby and the Pacific Coast DPS of the western snowy plover. The take would occur in association with activities implemented periodically to manage the water surface elevation in the Salinas River Lagoon in Monterey County, California, during storm events in order to avoid or minimize flooding of adjacent agricultural lands and residences. Project activities would include moving a bulldozer or excavator onto the beach on the seaward side of the Salinas River Lagoon to excavate a pilot channel in

the lagoon sandbar. Rising flood waters would then break through a sand plug left in the channel, connecting the Salinas River to the ocean and preventing a further rise in lagoon elevation. The applicant anticipates that up to five breaching events would be conducted during the 5-year project period and all project effects are expected to be temporary.

The HCP includes avoidance and minimization measures for the Monterey spineflower, tidewater goby, and Pacific Coast DPS of the western snowy plover and mitigation for unavoidable temporary loss of habitat for each species. As mitigation for temporary loss of up to 0.19 ac of Monterey spineflower habitat for each breaching event, the applicant proposes to fund the removal of invasive species on 1 ac of suitable habitat on Salinas River State Beach. As mitigation for expected take of up to five tidewater gobies during each breaching event, the applicant would fund two research projects developed in collaboration with the Service to provide a greater understanding of tidewater goby in the Salinas River Lagoon and larger Salinas Valley to support recovery goals:

- A study of goby reproductive patterns and population dynamics in the Lagoon
- A regional eDNA analysis of goby distribution in the Salinas River and connected waterways to evaluate occupancy and the potential presence of nearby source or refuge populations

As mitigation for expected take of up to one western snowy plover nest (three eggs or three chicks) over the 5-year permit term and temporary loss of up to 0.35 ac of western snowy plover habitat for each breaching event, the applicant proposes to contribute funding to California State Parks’ breeding season habitat management and public education and outreach programs at Salinas River State Beach, which may include installation of symbolic fencing and signage around nesting areas, interpretive signs at major trailheads, and animal-proof trash receptacles at trailheads and beach access points, and direct public outreach.

Public Availability of Comments

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 view, we

cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Stephen Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2023–11894 Filed 6–2–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23LR000F60100; OMB Control Number 1028–0062/Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Industrial Minerals 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 U.S. Geological Survey (USGS) is proposing to renew an Information Collection with a revision to add a new ‘Rare Gases’ canvass.

DATES: Interested persons are invited to submit comments on or before July 5, 2023.

ADDRESSES: Send your comments on this Information Collection Request (ICR) to the Office of Management and Budget’s 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 by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028–0062 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 March 3, 2023 (88 FR 13458–13459). 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 personal identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to these forms supply the USGS with domestic production- and consumption data for industrial mineral commodities, some of which are considered strategic and critical, to assist in determining National Defense Stockpile goals. These data and derived information will be published as chapters in Mineral Yearbooks, monthly Mineral Industry

Surveys, annual Mineral Commodity Summaries, and special publications for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public.

The USGS Mineral Resources Program is submitting this **Federal Register** Notice as a revision to add a new 'Rare Gases Sold or Used' annual canvass to this ICR and estimates an additional 20 respondents with an average estimated burden time per form of 30 minutes. Based on technology advances, rare gases have become an important component of the U.S. supply chain with few suppliers or functional substitutes, a high risk of supply-chain disruption, and fluctuation-sensitive markets.

Title of Collection: Industrial Minerals Surveys.

OMB Control Number: 1028–0062.

Form Number: Various (39 USGS forms).

Type of Review: Renewal with a revision of a currently approved collection.

Respondents/Affected Public: Businesses or Other For-Profit Institutions: U.S. nonfuel minerals producers and consumers of industrial minerals. Public sector: State- and local governments.

Total Estimated Number of Annual Respondents: 14,630.

Total Estimated Number of Annual Responses: 17,073.

Estimated Completion Time per Response: For each form, we will include an average burden time ranging from 10 minutes to 5 hours.

Total Estimated Number of Annual Burden Hours: 11,736.

Respondent's Obligation: Voluntary.

Frequency of Collection: Monthly, quarterly, semiannually, or annually.

Total Estimated Annual Non-hour Burden Cost: There are no "non-hour cost" burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA, the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98

et seq.), and the Defense Production Act (50 U.S.C. 2061 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2023–11849 Filed 6–2–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO#4500170433]

Notice of Intent To Prepare an Environmental Impact Statement and Potential Resource Management Plan Amendment for the Bonanza Solar Project in Clark and Nye Counties, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Nevada State Office intends to prepare an Environmental Impact Statement (EIS) and potential associated amendments to the 1998 Las Vegas Resource Management Plan (RMP) for the proposed solar development referred to as the Bonanza Solar Project. EDF Renewables Development Inc. is proposing to build the Bonanza Solar Project in Clark and Nye counties, Nevada. Publication of this notice initiates the scoping process and a 45-day public comment period to solicit public comments on the scope of the analysis, including issues and alternatives, and to solicit public comments on the planning criteria.

DATES: The BLM requests the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information, and studies by July 20, 2023. To afford the BLM the opportunity to consider issues raised by commenters in the Draft 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 expects to hold a combination of virtual and in-person scoping meetings during the 45-day scoping period. The BLM will provide the public at least 15-days' notice prior to the workshops.

ADDRESSES: You may submit comments on issues related to the Bonanza Solar Project by any of the following methods:

- *Website:* <https://eplanning.blm.gov/eplanning-ui/project/2020905/510>.
- *Email:* Bonanzasolar@blm.gov.
- *Mail:* BLM, Nevada State Office, Attn: Renewable Energy Coordination

Office, 1340 Financial Boulevard, Reno, Nevada 89502.

The website also contains available documents relevant to the planning process for the Bonanza Solar Project.

FOR FURTHER INFORMATION CONTACT:

Brian Buttazoni, Planning & Environmental Specialist, telephone (775) 861-6491; address 1340 Financial Boulevard, Reno, NV 89502; email Bonanzasolar@blm.gov. Contact us at this email address 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. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2020, EDF Renewables Development Inc. filed an Application for Transportation, Utility Systems, Telecommunications, and Facilities on Federal Lands and Property (Standard Form 299) and a preliminary Plan of Development (POD) with the BLM for a Federal Land Policy and Management Act of 1976 (FLPMA) right-of-way (ROW) authorization for the Bonanza Solar Project (NVN-100224). The requested ROW would be for the construction, operation and maintenance, and eventual decommissioning of a 300 megawatt (MW) alternating current solar photovoltaic power generating facility with a 300 MW battery energy storage system on approximately half of the 5,133-acre application area located approximately five miles west of Indian Springs in Clark and Nye counties, Nevada. Additionally, the application includes an approximately five and one-half mile gen-tie line that would tie into the existing GridLiance Innovation Substation. The proposed facilities would be located entirely on lands administered by the BLM.

The 5,133-acre application area is on lands identified as variance areas in the 2012 Western Solar Plan. The BLM has satisfied the requirements of the Western Solar Plan for evaluating this application through the variance process, including preliminary meetings and public outreach. On August 22, 2022, the BLM initiated a 30-day public input period for the variance process, which ended on September 22, 2022. During that period, the BLM hosted three virtual input sessions, one for

agencies and Tribal Nations on September 1, 2022, and two for the public on September 7 and 8, 2023. The BLM received approximately 35 comments during the public input period. The BLM Director signed a variance concurrence memo in April 2023, which allowed the project to move forward with the environmental analysis.

On December 12, 2022, the BLM published a Notice of Land Segregation in the **Federal Register**, which segregated the lands within the application area from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years, subject to valid existing rights (87 FR 76081).

Purpose and Need for the Proposed Action

In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and FLPMA, the BLM intends to complete an EIS for this project. The BLM has also determined that it will be necessary to evaluate the need for Resource Management Plan Amendments (RMPA) for this project, and as a result the document will be a combined EIS/RMPA following the requirements of the BLM's land use planning regulations. The EIS/RMPA will consider amending the 1998 Las Vegas Resource Management Plan to evaluate whether the re-classification of visual resources management class iii to class iv is warranted, and whether the re-alignment of existing RMP corridors is warranted.

The BLM's preliminary purpose and need for this Federal action is to respond to a right-of-way application submitted by EDF Renewables Development Inc. under title V of FLPMA (43 U.S.C. 1761) to construct, operate, maintain, and eventually decommission a 300 MW alternating current solar photovoltaic power generating facility; a 300 MW battery energy storage system on approximately half of the 5,133-acre application area; and a five and one-half mile gen-tie line located approximately five miles west of Indian Springs in Clark and Nye Counties, Nevada, in compliance with FLPMA, the BLM right-of-way regulations, 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 and sustained yield that consider the long-term needs of future generations for renewable and non-renewable resources. The BLM is authorized to grant ROWs on public

lands for systems of generation, transmission, and distribution of electrical energy (section 501(a)(4)).

Planning criteria are the standards, rules, and other factors developed by managers and interdisciplinary team members for use in forming judgements about decision making, analysis, and data collection during the planning process. The BLM has identified some preliminary planning criteria to guide development of the RMP amendments, to avoid unnecessary data collection and analysis, and to ensure the RMP amendments are tailored to the issues. These criteria may be modified and/or other criteria may be identified during the public scoping process. The following preliminary specific planning criteria will help guide the planning process:

Criteria 1: The BLM will use a systematic interdisciplinary approach to integrate physical, biological, economic, and other sciences.

Criteria 2: The BLM will use the best available data regarding natural resources.

Criteria 3: The BLM will consider the present and potential uses of public lands, and where existing RMP decisions are valid, those decisions will remain unchanged.

Criteria 4: The BLM will consider the relative scarcity of values and availability of alternative means and sites for recognizing those values.

Criteria 5: Any plan amendments will be completed in compliance with FLPMA, NEPA, and all other relevant Federal laws, executive orders, and BLM policies.

Criteria 6: The BLM will seek coordination and consistency with other government programs including Tribal plans and policies.

Criteria 7: Existing land use planning decisions will not change unless specifically amended.

Criteria 8: Any RMP amendments will recognize valid existing rights.

Preliminary Proposed Action and Alternatives

The Proposed Action is to authorize a ROW to EDF Renewables Development Inc. to construct, operate, and eventually decommission the proposed solar project, including associated facilities, with the potential to generate 300 MW of alternating current energy on public lands.

Additional action alternatives have not been identified to date but would be developed by taking into consideration comments and input submitted during the public outreach process and public scoping.

Under the No Action Alternative, the BLM would not issue a ROW for the proposed solar project and associated facilities. The proposed project would not be constructed, and existing land uses in the application area would continue. Additionally, the BLM would not undertake a RMPA to evaluate the re-classification of visual resources management designations and re-alignment of RMP utility corridors.

The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional reasonable alternatives.

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 43 CFR part 2800 application evaluation determination process. Through this process, the BLM gathered input from an interdisciplinary team of resource specialists pursuant to the requirements of the Western Solar Plan and completed public, agency, and tribal outreach during a 32-day input period. From the input received, the expected impacts from construction, operation, maintenance, and eventual decommissioning of the solar project, and associated facilities and the RMPA could include:

- Vegetation and soils.
- Threatened & endangered species, and Bureau sensitive species.
- Air quality and climate.
- Cultural and historical resources.
- Water resources.
- Access to public lands.
- Socioeconomics.
- Public health and safety.

Anticipated Permits and Authorizations

Along with a BLM ROW, as required under 43 CFR 2801.9, EDF Renewables Development Inc. 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 the Nevada Department of Wildlife; Temporary Discharge Permits and Working in Waterways Temporary Permit from the Nevada Division of Environmental Protection; Permit to Construct from the Nevada Public Utilities Commission; water rights modification permits from the Nevada Division of Water Resources; Hazardous Materials Storage permit from the Nevada State Fire Marshal; and Clark and Nye county permits, as

necessary. Further details on these permitting requirements may be found in the POD which is available on the project website at: <https://eplanning.blm.gov/eplanning-ui/project/2020905/510>.

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 EIS/RMPA and concurrent 30-day public protest period and 60-day Governor's consistency review on the Final EIS and Proposed RMPA. The Draft EIS/RMPA is anticipated to be available for public review in winter 2023, and the Final EIS and Proposed RMPA is anticipated to be available for public protest in spring 2024 with an Approved RMPA and Record of Decision (ROD) in the summer of 2024.

Public Scoping Process

This Notice of Intent initiates the scoping period, which guides the development and analysis of the Draft EIS/RMPA.

The BLM expects to hold two in-person scoping meetings and one virtual meeting. The specific date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through the project <https://eplanning.blm.gov/eplanning-ui/project/2020905/510>.

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 Bonanza Solar Project and potential 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 Nevada State Office is the lead agency for this EIS and RMPA. The BLM has initially identified the following agencies and organizations as potential Cooperating Agencies to participate in the environmental analysis of the Project: Bureau of Indian Affairs, Department of the Air Force, Department of Defense, U.S. Environmental Protection Agency Region 9, U.S. Fish and Wildlife Service, Nevada Department of Transportation, Big Pine Paiute Tribe of Owens Valley, Bishop Paiute Tribe, Chemehuevi Indian Tribe, Colorado River Indian Tribes, Fort Independence Indian Community of Paiute Indians, Fort Mojave Indian Tribe, Kaibab Band of Paiute Indians, Las Vegas Paiute Tribe, Lone Pine Paiute-Shoshone Tribe, Moapa Band of Paiutes, Paiute Indian Tribe of Utah, San Juan Southern Paiute Tribe, Timbisha Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Utu Utu Gwaitu Paiute Tribe, Nevada Department of Wildlife, Nevada Division of Environmental Protection, Nevada Division of Minerals, Nevada Division of State Lands, Clark County, and Nye County. Additional agencies and organizations may be identified as potential Cooperating Agencies to participate in the environmental analysis of the Project.

Responsible Official

The Nevada State Director is the deciding official for the proposed Bonanza Solar Project.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the EIS 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 (greenhouse gases), environmental justice, geology/mineral resources, hydrology, invasive/non-native species, lands and realty, public health and safety, recreation, 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 all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate

mitigation measures not already included in the proposed 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 the NEPA process 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 project 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 Manual Section 1780, and other policies. Tribal concerns, including impacts on Indian 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 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.

Nature of Decision To Be Made

The BLM will decide whether to grant, grant with conditions, or deny the ROW application. Pursuant to 43 CFR 2805.10, if the BLM issues a ROW, the BLM decision maker may include terms, conditions, and stipulations determined to be in the public interest. The BLM will make the decision as to whether or not to approve any RMP amendments, in accordance with BLM policy about delegation of authorities. In the ROD, the BLM will clearly distinguish the RMPA decision from the selected alternative for the proposed solar development project.

Personal Identifying Information

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. Comments submitted anonymously will be accepted and considered.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the public scoping period and should clearly articulate the reviewer's concerns.

(Authority: 40 CFR 1501.7 and 43 CFR part 2800.)

Christopher Bush,

Acting Nevada State Director.

[FR Doc. 2023-11872 Filed 6-2-23; 8:45 am]

BILLING CODE 4331-21-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-23-028]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 9, 2023 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701-TA-689 and 731-TA-1618 (Preliminary) (Non-Refillable Steel Cylinders from India). The Commission currently is scheduled to complete and file its determinations on June 12, 2023; views of the Commission currently are scheduled to be completed and filed on June 20, 2023.
5. Commission vote on Inv. Nos. 701-TA-686-688 and 731-TA-1612-1617 (Preliminary) (Brass Rod from Brazil, India, Israel, Mexico, South Africa, and South Korea). The Commission currently is scheduled to complete and file its determinations on June 12, 2023; views of the Commission currently are

scheduled to be completed and filed on June 20, 2023.

6. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Acting Supervisory Hearings and Information Officer, 202-205-2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 1, 2023.

Sharon Bellamy,

Acting Supervisory Hearings and Information Officer.

[FR Doc. 2023-11976 Filed 6-1-23; 11:15 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1353]

Certain Pick-Up Truck Folding Bed Cover Systems and Components Thereof (III); Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") granting the complainants' motion for leave to amend the complaint and notice of investigation to change the names of several respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be

obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 27, 2023, the Commission instituted this investigation based on a complaint, as supplemented, filed on behalf of Extang Corporation of Ann Arbor, Michigan and UnderCover Inc. of Rogersville, Missouri (together, "Complainants"). 88 FR 12422 (Feb. 27, 2023). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pick-up truck folding bed cover systems and components thereof that infringe certain claims of U.S. Patent Nos. 7,188,888; 7,484,788; 8,061,758; 7,537,264; 8,182,021; 8,690,224; and 9,815,358. *Id.* The complaint also alleged that a domestic industry exists. *Id.* The Commission's notice of investigation names as respondents: 4 Wheel Parts of Compton, California; American Trucks of Lenexa, Kansas; Auto Dynasty a/k/a Shun Fung Int'l Inc. of City of Industry, California; AUTOSTARLAND Technology (US) Inc. of Riverside, California; DNA Motoring of City of Industry, California; Fanciest Pickup Accessories of Riverside, California; Future Trucks a/k/a Future Trading Company, LLC of Houston, Texas; Ikon Motorsports Inc. of City of Industry, California; Jiaying Kscar Auto Accessories Co., Ltd. a/k/a KSC Auto of Pinghu City, China; Kiko Kikito of Ruian City, China; Lyon Cover Auto a/k/a Truck Tonneau Covers of Wenzhou City, China; Mamoru Cover, a/k/a Ningbo Surpass Auto Parts Co., Ltd. of Ningbo City, China; MOSTPLUS Auto, of Hong Kong, China; Newpowa America, Inc. of Ontario, California; New Home Materials, Inc. of Riverside, California; OEDRO of Kent, Washington; Pickup Zone, a/k/a Dai Qun Feng of Riverside, California; RDJ Trucks, LLC of Talmo, Georgia; Smittybilt, Inc. of Compton, California; Trek Power, Inc. of Placentia, California; and Wenzhou Tianmao Automobile Parts Co., Ltd. of Wenzhou City, China. *Id.* The Office of Unfair Import Investigations ("OUII") is participating in this investigation. *Id.*

On April 21, 2023, Complainants filed an unopposed motion to amend the complaint and notice of investigation to change the names of several respondents based on information obtained after the filing of the complaint. Specifically, Complainants sought to: (1) change the names of current respondents 4 Wheel Parts and

Smittybilt, Inc. to TAP Worldwide, LLC d/b/a 4 Wheel Parts; (2) change the name of current respondent MOSTPLUS Auto to Ultimate Motor Parts Limited; (3) change the name of current respondent OEDRO to Hong Kong Yintatech Network Co., Ltd. a/k/a OEDRO; (4) change the name of current respondent Ikon Motorsports, Inc. to Advance Tuning, LLC d/b/a Ikon Motorsports, Inc.; (5) change the names of current respondents AUTOSTARLAND Technology (US), Inc. and Pickup Zone a/k/a Dai Qun Feng to Autostarland Technology (US), Inc. dba Pickup Zone; (6) change the name of current respondent Mamoru Cover a/k/a Ningbo Surpass Auto Parts Co., Ltd. to Ningbo Surpass Auto Parts Co., Ltd.; (7) change the name of current respondent American Trucks to American Trucks Inc. and Turn 5 d/b/a American Trucks; (8) change the name of current respondent Kiko Kikito to Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Kikito and Rui'an Yiming Trading Co. Ltd.; and (9) change the name of current respondent Lyon Cover Auto a/k/a Truck Tonneau Covers to Wenzhou Tianmao Automobile Parts Co., Ltd. DBA Lyon Cover and Wenzhou Chaoming Auto Parts Co., Ltd. On May 1, 2023, OUII filed a response in support of the motion.

On May 4, 2023, pursuant to Commission Rules 210.14(b)(1) and 210.21(a)(1) (19 CFR 210.14(b)(1) and 210.21(a)(1)), the ALJ issued the subject ID granting leave to amend the complaint and notice of investigation to make the above changes. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID.

The Commission vote for this determination took place on May 30, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 31, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-11860 Filed 6-2-23; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[OMB Number 1110-0076]

Agency Information Collection Activities; Proposed eCollection eComments Requested; FBI Education and Training for Law Enforcement Officers

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Federal Bureau of Investigation, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on March 29, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until July 5, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Denielle Johnson, Unit Chief, Evaluation and Certification Unit, Training Division, FBI Academy, email address djohnson2@fbi.gov, and telephone number 703-632-1000.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number 1110–0076. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.
2. *Title of the Form/Collection:* FBI Education and Training for Law Enforcement Officers.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no form number associated with this information collection. The applicable component is the Training Division.
4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* State, Local and Tribal Governments. Abstract: This collection will gather feedback from graduates to determine if the training received from the has made an impact on their agency.
5. *Obligation to Respond:* Voluntary.
6. *Total Estimated Number of Respondents:* 8,250.
7. *Total Estimated Number of Responses:* 8,250.
8. *Time per Response:* 10 minutes.
9. *Total Estimated Annual Time Burden:* 1,375 hours.
10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice,

Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: May 18, 2023.

John R. Carlson,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–11832 Filed 6–2–23; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines

ACTION: Notice.

SUMMARY: The Department of Labor’s (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled, “Unemployment Insurance (UI) State Quality Service Plan (SQSP) Planning and Reporting Guidelines.” This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by August 4, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Delores Ferrell by telephone at 202–693–3183 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at Ferrell.Delores@dol.gov.

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4519, Washington, DC 20210; by email: Ferrell.Delores@dol.gov; or by Fax: 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Delores Ferrell by telephone at 202–693–3183 (this is not a toll-free number) or by email at Ferrell.Delores@dol.gov.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The SQSP is an approach to the unemployment insurance performance management and planning process that allows for an exchange of information between the Federal and state partners to enhance the ability of the UI program to reflect the joint commitment to performance excellence and client-centered services. As part of UI Performs, a comprehensive performance management system implemented in 1995 for the UI program, SQSP is the principal vehicle that state UI agencies use to plan, record, and manage program improvement efforts as they strive for excellence in service. SQSP also serves as the state plan for the UI program and serves as the grant document through which states receive Federal UI administrative funding. SQSP links program performance with the budget and planning process.

The Department’s information collection authority for SQSP is under Office of Management and Budget (OMB) number 1205–0132. ETA proposes to revise this information collection to improve the clarity of the documentation and instructions and update the estimated burden based on more recent operating activity. Currently, ETA is soliciting comments concerning the proposed modification to the ET Handbook No. 336, 18th Edition; Unemployment Insurance (UI) State Quality Service Plan (SQSP). ETA is providing specific guidance on the submittal of the SQSP.

The SQSP, with its State Plan Narrative, Corrective Action Plans (CAPs), and Integrity Action Plan (IAP), is the state’s formal plan and schedule for improving performance. States will continue to use the State Plan Narrative to provide a general summary of the UI program in the state. The Department expects each state to address its planned actions to correct deficiencies for Secretary Standards, Core Measures, and UI programs are expected in CAPs. The Department requires each state to submit one CAP for each deficiency. Based on FY 2022 data, states submitted a total of 874 CAPs. This is an increase of 397 CAPs compared to FY 2020 data.

The Secretary of Labor is authorized to provide funds to administer the UI

program and to govern the expenditures of those funds. Sections 302 and 303(a)(8) and (9), of the Social Security Act, authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0132.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

Agency: DOL-ETA.

Type of Review: Extension with revisions.

Title of Collection: Unemployment Insurance (UI) State Quality Service

Plan (SQSP) Planning and Reporting Guidelines.

Form: ET Handbook No. 336, 18th Edition.

OMB Control Number: 1205-0132.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Biennial, Annual, and Quarterly.

Total Estimated Annual Responses: 1,701.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden

Hours: 4,496 hours.

Total Estimated Annual Other Cost Burden: \$0.

(Authority: 44 U.S.C. 3506(c)(2)(A))

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023-11835 Filed 6-2-23; 8:45 am]

BILLING CODE 4510-FW-P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet virtually on June 27, 2023. The meeting will commence at 11:00 a.m. EDT and will continue until the conclusion of the Committee's agenda.

PLACE:

Public Notice of Virtual Meeting: LSC will conduct the June 27, 2023 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Finance Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Joining

June 27, 2023

To join the Zoom meeting by computer, please use this link.

- <https://lsc-gov.zoom.us/j/82139132833?pwd=dEVSK29vWVBWVGfhZkZEL1Rsd296dz09&from=addon>
- *Meeting ID:* 821 3913 2833
- *Passcode:* 062723

• To join the Zoom meeting with one tap from your mobile phone, please click dial:

- +13017158592,,82139132833# US (Washington, DC)
- +13126266799,,82139132833# US (Chicago)

• To join the Zoom meeting by telephone, please dial one of the following numbers:

- +1 301 715 8592 US (Washington, DC)
- +1 646 876 9923 US (New York)
- +1 312 626 6799 US (Chicago)
- +1 346 248 7799 US (Houston)
- +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- *Meeting ID:* 821 3913 2833
- *Passcode:* 062723

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Finance Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Meeting Agenda
2. Discussion with LSC Leadership Regarding Recommendations for the Organization's Fiscal Year 2025 Budget Request
3. Discussion with Leadership from the Office of Inspector General (OIG) for the Legal Services Corporation Regarding OIG's Fiscal Year 2025 Budget Request
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Adjournment of Meeting

CONTACT PERSON FOR MORE INFORMATION:

Cheryl DuHart, Administrative Coordinator, at (202) 295-1621. Questions may also be sent by electronic mail to duhartc@lsc.gov.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at <https://www.lsc.gov/about-lsc/board-meeting-materials>.

(Authority: 5 U.S.C. 552b.)

Dated: May 31, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations, Legal Services Corporation.

[FR Doc. 2023-11961 Filed 6-1-23; 11:15 am]

BILLING CODE 7050-01-P

LEGAL SERVICES CORPORATION**Sunshine Act Meetings**

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet virtually on June 12, 2023. The meeting will commence at 10:30 a.m. EDT and will continue until the conclusion of the Committee's agenda.

PLACE:

Public Notice of Virtual Meeting: LSC will conduct the June 12, 2023 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Finance Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Joining

June 12, 2023

To join the Zoom meeting by computer, please use this link.

- <https://lsc-gov.zoom.us/j/88527065662?pwd=Q0hPMiBuTnJaaHZUWFpwRk5M0h1Zz09&from=addon>
 - Meeting ID: 885 2706 5662
 - Passcode: 61223
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
 - +13017158592,,88527065662# US (Washington, DC)
 - +16468769923,,88527065662# US (New York)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
 - +1 301 715 8592 US (Washington, DC)
 - +1 646 876 9923 US (New York)
 - +1 312 626 6799 US (Chicago)
 - +1 346 248 7799 US (Houston)
 - +1 408 638 0968 US (San Jose)
 - +1 669 900 6833 US (San Jose)
 - +1 253 215 8782 US (Tacoma)
 - Meeting ID: 885 2706 5662
 - Passcode: 61223

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Finance Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the

'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda
2. Approval of minutes of the Finance Committee's meeting on March 27, 2023
3. Approval of minutes of the Combined Audit and Finance Committee Meeting on March 27, 2023
4. Public comment regarding LSC's Fiscal Year 2024 Budget Request
5. Public Comment on Other Matters
6. Consider and Act on Other Business
7. Consider and Act on Adjournment of Meeting

CONTACT PERSON FOR MORE INFORMATION:

Cheryl DuHart, Administrative Coordinator, at (202) 295-1621. Questions may also be sent by electronic mail to duhartc@lsc.gov.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at <https://www.lsc.gov/about-lsc/board-meeting-materials>.

(Authority: 5 U.S.C. 552b.)

Dated: May 31, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations, Legal Services Corporation.

[FR Doc. 2023-11958 Filed 6-1-23; 11:15 am]

BILLING CODE 7050-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022-74; CP2022-77]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 6, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. Docket No(s): CP2022-74; Filing Title: USPS Notice of Amendment to

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 11, Filed Under Seal; Filing Acceptance Date: May 26, 2023; Filing Authority: 39 CFR 3035.105; Public Representative: Christopher C. Mohr; Comments Due: June 6, 2023.

2. Docket No(s): CP2022-77; Filing Title: USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 14, Filed Under Seal; Filing Acceptance Date: May 26, 2023; Filing Authority: 39 CFR 3035.105; Public Representative: Christopher C. Mohr; Comments Due: June 6, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023-11843 Filed 6-2-23; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, June 8, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and
Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: June 1, 2023.

Vanessa A. Countryman,
Secretary.

[FR Doc. 2023-12089 Filed 6-1-23; 4:15 pm]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-516, OMB Control No. 3235-0574]

Proposed Collection; Comment Request; Extension: Rule 3a-8

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.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget for extension and approval.

17 CFR 270.3a-8 (rule 3a-8 of the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Act")), serves as a nonexclusive safe harbor from investment company status for certain research and development companies ("R&D companies").

The rule requires that the board of directors of an R&D company seeking to rely on the safe harbor adopt an appropriate resolution evidencing that the company is primarily engaged in a non-investment business and record that resolution contemporaneously in its minute books or comparable documents.¹ An R&D company seeking to rely on the safe harbor must retain these records only as long as such records must be maintained in accordance with state law.

¹ Rule 3a-8(a)(6) (17 CFR 270.3a-8(6)).

Rule 3a-8 contains an additional requirement that is also a collection of information within the meaning of the PRA. The board of directors of a company that relies on the safe harbor under rule 3a-8 must adopt a written policy with respect to the company's capital preservation investments. We expect that the board of directors will base its decision to adopt the resolution discussed above, in part, on investment guidelines that the company will follow to ensure its investment portfolio is in compliance with the rule's requirements.

The collection of information imposed by rule 3a-8 is voluntary because the rule is an exemptive safe harbor, and therefore, R&D companies may choose whether or not to rely on it. The purposes of the information collection requirements in rule 3a-8 are to ensure that: (i) the board of directors of an R&D company is involved in determining whether the company should be considered an investment company and subject to regulation under the Act, and (ii) adequate records are available for Commission review, if necessary. Rule 3a-8 would not require the reporting of any information or the filing of any documents with the Commission.

Commission staff estimates that there is no annual recordkeeping burden associated with the rule's requirements. Nevertheless, the Commission requests authorization to maintain an inventory of one burden hour for administrative purposes.

Commission staff estimates that approximately 537,619 R&D companies may take advantage of rule 3a-8.² Given that the board resolutions and investment guidelines will generally need to be adopted only once (unless relevant circumstances change),³ the Commission believes that all the R&D companies that existed prior to the adoption of rule 3a-8 adopted their board resolutions and established written investment guidelines in 2003 when the rule was adopted. We expect that R&D companies formed subsequent to the adoption of rule 3a-8 would adopt the board resolution and investment guidelines simultaneously with their formation documents in the

² See National Science Foundation, National Center for Science and Engineering Statistics, Business Enterprise Research and Development, 2020 Data Tables, Table 10, available at: <https://nces.nsf.gov/pubs/nsf23314>.

³ In the event of changed circumstances, the Commission believes that the board resolution and investment guidelines will be amended and recorded in the ordinary course of business and would not create additional time burdens.

ordinary course of business.⁴ Therefore, we estimate that rule 3a–8 does not impose additional burdens.

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 August 4, 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: May 30, 2023.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–11808 Filed 6–2–23; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–6317]

Notice of Intention To Cancel Registration Pursuant to Section 203(H) of the Investment Advisers Act of 1940

May 30, 2023.

Notice is given that the Securities and Exchange Commission (the “Commission”) intends to issue an order, pursuant to Section 203(h) of the Investment Advisers Act of 1940 (the “Act”), cancelling the registration of The Swarthmore Group, Inc., File No. 801–58069, hereinafter referred to as the “registrant.”

Section 203(h) provides, in pertinent part, that if the Commission finds that

any person registered under Section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant appears to be no longer in business as an investment adviser and has not filed its most recent Form ADV amendment with the Commission as required by rule 204–1 under the Act.¹ Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by June 26, 2023, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at Secretarys-Office@sec.gov.

At any time after June 26, 2023, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission:
Secretarys-Office@sec.gov.

FOR FURTHER INFORMATION CONTACT: Juliet Han, Senior Counsel at 202–551–6999; SEC, Division of Investment Management, Office of Chief Counsel,

100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023–11821 Filed 6–2–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97618; File No. SR–Phlx–2023–19]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7 To Establish Pricing for Index Options on the Nasdaq-100 ESG Index

May 30, 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 May 16, 2023, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7 to adopt pricing for index options on the Nasdaq-100 ESG Index, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

⁴ In order for these companies to raise sufficient capital to fund their product development stage, Commission staff believes that they will need to present potential investors with investment guidelines. Investors generally want to be assured that the company's funds are invested consistent with the goals of capital preservation and liquidity.

¹ Rule 204–1 under the Act requires any adviser that is required to complete Form ADV to amend the form at least annually and to submit the amendments electronically through the Investment Adviser Registration Depository.

² 17 CFR 200.30–5(e)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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 recently received approval to list index options on the Nasdaq-100 ESG Index (“NDXESG options”).³ The Nasdaq-100 ESG Index is a broad based, modified ESG Risk Rating Score-adjusted market-capitalization-weighted index that is designed to measure the performance of the companies in the Nasdaq-100 Index (“NDX”) that meet specific environmental, social and governance (“ESG”) criteria.⁴ The Nasdaq-100 ESG Index at all times consists of a selection of securities in NDX.⁵ These options would trade under the symbol “EXGN.”

Options 7, Section 5

The Exchange now proposes to amend its Pricing Schedule at Options 7, Section 5 to adopt pricing for NDXESG options. Specifically, the Exchange proposes to establish transaction fees for NDXESG that are identical to the transaction fees for NDX and NDXP. The Exchange proposes to amend Section 5.A of Options 7 to assess the following fees Options Transaction Charges: \$0.00 for Customer⁶ orders, \$0.75 per contract for Professional,⁷ Lead Market Maker,⁸

³ See Securities Exchange Act Release No. 97506 (May 15, 2023) (Sr-Phlx-2023-09) (Order Granting Approval of Proposed Rule Change to Permit the Listing and Trading of Options on the Nasdaq-100 ESG Index) (not yet published).

⁴ Companies are evaluated and weighted on the basis of their business activities, controversies and ESG Risk Ratings.

⁵ See https://indexes.nasdaqomx.com/docs/methodology_NDXESG.pdf.

⁶ The term “Customer” applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (“OCC”) which is not for the account of a broker or dealer or for the account of a “Professional” (as that term is defined in Options 1, Section 1(b)(45)).

⁷ The term “Professional” applies to transactions for the accounts of Professionals, as defined in Options 1, Section 1(b)(45) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Options 7, Section 1(c).

⁸ The term “Lead Market Maker” applies to transactions for the account of a Lead Market Maker (as defined in Options 2, Section 12(a)). A Lead Market Maker is an Exchange member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). An options Lead Market Maker includes a Remote Lead Market Maker which is defined as an options Lead Market

Market Maker,⁹ Broker-Dealer¹⁰ and Firm¹¹ orders. Similar to NDX and NDXP, a surcharge of \$0.25 per contract will be assessed to Non-Customers who transact EXGN.

Other Changes to Options 7

By way of background, the proprietary products listed within Options 7, Section 5.A, NDX, NDXP, XND, and VOLQ, are commonly excluded from a variety of pricing programs. The Exchange notes that the reason for such exclusion is because the Exchange has expended considerable resources developing and maintaining its proprietary products. NDXESG would be excluded from the same pricing once it is added to the list of proprietary products within Options 7, Section 5.A as NDXESG is also a proprietary product. Each exclusion is discussed below.

Today, the Customer Rebates in Options 7, Section 2 of the Pricing Schedule are not paid on broad-based index options symbols listed within Options 7, Section 5.A. However, broad-based index options symbols listed within Options 7, Section 5.A. will count toward the volume requirement to qualify for a Customer Rebate Tier. The Exchange proposes to apply the Customer Rebate program in the same manner for NDXESG.

Today, Options 7, Section 4 pricing for electronic orders (both simple and complex orders) excludes broad-based index options symbols listed within Options 7, Section 5.A. Also, broad-based index options symbols listed within Options 7, Section 5.A are excluded from a variety of fee programs in Options 7, Section 4 including, the

Maker in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 7, Section 1(c). The term “Floor Lead Market Maker” is a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a) and has a physical presence on the Exchange’s trading floor. See Options 8, Section 2(a)(3).

⁹ The term “Market Maker” is defined in Options 1, Section 1(b)(28) as a member of the Exchange who is registered as an options Market Maker pursuant to Options 2, Section 12(a). A Market Maker includes SQTs and RSQTs as well as Floor Market Makers. See Options 7, Section 1(c). The term “Floor Market Maker” is a Market Maker who is neither an SQT or an RSQT. A Floor Market Maker may provide a quote in open outcry. See Options 8, Section 2(a)(4).

¹⁰ The term “Broker-Dealer” applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. See Options 7, Section 1(c).

¹¹ The term “Firm” applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation. See Options 7, Section 1(c).

“Monthly Market Maker Cap,”¹² “Monthly Firm Fee Cap,”¹³ facilitation orders pursuant to Options 8, Section 30,¹⁴ BD-Customer Facilitation,¹⁵ “Strategy Caps,” and Marketing Fees.

Broad-based index options symbols listed within Options 7, Section 5.A. are not subject to Options 7, Section 6.A. PIXL¹⁶ Pricing.

Today, broad-based index options symbols listed within Options 7, Section 5.A are not assessed the FLEX transaction fees set forth in Options 7, Section 6.B, because broad-based index options symbols listed within Options 7, Section 5.A are not considered Eligible Contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁸ in particular, in that it provides for the equitable allocation of

¹² Lead Market Makers and Market Makers are subject to a “Monthly Market Maker Cap” of \$500,000 for: (i) electronic Option Transaction Charges, excluding surcharges and excluding options overlying broad-based index options symbols listed within Options 7, Section 5.A; and (ii) QCC Transaction Fees (as defined in Exchange Options 3, Section 12 and Floor QCC Orders, as defined in Options 8, Section 30(e)). See Options 7, Section 4.

¹³ Firms are subject to a \$200,000 “Monthly Firm Fee Cap”. Firm Floor Option Transaction Charges and QCC Transaction Fees, in the aggregate, for one billing month that exceed the Monthly Firm Fee Cap per member or member organization, when such members or member organizations are trading in their own proprietary account, are subject to a reduced transaction fee of \$0.02 per capped contract unless there is no fee or the fee is waived. See Options 7, Section 4.

¹⁴ The Firm Floor Options Transaction Charges are waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members are trading in their own proprietary account (including Cabinet Options Transaction Charges). The Firm Floor Options Transaction Charges are waived for the buy side of a transaction if the same member or its affiliates under Common Ownership represents both sides of a Firm transaction when such members are trading in their own proprietary account. See Options 7, Section 4.

¹⁵ Broker-Dealer Floor Options Transaction Charges (including Cabinet Options Transaction Charges) are waived for members executing facilitation orders pursuant to Options 8, Section 30 when such members would otherwise incur this charge for trading in their own proprietary account contra to a Customer (“BD-Customer Facilitation”), if the member’s BD-Customer Facilitation average daily volume (including both FLEX and non-FLEX transactions) exceeds 10,000 contracts per day in a given month. See Options 7, Section 4.

¹⁶ A member may electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity (“PIXL Order”) against principal interest or against any other order it represents as agent (an “Initiating Order”) provided it submits the PIXL Order for electronic execution into the PIXL Auction (“Auction”) pursuant to Options 3, Section 13.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Options 7, Section 5

The Exchange believes it is reasonable to assess the proposed Options Transaction Charge and Non-Customer surcharge as discussed above for EXGN because the proposed pricing reflects the exclusive and proprietary nature of this product. Similar to NDX and NDXP the Exchange continues to expend resources to build and list proprietary products. Further, the Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, XND, or EXGN or separately execute options overlying PowerShares QQQ Trust ("QQQ").¹⁹ Offering such proprietary products provides market participants with a variety of choices in selecting the product they desire to utilize in order to transact in the Nasdaq-100 Index. These transaction fees enable Phlx to innovate and offer new proprietary products, which in turn incentivizes growth and competition for the innovation of additional products in the options industry. Further, the Exchange believes that the proposed rates for EXGN are reasonable because the proposed fees are identical to fees assessed for NDX and NDXP.

The Exchange believes that the proposed rates for EXGN are equitable and not unfairly discriminatory because the Exchange will assess this fee uniformly to all Non-Customers. The Exchange similarly believes that the proposed \$0.25 per contract surcharge is equitable and not unfairly discriminatory because it will apply uniformly to all Non-Customers. The Exchange believes it is equitable and not unfairly discriminatory to assess no transaction fees to Customers for EXGN because Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Lead Market Makers and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Other Fee Programs

Excluding EXGN from the same pricing programs as all other proprietary products within Options 7, Section 5.A is reasonable because the Exchange seeks to treat EXGN in the same manner as other proprietary products. More specifically, NDX, NDXP, and XND, and now EXGN, represent similar options on the same underlying Nasdaq-100 Index.

It is reasonable to not pay Customer Rebates on EXGN in any rebate category because this index option will be exclusively listed on Phlx only. The original intent of the Customer Rebate Program was to pay rebates on electronically-delivered multiply-listed options. By definition, EXGN will not be a multiply-listed option, and the Exchange does not desire to pay rebates on EXGN because of the exclusivity of this option. While the Exchange will not pay any Customer Rebates on EXGN transactions, the Exchange also believes it is reasonable to count EXGN in the total volume to qualify a market participant for these rebates as market participants would be incentivized to transact in EXGN to qualify for the Customer Rebate Tiers. The Exchange believes that its proposal to not pay Customer Rebates on EXGN, but to count EXGN volume toward the volume requirement to qualify for a rebate tier is equitable and not unfairly discriminatory because the Exchange would apply the rebate program as described uniformly for all market participants. Any market participant is eligible to earn a Customer Rebate.

The Exchange believes that the proposed updates in Options 7, Section 4 in connection with the application of certain fee programs to EXGN are reasonable, equitable, and not unfairly discriminatory. Particularly, the Exchange believes that it is reasonable to exclude EXGN from the Non-Penny complex surcharge in note 7 of Options 7, Section 4, the Monthly Market Maker Cap, the Monthly Firm Fee Cap, the Floor Options Transaction Charge waivers, the Strategy Caps, and the Marketing Fees in the same manner in which NDX and NDXP are currently excluded from the same programs today. The Exchange believes it is appropriate to update these fee programs in a manner that similarly situates EXGN with NDX and NDXP as these are all proprietary products that are based on the Nasdaq-100 Index. In addition, similar to NDX and NDXP, the Exchange seeks to exclude EXGN from programs that cap or waive transaction fees for market participants. As it relates to the Marketing Fee, the Exchange believes it is reasonable to exclude EXGN from this

fee, similar to NDX and NDXP today, because the purpose of the Marketing Fee is to generate more Customer order flow to the Exchange. Because EXGN will be an exclusively listed product on Phlx, the Exchange does not believe that applying a Marketing Fee is necessary for this product. The Exchange's proposal to exclude EXGN from the various fee programs in Options 7, Section 4 as discussed above is equitable and not unfairly discriminatory because the programs will uniformly exclude all market participant orders in EXGN. The Exchange notes that its proposal does not alter any of the existing fee programs, but instead merely proposes to exclude EXGN in those programs in the same way that NDX and NDXP are currently excluded.

The Exchange's proposal to exclude EXGN from PIXL pricing in Options 7, Section 6.A is reasonable because the Exchange intends to assess the same fees across the board for EXGN transactions. This will align the pricing structure for EXGN with NDX and NDXP. The proposed changes are equitable and not unfairly discriminatory because the Exchange will uniformly exclude EXGN from PIXL pricing for all market participants, and instead uniformly charge them the Options 7, Section 5.A pricing.

The Exchange believes that its proposal to assess FLEX EXGN options the Options Transaction Charges and Non-Customer options surcharge in Options 7, Section 5.A is reasonable because the Exchange intends to assess the same fees across the board for EXGN transactions. Specifically, the Exchange will apply the proposed EXGN options surcharge of \$0.25 per contract to Non-Customers in FLEX EXGN options. Further, the Exchange will apply the proposed EXGN Options Transaction Charges of \$0.75 per contract (Non-Customer) and \$0.00 per contract (Customer) to FLEX EXGN options. FLEX NDX and NDXP options are likewise assessed the same Options Transaction Charge and Non-Customer options surcharge that NDX and NDXP options are assessed today. The Exchange's proposal is equitable and not unfairly discriminatory because the Exchange will uniformly apply these fees to FLEX EXGN options to all similarly situated market participants.

The Exchange believes it is reasonable to exclude EXGN from Eligible Contracts for purposes of qualifying for a MARS Payment in the same manner in which NDX and NDXP are currently excluded today. The Exchange believes it is appropriate to update its MARS program in a manner that similarly

¹⁹QQQ is an exchange-traded fund based on the same Nasdaq-100 Index as NDX, NDXP, and XND.

situates EXGN with its other proprietary products, NDX and NDXP, which are all based on the Nasdaq-100 Index. The Exchange believes that its proposal is equitable and not unfairly discriminatory because the Exchange will uniformly exclude EXGN from MARS for all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. The Exchange notes that with its products, market participants are offered an opportunity to transact in NDX, NDXP, XND, or EXGN, or separately execute options overlying QQQ. Offering these products provides market participants with a variety of choices in selecting the product they desire to utilize to transact in the Nasdaq-100 Index.

Further, the Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed EXGN pricing will apply uniformly to all similarly situated market participants. Specifically, all Non-Customers will be assessed a uniform Options Transaction Charge and options surcharge while Customers receive free executions. As discussed above, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts other market participants, thus facilitating tighter spreads and increased order flow.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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-Phlx-2023-19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2023-19. 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-Phlx-2023-19 and should be submitted on or before June 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-11823 Filed 6-2-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, June 7, 2023 at 10:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at www.sec.gov.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at www.sec.gov.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt rules under the Securities Exchange Act of 1934 ("Exchange Act") that are designed to prevent fraud, manipulation, and deception in connection with transactions in security-based swaps as well as to prevent the personnel of a security-based swap dealer or major security-based swap participant from taking actions to coerce, mislead, or otherwise interfere with such entity's chief compliance officer.

2. The Commission will consider whether to adopt rule amendments to Regulation M under the Exchange Act that remove certain existing rule exceptions that reference credit ratings and substitute in their place new exceptions that are based on alternative standards of creditworthiness.

3. The Commission will consider whether to approve a proposed amendment to the CAT NMS Plan to implement a revised funding model ("Executed Share Model") for the consolidated audit trail ("CAT") and to establish a fee schedule for Participant CAT fees in accordance with the Executed Share Model.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 200.30-3(a)(12).

CONTACT PERSON FOR MORE INFORMATION:

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Authority: 5 U.S.C. 552b.

Dated: May 31, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023-11960 Filed 6-1-23; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97620; File No. SR-BX-2023-013]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Options 3 Rules and Options 5, Section 4

May 30, 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 May 16, 2023, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 3, Options Trading Rules, at: Section 4 Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Quote Protocols; Section 8, Options Opening Process; Section 11, Auction Mechanisms; Section 13, Price Improvement Auction (“PRISM”); Section 15, Risk Protections; and Options 3, Section 18, Detection of Loss of Communication. The Exchange also proposes to amend Options 5, Section 4, Order Routing.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

BX proposes to amend Options 3, Options Trading Rules, at: Section 4, Entry and Display of Quotes; Section 5, Entry and Display of Orders; Section 7, Types of Orders and Quote Protocols; Section 8, Options Opening Process; Section 11, Auction Mechanisms; Section 13, Price Improvement Auction (“PRISM”); Section 15, Risk Protections; and Options 3, Section 18, Detection of Loss of Communication. The Exchange also proposes to amend Options 5, Section 4, Order Routing. Each change will be discussed below. The amendments proposed herein seek to codify the current System functionality. The proposed amendments will not result in System changes.

Option 3, Sections 4 and 5

The Exchange proposes to codify existing functionality that allows Market Makers to submit their quotes to the Exchange in block quantities as a single bulk message. In other words, a Market Maker may submit a single message to the Exchange, which may contain bids and offers in multiple series. The Exchange’s current rules do not specify bulk messaging for orders. The Exchange has historically provided Market Makers with information regarding bulk messaging in its publicly available technical specifications.³ To promote greater transparency, the Exchange is seeking to codify this functionality in its Rulebook. Specifically, the Exchange proposes to amend BX Options 3, Section 4(b)(3) to memorialize that quotes may be

³ See https://www.nasdaq.com/docs/2023/01/12/0054-Q23_SQF_8.2b%20akg_NAM.pdf (specifying for bulk quoting of up to 200 quotes per quote block message). The specifications note in other places the manner in which a Participant can send such quote block messages.

submitted as a bulk message. The Exchange also proposes to add a definition of “bulk message” in new subparagraph (i) of Options 3, Section 4(b)(3), which will provide that a bulk message means a single electronic message submitted by a Market Maker to the Exchange which may contain a specified number of quotations as designated by the Exchange.⁴ The bulk message, submitted via SQF,⁵ may enter, modify, or cancel quotes. Bulk messages are handled by the System in the same manner as it handles a single quote message. MRX recently added bulk messages to MRX Options 3, Section 4(b)(3).⁶ The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(3) will not result in a System change.

The Exchange also proposes to amend BX Options 3, Section 4(b)(6) to provide the following,

A quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through, violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) *as non-displayed*, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

Where a quote is re-priced to avoid a locked or crossed market, the best bid or offer will be non-displayed and the re-priced order will be displayed at a price that is one minimum trading increment inferior to the ABBO. A similar change is proposed for Options 3, Section 5(d). MRX recently amended Options 3,

⁴ *Id.* As noted above, quote bulk messages can presently contain up to 200 quotes per message. This is the maximum amount that is permitted in a bulk message. The Exchange would announce any change to these specifications in an Options Technical Update distributed to all Participants.

⁵ “Specialized Quote Feed” or “SQF” is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying instruments); (2) System event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. See Options 3, Section 7(e)(1)(B).

⁶ See Securities Exchange Act, Release No. 95982 (October 4, 2022), 87 FR 61391 (October 11, 2022) (SR-MRX-2022-18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) (“SR-MRX-2022-18”).

Section 4(b)(6) and Options 3, Section 5(d) to include this language.⁷ At this time, the Exchange proposes to amend BX's rule text to reflect that the actual price remains non-displayed in this scenario. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(6) will not result in a System change.

Similarly, the Exchange proposes to add a new BX Options 3, Section 4(b)(7) to clarify that, today, BX's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO")⁸ if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6). This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes.⁹ MRX recently amended Options 3, Section 4(b)(7) to include the same language.¹⁰ At this time, the Exchange proposes to align BX's rule text in Options 3, Section 4(b)(7) to MRX's rule text in Options 3, Section 4(b)(7). The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(7) will not result in a System change.

Finally, the Exchange proposes to amend BX Options 3, Section 5(c) to include a citation to Options 3, Section 4(b)(6) as the internal BBO is comprised of both orders and quotes, similar to MRX.¹¹

The amendments proposed to Options 3, Sections 4 and 5 do not change the current System functionality.

Options 3, Section 7

The Exchange proposes to amend the title of BX Options 3, Section 7 from "Types of Orders and Quote Protocols" to "Types of Orders and Order and Quote Protocols" so that it may align BX's title to MRX Options 3, Section 7.

The Exchange proposes to amend BX Options 3, Section 7(a)(9) to add the word "Order" after "PRISM". This is a non-substantive technical amendment to align the term to its usage within Options 3, Section 13.

⁷ See Securities Exchange Act, Release No. 95807 (September 16, 2022), 87 FR 57933 (September 22, 2022) (SR-MRX-2022-16) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Rules in Connection With a Technology Migration to Enhanced Nasdaq Functionality) ("SR-MRX-2022-16").

⁸ The internal BBO refers to the Exchange's non-displayed book.

⁹ The Exchange also proposes to re-number current Options 3, Section 4(b)(7) as (8).

¹⁰ See SR-MRX-2022-16.

¹¹ *Id.*

The Exchange proposes to amend the rule text of BX Options 3, Section 7(a)(8), related to an Opening Sweep,¹² and (b)(1), related to Opening Only¹³ or "OPG" orders, to reflect a current System function. The Exchange proposes to specify that these order types are subject to the Market Wide Risk Protection within Options 3, Section 15. The Market Wide Risk Protection within Options 3, Section 15(a)(1)(C) automatically removes orders when certain firm-set thresholds are met. Specifically, the Market Wide Risk Protection requires all Participants to provide parameters for the order entry and execution rate protections. Today, the Market Wide Risk Protection applies to Opening Sweep Orders and OPG Orders, similar to other order types, and allows BX Participants to manage their exposure to risk in the Opening Process, described in Options 3, Section 8, as well as intra-day. The Market Wide Risk Protection is designed to reduce risk associated with System errors or market events that may cause Participants to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. Specifically, the availability of Market Wide Risk Protection during the Opening Process assists Participants in managing their pre-open risk. The proposed amendments to BX Options 3, Section 7(a)(8) and (b)(1) will not result in a System change.

The Exchange proposes to amend the rule text at BX Options 3, Section 7(b)(2)(C) to add Block Orders¹⁴ and Customer Cross Orders¹⁵ to Options 3, Section 7(b)(2)(C) and replace the term "Price Improvement Auction ("PRISM") Mechanism" with "PRISM Orders." The proposed sentence would state that "Block Orders, Customer Cross Orders, and PRISM Orders are considered to have a TIF of IOC." In 2020, BX adopted Block Orders and Customer Cross Orders in a technology migration.¹⁶ At

¹² An Opening Sweep is a one-sided order entered by a Market Maker through SQF for execution against eligible interest in the System during the Opening Process.

¹³ An OPG order is entered with a TIF of "OPG." This order can only be executed in the Opening Process pursuant to Options 3, Section 8. See Options 3, Section 7(b)(1).

¹⁴ A "Block Order" is an order entered into the Block Order Mechanism as described in Options 3, Section 11(a). See Options 3, Section 7(a)(11).

¹⁵ A "Customer Cross Order" is as described in Options 3, Section 12(a). See Options 3, Section 7(a)(10).

¹⁶ See Securities Exchange Act, Release No. 89759 (September 3, 2020), 85 FR 55886 (September 10, 2020) (SR-BX-2020-023) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules in Connection With a Technology Migration to Enhanced Nasdaq, Inc. Functionality) ("SR-BX-2020-023"). See also

that time, the Exchange should have added those order types to this list. At this time, the Exchange proposes to update this list to include these order types. Further, the Exchange proposes to state that, "By their terms, these orders will be: (1) executed either on entry or after the exposure period, or (2) cancelled." The additional language is being added because Customer Cross Orders may be executed upon entry, provided all the terms are satisfied. This proposed change aligns BX's rule text to MRX's rule text at Supplementary Material .02(d)(3) of Options 3, Section 7. The proposed amendments to BX Options 3, Section 7(b)(2)(C) will not result in a System change.

Finally, the Exchange proposes to amend the description of Specialized Quote Feed or "SQF" within BX Options 3, Section 7(e)(1)(B) to add rule text which states, "Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, Market Order Spread Protection, or Size Limitation Protection in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively." This rule text is currently noted within Options 3, Section 7(b)(2) above. The Exchange is adding the same language into the description of SQF to provide a more complete description. The addition of this information would align the level of information of BX's rule text to MRX's rule text at Supplementary Material .03(c) to Options 3, Section 7. The proposed amendment to BX Options 3, Section 7(e)(1)(B) will not result in a System change.

The amendments proposed to Options 3, Section 7 do not change the current System functionality.

Options 3, Section 8

The Exchange proposes to amend BX Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price.¹⁷ Today, Section 8(h)(1) provides that when two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the System takes the highest and lowest of those prices and takes the mid-point; if such mid-point is not expressed as a permitted minimum price variation, it

Securities Exchange Act, Release No. 89476 (August 4, 2020), 85 FR 482274 (August 10, 2020) (SR-BX-2020-017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various BX Rules in Connection With a Technology Migration) ("SR-BX-2020-017").

¹⁷ The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.

will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session. If there is no closing price from the immediately prior trading session, the System will round up to the minimum price variation to determine the Opening Price. BX began rounding up when the Exchange modified certain functionality during a technology migration.¹⁸ Various parts of the BX rules were amended to reflect that BX was rounding up.¹⁹ The Exchange inadvertently did not amend Options 3, Section 8(h)(1) to reflect that BX was rounding up. At this time, the Exchange proposes to amend the current language to reflect that it no longer rounds in the direction of the previous trading day's closing price. Instead, today, the System simply rounds up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation. This proposed change is intended to bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series. This change is identical to a change recently made in MRX Options 3, Section 8(g).²⁰ The proposed amendment to BX Options 3, Section 8(h)(1) will not result in a System change.

The Exchange further proposes to amend BX Options 3, Section 8(j)(3), which currently describes the determination of Opening Quote Range ("OQR") boundaries in certain scenarios.²¹ Specifically, the Exchange proposes to replace "are marketable against the ABBO" with "cross the ABBO" to precisely describe the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).²² The proposed amendment to BX Options 3, Section 8(j)(3) will not result in a System change.

The Exchange proposes to amend BX Options 3, Section 8(k), which currently describes the Price Discovery

Mechanism.²³ First, the Exchange proposes to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other." Options 3, Section 8(d)(3) provides that the Opening Process will stop and an option series will not open, if the ABBO becomes crossed. Once this condition no longer exists, the Opening Process in the affected option series will start again pursuant to paragraphs (f)–(k) below. Further, where the internal quotes are crossed, Options 8, Section 8(i) rules apply. At the time that Options 3, Section 8(k)(1)(A) is applicable, the BX System has sent an Imbalance Message and the System would disseminate an Imbalance Message showing "0" volume and "\$0.00" price if no executions are possible, but routable interest is priced at or through the ABBO. Internal quotes would not be crossing each other at this point in the Opening Process. The Exchange proposes to remove this language which describes a scenario involving crossed orders.²⁴ The proposed amendment to BX Options 3, Section 8(k)(1)(A) will not result in a System change.

Second, the Exchange proposes to amend BX Options 3, Section 8(k)(4) to align BX's rule text with that of MRX Options 3, Section 8(j)(6)(i) by stating "Pursuant to Options 3, Section 8(k)(3)(F), the System will re-price Do Not Route Orders (that would otherwise have to be routed to the exchange(s) disseminating the ABBO for an opening to occur) to *the current away best offer (for bids) or the current away best bid (for offers) as non-displayed, and display at a price that is one minimum trading increment inferior to the ABBO, and disseminate the re-priced DNR Order as part of the new BBO.*" The proposed language more explicitly describes the manner in which the Exchange will re-price orders and would mirror rule text in BX Options 3, Section 4(b)(6). The proposed amendment to BX Options 3, Section 8(j)(6)(i) will not result in a System change.

Options 3, Section 11

The Exchange proposes to amend BX Options 3, Section 11 which describes the Block Order Mechanism. First, the Exchange proposes to amend the

introductory paragraph to Options 3, Section 11 to add a new sentence which states, "Responses submitted by Participants shall not be visible to other auction participants during the exposure period and can be modified or deleted before the exposure period has ended." This rule text is intended to provide greater clarity regarding responses that are entered into the Exchange's Block Order Mechanism. In 2020, BX adopted the Block Order Mechanism,²⁵ which it copied from Nasdaq ISE, LLC ("ISE") Options 3, Section 11. The proposed rule text within ISE Options 3, Section 11 concerning responses should also have been adopted at that time as the functionalities are identical. The proposed amendment to the introductory paragraph to BX Options 3, Section 11 will not result in a System change.

Second, the Exchange proposes to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments. Specifically, the Exchange proposes to state that with respect to Penny Prices, orders and Responses may be entered into the Block Order Mechanism and receive executions at penny increments. Orders and quotes in the market that receive the benefit of the block execution price under paragraph (a)(2)(A) may also receive executions at penny increments. When BX copied MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.²⁶ The proposed amendment to the introductory paragraph to BX Options 3, Section 11(a)(4) will not result in a System change.

Options 3, Section 13

The Exchange proposes to amend BX Options 3, Section 13 related to its Price Improvement Auction or "PRISM" to include the concept of "internal BBO" within the order entry checks. Specifically, the Exchange proposes to amend Options 3, Section 13(i)(A)–(C) to add the words "internal BBO"²⁷ where the NBBO is described. MRX recently added the same language to its Price Improvement Auction within Options 3, Section 13(b)(1) and (2).²⁸ The proposed changes will conform these order entry check to the concept of re-pricing at an internal BBO as

¹⁸ See SR–BX–2020–017.

¹⁹ *Id.*

²⁰ See SR–MRX–2022–18.

²¹ OQR is an additional type of boundary used in the Opening Process, and is intended to limit the opening price to a reasonable, middle ground price, thus reducing the potential for erroneous trades during the Opening Process.

²² See SR–MRX–2022–18.

²³ The Price Discovery Mechanism is a process that the Exchange will undergo in the instance where the Exchange has not Opened with a BBO or Trade. The Price Discovery Mechanism will attempt to identify an Opening Price by attempting to satisfy the maximum number of contracts possible.

²⁴ The Exchange also proposes to take out (i) earlier in the sentence as unnecessary with the removal of (ii).

²⁵ See SR–BX–2020–023.

²⁶ *Id.* MRX adopted this rule text in its Form 1 Application. See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10–221).

²⁷ The internal BBO refers to the Exchange's non-displayed book.

²⁸ See SR–MRX–2022–18.

described within Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the PRISM Order measures the difference between the NBBO or the internal BBO to be \$0.01. Today, the Exchange utilizes the internal BBO to determine PRISM eligibility. The proposed amendment to the introductory paragraph of BX Options 3, Section 13(i)(A)–(C) will not result in a System change.

Additionally, the Exchange proposes to make a non-substantive amendment to replace the word “crosses” within BX Options 3, Section 13(ii)(B)(ii) with “improves beyond” to conform the word choice to Nasdaq PHLX LLC Options 3, Section 13(b)(2)(B) which similarly describes the interaction between Phlx’s Reference BBO and a stop price. The proposed amendment to Options 3, Section 13(ii)(B)(ii) will not result in a System change.

Options 3, Section 15

MRX recently amended its Order Price Protection (“OPP”) ²⁹ rule to be functionally similar to the OPP functionality on BX. ³⁰ MRX’s OPP rule utilized different rule text to explain the OPP functionality. At this time, the Exchange proposes to amend BX Options 3, Section 15(a)(1) to align BX’s rule text to MRX’s rule text within Options 3, Section 15(a)(1)(A). Specifically, the Exchange proposes to remove the references to “day limit, good til cancelled, and immediate or cancel orders” and, instead, simply refer to “limit” orders as that order type accurately captures the scope of the orders subject to OPP. This change would also make the sentence, “OPP applies to all options but does not apply to market orders,” unnecessary. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

Additionally, the Exchange proposes to amend its Acceptable Trade Range (“ATR”) Rule within BX Options 3, Section 15(b)(1). ³¹ MRX recently amended its ATR rule to harmonize the rule to BX Options 3, Section 15(b)(1). ³² MRX’s ATR rule utilized different rule text to explain the ATR functionality. At this time, the Exchange proposes to amend BX Options 3, Section 15(b)(1) to align BX’s rule text to MRX’s rule text within Options 3, Section 15(b)(1). Specifically, like MRX, BX’s ATR rule

applies to orders and quotes. BX’s rule only discusses quotes, but as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. To that end, first, the Exchange proposes to add the term “quote” or “quotes” as applicable next to the term “order” or “orders” throughout the BX ATR rule. Second, the Exchange proposes to begin the ATR rule text with “After the Opening Process” as this risk protection does not apply during the Opening Process today. This additional rule text provides greater clarity to the rule. Today, the ATR risk protection is not available during the Opening Process. Third, the Exchange proposes to add the concept of “internal BBO” into the ATR rule. The Exchange proposes to update the reference price definition to provide that upon receipt of a new order or quote, the reference price will now be the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. ³³ The Exchange noted within the MRX rule change that its ATR reference price was functionally identical to BX’s ATR reference price. ³⁴ Fourth, the Exchange proposes to amend Options 3, Section 15(b)(1)(A) to add the words “after the Posting Period” to explain when a new ATR would be calculated to provide more context to the rule. ³⁵ Fifth, similar to MRX Options 3, Section 15(a)(2)(A)(v) the Exchange proposes to add the following rule text within BX Options 3, Section 15(b)(1)(C),

There will be three categories of options for Acceptable Trade Range: (1) Penny Interval Program Options trading in one cent increments for options trading at less than \$3.00 and increments of five cents for options trading at \$3.00 or more, (2) Penny Interval Program Options trading in one-cent increments for all prices, and (3) Non-Penny Interval Program Options.

This is how BX operates today. This rule text makes clear the application of BX Options 3, Section 3 to the ATR rule by explicitly stating the Exchange’s ability to set different ATR values by options category. These ATR values are set forth in BX’s System Settings document which is posted online. ³⁶ The

Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 3, Section 18

The Exchange proposes to amend Options 3, Section 18, Detection of Loss of Communication, to correct an error in a prior rule change. In 2019, BX relocated then Chapter VI, Section(e), Detection of Loss of Communication, to Chapter VI, Section 23. ³⁷ BX noted in the rule change that it was not proposing to amend the Detection of Loss Communication rule. ³⁸ In relocating the rule, it appears The Nasdaq Options Market, LLC’s rule was inadvertently copied over instead of BX’s rule. At the time, NOM did offer OTTO. BX has never offered OTTO. The Exchange proposes to reflect the absence of OTTO on BX by deleting rule text related to OTTO within Options 3, Sections 18(a)(1), (a)(3), 18(c), 18(f) and 18(g) and re-lettering the renaming items to reflect those deletions. The proposed amendment to Options 3, Section 18 will not result in a System change.

Options 5, Section 4

Options 5, Section 4 describes the manner in which BX routes orders. The Exchange proposes to amend BX Options 5, Section 4(a) to eliminate the following rule text,

The term “System routing table” refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice.

When ISE filed to amend its routing rules, it copied BX’s Options 5, Section 4 routing rule, except that it did not adopt the aforementioned rule text. ³⁹ At this time, the Exchange proposes to remove this unnecessary term that is not utilized elsewhere within Options 5, Section 4. Removing this rule text will harmonize BX’s Options 5, Section 4 rule with ISE’s Options 5, Section 4. The proposed amendment to Options 5,

³⁷ See Securities Exchange Act Release No. 87270 (October 10, 2019), 84 FR 55631 (October 17, 2019) (SR–BX–2019–033) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BX Rules at Chapter VI, Section 6).

³⁸ *Id.*

³⁹ See Securities Exchange Act Release No. 94894 (May 18, 2022), 87 FR 30294 (May 12, 2022) (SR–ISE–2022–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Functionality in Connection With a Technology Migration).

²⁹ OPP prevents the execution of Limit Orders at prices outside pre-set parameters.

³⁰ See SR–MRX–2022–18.

³¹ ATR is designed to guard against the System from experiencing dramatic price swings by preventing the immediate execution of quotes and orders beyond the thresholds set by the protection.

³² See SR–MRX–2022–16.

³³ The additions of “internal BBO” in this rule text are consistent with the addition of this term elsewhere in the rules.

³⁴ See SR–MRX–2022–16.

³⁵ The Exchange also proposes a technical amendment to add opening parentheses in two places.

³⁶ <https://www.nasdaq.com/docs/BXOptionsSystemSettings>.

Section 4(a) will not result in a System change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) is consistent with the Act as it will codify existing functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion.⁴² This functionality provides Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate, consistent with the purpose of the bulk message functionality to facilitate Market Makers' provision of liquidity. By providing Market Makers with additional control over the quotes they use to provide liquidity to the Exchange, this tool may benefit all investors through additional execution opportunities at potentially improved prices. Today, MRX offers this same functionality within Options 3, Section 4(b)(3). Further, the Exchange does not believe that the offering the bulk message functionality to only Market Makers would permit unfair discrimination. Market Makers play a unique and critical role in the options market by providing liquidity and active markets, and are subject to various quoting obligations which other market participants are not, including obligations to maintain active markets, update quotes in response to changed market conditions, to compete with other Market Makers in its appointed classes, and to provide intra-day quotes in its appointed classes.⁴³ Bulk message functionality provides Market Makers with a means to help them satisfy these obligations. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(3) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 4(b)(6) to make clear that the actual price remains non-displayed during re-pricing is consistent with the Act and removes impediments to and perfects the mechanism of a free and open market and a national market system because it displays a re-priced order that does not lock or cross an away market. The rule text clearly explains that the best bid or offer will be non-displayed and the re-priced order will be displayed. A similar change is proposed for BX Options 3, Section 5(d). MRX recently amended Options 3, Section 4(b)(6) and Options 3, Section 5(d) to include the same language.⁴⁴ The proposed change aligns BX's rule text to MRX's rule text. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(6) will not result in a System change.

The Exchange's proposal to add a new Options 3, Section 4(b)(7) to clarify that, today, BX's System will automatically execute eligible quotes using the Exchange's displayed best bid and offer ("BBO") or the Exchange's non-displayed order book ("internal BBO") if the best bid and/or offer on the Exchange has been repriced pursuant to Options 3, Section 5(d) and Options 3, Section 4(b)(6) is consistent with the Act and protects investors and the public interest. This rule text seeks to codify the current System function and make clear that the internal BBO is comprised of both orders and quotes, both of which are considered for price checks. MRX recently amended Options 3, Section 4(b)(7) to include this language.⁴⁵ The proposed change aligns BX's rule text to MRX's rule text. The proposed amendment to the Rulebook to add BX Options 3, Section 4(b)(7) will not result in a System change.

Options 3, Section 7

The Exchange's proposal to amend the title of Options 3, Section 7 from "Types of Orders and Quote Protocols" to "Types of Orders and Order and Quote Protocols" aligns BX's title to MRX Options 3, Section 7. This change is non-substantive.

The Exchange's proposal to amend Options 3, Section 7(a)(9) to add the word "Order" after "PRISM" is a non-substantive amendment that aligns the term to its usage within BX Options 3, Section 13.

The Exchange's proposal to amend the rule text of Options 3, Section 7(a)(8), related to an Opening Sweep, and (b)(1) related to OPG orders, is consistent with the Act and protects

investors and the general public because the availability of Market Wide Risk Protection during the Opening Process assists Participants in managing their pre-open risk. The Market Wide Risk Protection is designed to reduce risk associated with System errors or market events that may cause Participants to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. The proposed amendments to BX Options 3, Section 7(a)(8) and (b)(1) will not result in a System change.

The Exchange's proposal to amend the rule text of Options 3, Section 7(b)(2)(C) to add Block Orders and Customer Cross Orders to Options 3, Section 7(b)(2)(C) and replace the term "Price Improvement Auction ("PRISM" Mechanism" with "PRISM Orders" is consistent with the Act. In 2020, BX adopted Block Orders and Customer Cross Orders in a technology migration⁴⁶ and should have added those order types to this list. At this time, the Exchange proposes to update this rule to include these order types. Further, the Exchange proposes to state that "By their terms, these orders will be: (1) executed either on entry or after the exposure period, or (2) cancelled." The additional language is being added because Customer Cross Orders may be executed upon entry provided all the terms are satisfied. This proposed change aligns to MRX Supplementary Material .02(d)(3) of Options 3, Section 7. The proposed amendments to BX Options 3, Section 7(b)(2)(C) will not result in a System change.

The Exchange's proposal amends the description of SQF within Options 3, Section 7(e)(1)(B) is consistent with the Act as this rule text is currently noted within Options 3, Section 7(b)(2) above. The addition of this language into the description of SQF provides a more complete description of this protocol. The addition of this information also aligns the level of information with that offered on MRX for SQF within Supplementary Material .03(c) to Options 3, Section 7. The proposed amendment to BX Options 3, Section 7(e)(1)(B) will not result in a System change.

Options 3, Section 8

The Exchange's proposal to amend Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price, is consistent with the Act and protects investors and the public interest. BX began rounding up

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² As discussed above, this existing functionality is currently described in the Exchange's publicly available technical specifications. See *supra* note 3.

⁴³ See Options 2, Sections 4 and 5.

⁴⁴ See SR-MRX-2022-16.

⁴⁵ *Id.*

⁴⁶ See *supra* note 16.

when the Exchange modified certain functionality during a technology migration.⁴⁷ Various parts of the BX rules were amended to reflect that BX was rounding up.⁴⁸ The Exchange inadvertently did not amend Options 3, Section 8(h)(1) to reflect that BX was rounding up. At this time, the Exchange proposes to amend the current language to reflect that it no longer rounds in the direction of the previous trading day's closing price. Today, the System simply rounds up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation. This proposed change is intended to bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series. This change is identical to a change recently made in MRX Options 3, Section 8(g).⁴⁹ The proposed amendment to BX Options 3, Section 8(h)(1) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 8(j)(3), which currently describes the determination of OQR boundaries in certain scenarios is consistent with the Act. Replacing the phrase "are marketable against the ABBO" with "cross the ABBO" serves to precisely describe the specified scenario within in this rule. The Exchange notes that this is not a System change, rather this amendment clarifies the applicability of the rule text. This change is identical to a change recently made on MRX at Options 3, Section 8(i)(3).⁵⁰ The proposed amendment to BX Options 3, Section 8(j)(3) will not result in a System change.

The proposal to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other" remove impediments to and perfect the mechanism of a free and open market and a national market system by removing a scenario from this section of the rule that is covered elsewhere. Options 3, Section 8(d)(3) provides that the Opening Process will stop and an option series will not open, if the ABBO becomes crossed. Once this condition no longer exists, the Opening Process in the affected option series will start again pursuant to paragraphs (f)–(k) below. Further, where the internal quotes are crossed, Options 8, Section 8(i) rules apply. At the time that Options 3,

Section 8(k)(1)(A) is applicable, the BX System has sent an Imbalance Message and the System would disseminate an Imbalance Message showing "0" volume and "\$0.00" price if no executions are possible, but routable interest is priced at or through the ABBO. Internal quotes would not be crossing each other at this point in the Opening Process. The proposed amendment to BX Options 3, Section 8(k)(1)(A) will not result in a System change.

The Exchange's proposal to amend Options 3, Section 8(k)(4) to align BX's rule text with that of MRX Options 3, Section 8(j)(6)(i) is consistent with the Act because it explicitly describes the manner in which the Exchange will re-price orders and mirrors rule text similar to the language within Options 3, Section 4(b)(6). The proposed amendment to BX Options 3, Section 8(j)(6)(i) will not result in a System change.

Options 3, Section 11

The Exchange's proposal to amend the introductory paragraph to Options 3, Section 11 to provide greater clarity regarding responses that are entered into the Exchange's Block Order Mechanism is consistent with the Act and protects investors and the public interest. In 2020, BX adopted the Block Order Mechanism,⁵¹ which it copied from ISE Options 3, Section 11. This rule text concerning responses should also have been adopted at that time as the functionality on BX is identical to that on ISE. The proposed amendment to the introductory paragraph to BX Options 3, Section 11 will not result in a System change.

The Exchange's proposal to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments is consistent with the Act as it will make clear the manner in which minimum increments apply within this mechanism. This language codifies current System behavior. When BX copied the MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.⁵² The proposed amendment to the introductory paragraph to BX Options 3, Section 11(a)(4) will not result in a System change.

Options 3, Section 13

The Exchange's proposal to amend Options 3, Section 13 related to PRISM to include the concept of "internal BBO" within the order entry checks is consistent with the Act and protects

investors and the public interest. The proposed changes will conform these order entry check to the concept of repricing at an internal BBO as described within BX Options 3, Sections 4(b)(6), 4(b)(7), 5(c) and 5(d), and will make clear that the PRISM Order measures the difference between the NBBO or the internal BBO to be \$0.01. MRX recently added the same language to its Price Improvement Auction within Options 3, Section 13.⁵³ The proposed amendment to the introductory paragraph of BX Options 3, Section 13(i)(A)–(C) will not result in a System change.

The Exchange's proposal to replace the word "crosses" within Options 3, Section 13(ii)(B)(ii) with "improves beyond" conforms the word choice to Nasdaq PHLX LLC Options 3, Section 13(b)(2)(B) which similarly describes the interaction between Phlx's Reference BBO and a stop price. The proposed amendment to Options 3, Section 13(ii)(B)(ii) will not result in a System change.

Options 3, Section 15

The Exchange's proposal to amend BX Options 3, Section 15(a)(1) to align BX's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) is consistent with the Act⁵⁴ because removing the references to "day limit, good til cancelled, and immediate or cancel orders and, instead, referring to "limit" orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the remainder of the rule text stating it does not apply to market orders. The proposed amendment to Options 3, Section 15(a)(1) will not result in a System change.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) is consistent with the Act. MRX recently amended its ATR rule to harmonize the rule with BX Options 3, Section 15(b)(1).⁵⁵ MRX's ATR rule utilized different rule text to explain the ATR functionality. Amending BX Options 3, Section 15(b)(1) to align BX's rule text to MRX's rule text within Options 3, Section 15(b)(1) is consistent with the Act because like MRX, BX's ATR rule applies to orders and quotes. BX's rule only discusses quotes, but as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. The Exchange's proposal to begin the rule text with "After the Opening Process" is

⁵³ See SR-MRX-2022-16.

⁵⁴ MRX recently amended its Order Price Protection ("OPP") rule to be functionally similar to the OPP functionality on BX. See SR-MRX-2022-18.

⁵⁵ See SR-MRX-2022-16.

⁴⁷ See SR-BX-2020-017.

⁴⁸ *Id.*

⁴⁹ See SR-MRX-2022-18.

⁵⁰ *Id.*

⁵¹ See SR-BX-2020-023.

⁵² *Id.*

consistent with the Act as this risk protection does not apply during the Opening Process today. This additional rule text provides greater clarity to the rule. The Exchange's proposal to add the concept of "internal BBO" into the ATR rule is consistent with the Act and protects investors and the public interest by specifying that the reference price definition is the better of the NBB or internal best bid for sell orders/quotes and the better of the NBO or internal best offer for buy orders/quotes or the last price at which the order/quote is posted, whichever is higher for a buy order/quote or lower for a sell order/quote. The Exchange noted within the MRX rule change that the proposed additional functionality is identical to BX's ATR reference price.⁵⁶ The Exchange's proposal to amend Options 3, Section 15(b)(1)(A) to add the words "after the Posting Period" to explain when a new ATR would be calculated provides more context to the rule. Adding rule text within BX Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category is consistent with the Act because the ATR risk protection limits the range of prices at which an order and quote trades and would take into account the minimum increment. The ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule. The proposed amendment to Options 3, Section 15(b)(1) will not result in a System change.

Options 3, Section 18

Amending Options 3, Section 18, Detection of Loss of Communication, to delete rule text related to OTTO within Options 3, Sections 18(a)(1), (a)(3), 18(c), 18(f) and 18(g) and re-lettering the renaming items to reflect those deletions is consistent with the Act because it corrects a prior error when this rule was relocated within the Rulebook by placing the replica of the original rule from SR-BX-2019-033 into its Rulebook. The proposed amendment to Options 3, Section 18 will not result in a System change.

Options 5, Section 4

Eliminating an unnecessary term in Options 5, Section 4(a) that is not utilized elsewhere within Options 5, Section 4 which is unnecessary is consistent with the Act as it will remove confusion. The proposed amendment to Options 5, Section 4(a) will not result in a System change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Option 3, Sections 4 and 5

The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on intra-market competition. While the Exchange currently offers this functionality to Market Makers only, bulk messaging is intended to provide Market Makers with an additional tool to meet their various quoting obligations in a manner they deem appropriate. As such, the Exchange believes that this functionality may facilitate Market Makers' provision of liquidity, thereby benefiting all market participants through additional execution opportunities at potentially improved prices. Furthermore, while the Exchange will offer the proposed Post-Only Quote Configuration to Market Makers only, the proposed risk protection will enhance the ability of Market Makers to add liquidity and avoid removing liquidity from the Exchange's order book in the manner described above. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. The Exchange believes that its proposal to memorialize its bulk message functionality within Options 3, Section 4(b)(3) does not impose an undue burden on inter-market competition as other options exchanges may adopt this functionality.

The Exchange's proposal to amend BX's rules at Options 3, Section 4(b)(6) and Options 3, Section 4(b)(7) do not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Options 3, Section 7

The Exchange's proposal to amend the rule text of BX Options 3, Section 7(a)(8), related to an Opening Sweep, and (b)(1), related to OPG orders, does not impose an undue burden on competition because the availability of Market Wide Risk Protection during the Opening Process assists all Participants in managing their pre-open risk.

The Exchange's proposal to amend the rule text at BX Options 3, Section 7(b)(2)(C) to add Block Orders and

Customer Cross Orders to Options 3, Section 7(b)(2)(C) and replace the term "Price Improvement Auction ("PRISM") Mechanism" with "PRISM Orders" does not impose an undue burden on competition as these order types are well established and the manner in which they trade is specified in each of the particular auction rules. This proposed change aligns to MRX Supplementary Material .02(d)(3) of Options 3, Section 7.

Options 3, Section 8

The Exchange's proposal to amend Options 3, Section 8(h)(1), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price, does not impose an undue burden on competition. BX began uniformly rounding up when the Exchange modified certain functionality during a technology migration, this amendment makes clear the System functionality.

The proposal to amend Options 3, Section 8(k)(1)(A) by removing the phrase "or (ii) internal quotes are crossing each other" does not impose an undue burden on intra-market competition because internal quotes would not be crossing each other at this point in the Opening Process. All Participants are subject to the Opening Process rule.

Options 3, Section 11

The Exchange's proposal to amend the introductory paragraph to Options 3, Section 11 does not impose an undue burden on competition, rather it provides greater clarity regarding responses that are entered into the Exchange's Block Order Mechanism. In 2020, BX adopted the Block Order Mechanism,⁵⁷ which it copied from ISE Options 3, Section 11. This rule text concerning responses should also have been adopted at that time as the functionality on BX is identical to that on ISE.

The Exchange's proposal to adopt new rule text within BX Options 3, Section 11(a)(4) related to the Block Order Mechanism with respect to minimum increments does not impose an undue burden on competition as it will make clear the manner in which minimum increments apply within this mechanism. When BX copied the MRX Options 3, Section 11 rule for Block Orders, this language should have been adopted as well.⁵⁸

⁵⁷ See SR-BX-2020-023.

⁵⁸ *Id.*

⁵⁶ *Id.*

Options 3, Section 13

The Exchange's proposal to amend Options 3, Section 13 related to its Price Improvement Auction to include the concept of "internal BBO" within the order entry checks does not impose an undue burden on competition because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Options 3, Section 15

The Exchange's proposal to amend BX Options 3, Section 15(a)(1) to align BX's OPP rule text to MRX's OPP rule text within Options 3, Section 15(a)(1)(A) does not impose an undue burden on competition because removing the references to "day limit, good til cancelled, and immediate or cancel orders and, instead, referring to "limit" orders accurately captures the scope of the orders subject to OPP. This change would also make unnecessary the remainder of the rule text stating it does not apply to market orders.

The Exchange's proposal to amend the ATR Rule within Options 3, Section 15(b)(1) does not impose an undue burden on competition. Like MRX, BX's ATR rule applies to orders and quotes as noted in the title to Options 3, Section 15(b), the ATR risk protection is an order and quote risk protection. Additionally, ATR does not apply during the Opening Process today. Further, adding the concept of "internal BBO" into the ATR rule because all options markets must not trade-through other orders on their markets as well as away markets. The proposed change aligns BX's rule text to MRX's rule text.

Adding rule text within BX Options 3, Section 15(b)(1)(C) to make clear the Exchange's ability to set different ATR values by options category does not impose an undue burden on competition because the ability for the Exchange to set the ATR based on the increment allows the Exchange to set appropriate limits. The Exchange believes this rule text will add greater clarity to the ATR rule.

Options 3, Section 18

Amending Options 3, Section 18, Detection of Loss of Communication, to remove references to OTTO does not impose an undue burden on competition because it corrects a prior error when this rule was relocated within the Rulebook by placing the replica of the original rule from SR-BX-2019-033 into its Rulebook.

Options 5, Section 4

Eliminating an unnecessary reference within amend Options 5, Section 4(a) does not impose an undue burden on competition because the term is not utilized elsewhere within Options 5, Section 4.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁵⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁶⁰

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-BX-2023-013 on the subject line.

⁵⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-BX-2023-013. 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-BX-2023-013, and should be submitted on or before June 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-11822 Filed 6-2-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17949 and #17950; GUAM Disaster Number GU-00009]

Presidential Declaration of a Major Disaster for the Territory of Guam

AGENCY: Small Business Administration.

ACTION: Notice.

⁶¹ 17 CFR 200.30-3(a)(12).

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Territory of Guam (FEMA-4715-DR), dated 05/28/2023.
Incident: Typhoon Mawar.
Incident Period: 05/22/2023 and continuing.

DATES: Issued on 05/28/2023.
Physical Loan Application Deadline Date: 07/27/2023.
Economic Injury (EIDL) Loan Application Deadline Date: 02/28/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/28/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area (Physical Damage and Economic Injury Loans): Territory of Guam.

Contiguous Areas (Economic Injury Loans Only):

None.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17949 8 and for economic injury is 17950 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,
Associate Administrator, Office of Disaster Recovery & Resilience.
 [FR Doc. 2023-11853 Filed 6-2-23; 8:45 am]
BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12090]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Guercino’s Friar With a Gold Earring: Fra Bonaventura Bisi, Painter and Art Dealer” 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 “Guercino’s Friar with a Gold Earring: Fra Bonaventura Bisi, Painter and Art Dealer” at The John and Mable Ringling Museum of Art, Sarasota, Florida, 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: Reed Liriano, Program Coordinator, 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/PA, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,
Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.
 [FR Doc. 2023-11834 Filed 6-2-23; 8:45 am]
BILLING CODE 4710-05-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Xinming Du and Andrew Wilson of Columbia University (WB23-33-5/30/23) for permission to use data from the Board’s annual 1984-2021 unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board’s website under docket no. WB23-33.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board’s Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Tammy Lowery,
Clearance Clerk.
 [FR Doc. 2023-11838 Filed 6-2-23; 8:45 am]
BILLING CODE 4915-01-P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Information Collection Renewal With Minor Modifications; Comment Request

AGENCY: Tennessee Valley Authority (TVA).

ACTION: 60-Day notice of submission of information collection renewal approval with minor modifications and request for comments.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Tennessee Valley Authority (TVA) will be requesting from the Office of Management and Budget (OMB) renewal, with minor modifications, of TVA’s Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. This generic clearance will fast-track the process for TVA to seek feedback and input from the public, through surveys and other instruments, regarding TVA services and programs as well as community needs and concerns. The clearance will also allow the collection of registration information for public forums, events, and other opportunities for public engagement.

DATES: Comments should be sent to the Public Information Collection Clearance Officer no later than August 4, 2023.

ADDRESSES: Requests for information, including copies of the information

collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK-320, Knoxville, Tennessee 37902-1401; telephone (865) 632-6580 or by email at pra@tva.gov.

SUPPLEMENTARY INFORMATION:

Type of Request: Renewal with minor modification.

Title of Information Collection: Generic Clearance for the Collection of Qualitative Feedback and Input on Agency Services and Program Delivery and Registration.

OMB Control Number: 3316-0114.

Current Expiration Date: July 31, 2023.

Type of Affected Public: Individuals and Households, Businesses and Organizations, State, Local and Tribal Governments.

Frequency of Collection: On occasion. *Small Businesses or Organizations Affected:* Yes.

Federal Budget Functional Category Code: 455.

Estimated Number of Annual Responses: 10,000.

Estimated Total Annual Burden Hours: 5,000.

Estimated Average Burden Hours per Response: 0.50.

Need For and Use of Information:

Abstract: Renewal of this information collection will enable TVA to obtain qualitative customer and stakeholder feedback and input in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery and enable the public to register for public forums, events, and other opportunities. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback and input will provide TVA with insights into customer or stakeholder perceptions, experiences, and expectations; help TVA quickly identify actual or potential problems with how the agency provides services to the public; focus attention on areas where communication, training, or changes in operations might improve TVA's delivery of its products or services; and engage the public on community needs and concerns to guide the direction of new products and services. These collections will allow for ongoing, collaborative, and actionable communications between TVA and its customers and

stakeholders. It will also allow feedback and input to contribute directly to the improvement of program management. TVA will solicit feedback and input in areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, resolution of issues with service delivery, impacts of events, community needs and concerns, and interest in new programs and services. TVA will use the responses to plan and inform its efforts to improve or maintain the quality of service and programs offered to the public and chart the direction of new programs and offerings. TVA will use the registration information for logistical planning for public events, required access control to government property, and connection to service and program offerings. If this information is not collected, TVA will not have access to vital feedback and input from customers and stakeholders about the agency's services and programs and the public will not have access to TVA-sponsored events, programs, or services. TVA will only submit an information collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- The collections are targeted to the solicitation of feedback and input from respondents who have experience with the program or who may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and will not be retained beyond the immediate need;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, TVA will indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information, and the collections will not be designed or expected to yield statistically reliable results or used as though the results are

generalizable to the population of study. Feedback collected under this generic clearance provides useful information, but will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Rebecca L. Coffey,

Agency Records Officer.

[FR Doc. 2023-11807 Filed 6-2-23; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2022-1739]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Airport Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2023. The collection involves gathering data from airport sponsors and planning agencies to determine eligibility, ensure compliance with Federal requirements, and ensure proper use of Federal funds and project accomplishments for the Airport Improvement Program and Bipartisan Infrastructure Law (BIL) programs. Submission is required to receive funds. **DATES:** Written comments should be submitted by July 5, 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.

FOR FURTHER INFORMATION CONTACT: Kay Ryder by email at: kay.ryder@faa.gov; phone: 202-267-3831.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-0569.

Title: Airport Grants Program.

Form Numbers: FAA Forms 5100-100, 5100-101, 5100-108, 5100-110, 5100-126, 5100-127, 5100-128, 5100-129, 5100-130, 5100-131, 5100-132, 5100-133, 5100-134, 5100-135, 5100-136, 5100-137, 5100-138, 5100-139, 5100-140, 5100-141, 5100-142, 5100-145, 5370-1. Standard Forms 424, 425, 425A, 1445. DOL Form 347.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2023 (88 FR 900).

Codification of certain U.S. Transportation laws at 49 U.S.C., repealed the Airport and Airway Improvement Act of 1982, as amended, and the Aviation Safety and Noise Abatement Act of 1979, as amended, and re-codified them without substantive change at Title 49 U.S.C., which is referred to as the “Act.” The Act provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The Act also authorizes funds for noise compatibility planning and to carry out noise compatibility programs. The Infrastructure Investment and Jobs Act, referred to as the Bipartisan Infrastructure Law (BIL), provided approximately \$20 billion for airport infrastructure, terminal development, including multimodal terminal development and on-airport rail access projects, and airport owned towers. The information required by these programs is necessary to protect the Federal interest in safety, efficiency, and utility of the Airport. Data is collected to meet reporting requirements of 2 CFR part

200 for certifications of domestic preferences and representations, financial management and performance measurement.

Respondents: Approximately 22,362.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 8.2 hours.

Estimated Total Annual Burden: Approximately 182,675 hours.

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

Kay Ryder,

Manager, AIP Finance Branch Office of Airports, Airports Financial Assistance Division.

[FR Doc. 2023-11964 Filed 6-1-23; 11:15 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: **FAA-2023-0474**]

Agency Information Collection Activities: Requests for Comments; Clearance of Approval of Continuing Information Collection: Privacy International Civil Aviation Organization (ICAO) Address (PIA) Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about their intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2023. This is a correction to a previously published notice with the incorrect closing date. The collection involves an aircraft operator’s request for a privacy ICAO address through a web-based application process. The information to be collected is necessary to qualify for the authorized use of the privacy ICAO address services and for monitoring to support continued airworthiness and enforcement activities.

DATES: Written comments should be submitted by July 5, 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.

By mail: Send comments to FAA at the following address: Mr. Evan Setzer, Program Manager, Service and Broadcast Services (AJM-42), Program Management Organization, Federal Aviation Administration, 600 Independence Ave. SW, Wilbur Wright Building, Washington, DC 20597

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Mr. Jamal Wilson, Surveillance and Broadcast Services, AJM-42, PIA Project Lead at 202-267-4301, or at jamal.wilson@faa.gov.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120-0779

Title: Privacy International Civil Aviation Organization (ICAO) Address (PIA)

Form Numbers: Not applicable

Type of Review: Renewal of an information collection

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 28, 2023 (88 FR 12715). In 2010, the FAA issued a final rule mandating equipage requirements and performance standards for Automatic Dependent Surveillance-Broadcast (ADS-B) Out avionics on aircraft operating in certain airspace after December 31, 2019. Aircraft operators must be equipped with ADS-B Out to fly in most controlled airspace. Federal Regulations 14 CFR 91.225 and 14 CFR 91.227 contain requirement details. Each registered aircraft is assigned an aircraft registration number and an ICAO 24-bit aircraft address. This is also referred to as a “Mode S Code” in some FAA documents and websites, including the FAA Aircraft Registry. Where a 1090-MHz Extended Squitter (1090ES) transponder is required for ADS-B Out compliance, this ICAO 24-bit aircraft address, based on current transponder avionics standards, is openly broadcasted on the 1090 MHz frequency in transponder replies and

ADS-B messages. Subsequently, the nature of openly broadcasting makes the identity of the aircraft publicly available. Industry stakeholders have long suggested that FAA develop a process for aircraft operators who seek anonymity such that their aircraft movements and identity cannot be traced or seen by privately owned sensors that monitor the 1090 MHz frequency and combine this with other downlinked ADS-B and Mode S data being disseminated using the internet. The FAA intends to develop a process for operators who wish to mask their aircraft movements and identity for a period while flying within the sovereign airspace of the United States. Participation in the assignment of privacy ICAO Code addresses is voluntary. Only U.S. registered aircraft can be assigned a privacy ICAO aircraft address. No operator can use a privacy ICAO aircraft address for a U.S.-registered aircraft unless that operator is authorized to use a third-party flight identification for that same aircraft. No unique privacy ICAO address will be assigned to more than one U.S.-registered aircraft at any given time. Once approved, the operator will be assigned a privacy ICAO address. The operator will be required to notify the FAA when their avionics have been loaded with the assigned temporary ICAO 24-bit aircraft address. Owners and operators must verify that the ICAO 24-bit aircraft address (Mode S code) broadcast by their ADS-B equipment matches the assigned privacy ICAO address for their aircraft. Operators can verify what ICAO 24-bit aircraft address is being broadcast by their aircraft by visiting: <https://adsbperformance.faa.gov/PAPRRequest.aspx>. For monitoring privacy ICAO address use, the information will be downloaded by the FAA and entered into the FAA's ADS-B Performance Monitor [Docket No. FAA-2017-1194 published in **Federal Register**, December 20, 2017, as Document Number: 2017-27202].

Respondents

Intended for operators who seek anonymity such that their aircraft movements and identity cannot be easily traced or seen by privately owned sensors that monitor the 1090 MHz frequency. FAA estimates up to 15,000 respondents.

Frequency: Frequency will be occasional based on specific scenarios. An operator can change privacy ICAO aircraft addresses, but no more often than once every 20 days. In the event real-world security concerns become evident, an operator can elect to change their PIA address sooner than 20 days.

Estimated Average Burden per Response: Approximately 15 minutes per application.

Estimated Total Annual Burden: 12,563 hours.

Stanton Brunner,

In-Service Performance and Sustainment (AJM-422), Federal Aviation Administration.

[FR Doc. 2023-11554 Filed 6-2-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2023-1282]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Certificates of Waivers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The purpose of this notice is to allow 60 days for public comment. The FAA proposes collecting information related to requests for certificate of waivers to operate Unmanned Aircraft Systems (UAS) in deviation from the normal operating rules. The FAA will use the collected information to make determinations whether to authorize or deny the requested operation of UAS. The proposed information collection is necessary to issue such authorizations or denials consistent with the FAA's mandate to ensure safe and efficient use of national airspace.

DATES: Written comments should be submitted by July 30, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: FAA HQ, Bldg. 10B, 5th Floor, Desk 5E4TS, 600 Independence Ave. SW, Washington, DC 20597.

FOR FURTHER INFORMATION CONTACT: Rahat Ali by email at: Rahat.Ali@faa.gov; phone: 202-267-8780.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of

information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection. **OMB Control Number:** 2120-XXXX. **Title:** Certificates of Waivers under 14 CFR 91.903.

Form Numbers: Not applicable. **Type of Review:** Approval of new Information Collection.

Background: Title 14, part 91 of the Code of Federal Regulations prescribes the rules governing the operation of aircraft within the United States. Included in this is the operation of unmanned aircraft systems (UAS), commonly known as drones, by both civil and public aircraft operators. 14 CFR 91.903 allows for operators of aircraft to apply for a certificate of waiver authorizing the operator to deviate from the rules listed in § 91.905 if the proposed operation can be conducted safely.

To process certificate of waiver requests, the FAA requires the name of the person or organization sponsoring the request, mailing address, information related to any pending or to prior waiver requests that were denied or rescinded, the regulation sought to deviate from, time and location of the proposed operation, the make and model of the aircraft, and the pilot's name, address, and certificate number and rating. This information is necessary for the FAA to meet its statutory mandate of maintaining a safe and efficient national airspace. See 49 U.S.C. 40103, 44701, and 44807. The FAA will use the requested information to determine if the proposed UAS operation can be conducted safely.

The FAA proposes to use a web portal accessible from the FAA website to process certificate of waiver requests from the public. To initially access the web portal, the FAA requires respondents to complete an Access Request Form. This form requires the respondent to provide the date, the respondent's name, telephone number, and email address, to identify if the respondent is a civil or public operator, and to provide a general reason why operating a UAS.

Respondents: UAS operators seeking to a certificate of waiver under 14 CFR 91.903. Between 2023-2026, the FAA estimates that it will receive a total of 5,105 certificate of waiver requests with 4,925 coming from public users and 180

coming from civil users. The FAA also estimates that it will receive a total 2,572 requests to initially access the web portal.

Frequency: The requested information will need to be provided each time a respondent requests a certificate of waiver under Part 91 and the first time that a respondent requests to access the web portal.

Estimated Average Burden per Response: The FAA estimates the respondents will take an average of 15 minutes to complete the Access Request Form and 120 minutes to request a certificate of waiver.

Estimated Total Annual Burden: 3,283 hours for those completing certificate of waiver requests. 214 hours for those completing the Access Request Form.

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

Rahat Ali,

General Engineer, AJV-P22

[FR Doc. 2023-11883 Filed 6-2-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Designation of Transportation Management Areas

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice.

SUMMARY: On December 29, 2022, the United States Census Bureau published a notice in the **Federal Register** announcing the qualifying urban areas from the 2020 Census. The FTA and FHWA are announcing that all urbanized areas (UZA) with populations greater than 200,000, as determined by the 2020 Census, are hereby identified as Transportation Management Areas (TMA). The FTA and FHWA are taking this action in compliance with the agencies' authorizing statutes. This action supersedes the agencies' previous designations of TMAs made in the **Federal Register**.

DATES: This notice is effective June 5, 2023.

FOR FURTHER INFORMATION CONTACT: For FTA related questions, please contact Fleming El-Amin, Office of Planning (TPE-10), (202) 493-0316, or via email

at fleming.el-amin@dot.gov, or Mark Montgomery, Office of Chief Counsel (TCC), (202) 366-1017, via email at mark.montgomery@dot.gov, Federal Transit Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours for FTA are from 8:00 a.m. to 5:00 p.m., et., Monday through Friday, except Federal holidays.

For FHWA related questions, please contact Kenneth Petty, Office of Planning (HEPP), (202) 366-6654, or via email at kenneth.petty@dot.gov, or Michael Harkins, Office of Chief Counsel (HCC), 202-366-1523, via email at michael.harkins@dot.gov, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Census Bureau's urban-rural classification is a delineation of geographical areas, identifying individual urban areas as well as the rural portion of the Nation. The resulting classification of "urban areas" is distinguishable from FHWA and FTA's definition of "urbanized areas," but the population data from the decennial census informs which geographical areas meet the definition of "urbanized area" for transportation planning purposes under Titles 23 and 49 of the United States Code (23 U.S.C. 101(a)(36) and 49 U.S.C. 5302(24)).

The Census Bureau defined the qualifying urban areas from the 2020 Census using the criteria published in the **Federal Register** on March 24, 2022 (87 FR 16706). As a result of these criteria and a decade of population and land use change, there are significant differences in the UZAs based on the 2020 Census from those based on the 2010 Census, including place names, boundary shapes, and population counts. Notably, 192 UZAs have populations over 200,000, the statutory threshold for TMA designation, including 15 UZAs that were not identified in the **Federal Register** on July 18, 2012 (77 FR 42354). Furthermore, 2 UZAs that were previously above 200,000 are now below the threshold (*i.e.*, Norwich-New London, Connecticut, and Visalia, California).

Titles 23 and 49 of the United States Code (U.S.C.) (23 U.S.C. 134(k)(1)(A) and 49 U.S.C. 5303(k)(1)(A)) require the Secretary of Transportation to identify each UZA over 200,000 in population as a TMA. The UZAs that meet this threshold, as determined by the 2020

Census, are listed in the table below and are hereby identified as TMAs. For the multistate UZAs over 200,000 in population, the UZA is listed under the State with the largest share of the population; however, the TMA designation applies to the entire multistate area.

The TMAs are subject to special transportation planning and programming requirements. These requirements apply to the metropolitan planning areas that must be determined jointly by the metropolitan planning organization (MPO) and Governor, in accordance with 23 U.S.C. 134(e) and 49 U.S.C. 5303(e). The FTA and FHWA have developed a series of "Questions and Answers" related to applying 2020 Census data to urban areas and UZAs in the joint FTA and FHWA planning processes. More information can be found at: https://www.fhwa.dot.gov/planning/census_issues/urbanized_areas_and_mpo_tma/ and <https://www.transit.dot.gov/census>.

Additional UZAs may be designated as TMAs by the Secretary of Transportation upon request of the Governor and the MPO or affected local officials. Notification of any additional TMAs will be issued through a Secretarial Memorandum to the appropriate State Governors and MPOs, not as a notice published in the **Federal Register**.

For example, the Governor of Texas and the Permian Basin MPO (formerly the Midland Odessa Transportation Organization) requested TMA designations in 2012 for the Midland, Texas, and the Odessa, Texas, UZAs. On July 31, 2012, the Secretary of Transportation approved the request and designated both UZAs as TMAs. Although the Midland, Texas, and Odessa, Texas, UZAs do not meet the statutory population threshold for TMA designation under the 2020 Census, FHWA and FTA continue to recognize the Midland, Texas and Odessa, Texas UZAs as TMAs due to the Secretary's prior action.

In addition, the bi-State Lake Tahoe MPO region shall be treated as a TMA with a UZA population of 145,000 in the State of California and 65,000 in the State of Nevada, per 23 U.S.C. 134(r).

Authority: 23 U.S.C. 315, 23 U.S.C. 134(k)(1)(A), 49 U.S.C. 5303(k)(1)(A), 49 CFR 1.85(c)(19), and 49 CFR 1.91(a).

Shailen P. Bhatt,

Administrator, FHWA.

Nuria Fernandez,

Administrator, FTA.

State/urbanized area (UZA)	UZA 2020 population	Area comparison to 2010 census TMAs; population
Alabama:		
Birmingham, AL	774,956	
Huntsville, AL	329,066	
Mobile, AL	321,907	
Montgomery, AL	254,348	
State Total	1,680,277	
Alaska:		
Anchorage, AK	249,252	
State Total	249,252	
Arizona:		
Phoenix—Mesa—Scottsdale, AZ	3,976,313	Name Change.
Tucson, AZ	875,441	
Phoenix West—Goodyear—Avondale, AZ	419,946	New TMA.
State Total	5,271,700	
Arkansas:		
Little Rock, AR	461,864	
Fayetteville—Springdale—Rogers, AR-MO	373,687	
State Total	835,551	
California:		
Los Angeles—Long Beach—Anaheim, CA	12,237,376	
San Francisco—Oakland, CA	3,515,933	
San Diego, CA	3,070,300	
Riverside—San Bernardino, CA	2,276,703	
Sacramento, CA	1,946,618	
San Jose, CA	1,837,446	
Fresno, CA	717,589	
Mission Viejo—Lake Forest—Laguna Niguel, CA	646,843	Name Change.
Bakersfield, CA	570,235	
Concord—Walnut Creek, CA	538,583	Name Change.
Temecula—Murrieta—Menifee, CA	528,991	Name Change.
Stockton, CA	414,847	
Oxnard—San Buenaventura (Ventura), CA	376,117	Name Change.
Indio—Palm Desert—Palm Springs, CA	361,075	Name Change.
Palmdale—Lancaster, CA	359,559	Name Change.
Modesto, CA	357,301	
Victorville—Hesperia—Apple Valley, CA	355,816	Name Change.
Antioch, CA	326,205	
Santa Rosa, CA	297,329	
Santa Clarita, CA	278,031	
Livermore—Pleasanton—Dublin, CA	240,381	New TMA.
Thousand Oaks, CA	213,986	
Santa Barbara, CA	202,197	New TMA.
State Total	31,669,461	
Colorado:		
Denver—Aurora, CO	2,686,147	
Colorado Springs, CO	632,494	
Fort Collins, CO	326,332	
State Total	3,644,973	
Connecticut:		
Hartford, CT	977,158	
Bridgeport—Stamford, CT-NY	916,408	
New Haven, CT	561,456	
State Total	2,455,022	
Delaware:		
State Total	N/A	
District of Columbia:		
Washington—Arlington, DC-VA-MD	5,174,759	Name Change.
State Total	5,174,759	
Florida:		
Miami—Fort Lauderdale, FL	6,077,522	Name Change.
Tampa—St. Petersburg, FL	2,783,045	
Orlando, FL	1,853,896	
Jacksonville, FL	1,247,374	
Bradenton—Sarasota—Venice, FL	779,075	Name Change.

State/urbanized area (UZA)	UZA 2020 population	Area comparison to 2010 census TMAs; population
Cape Coral, FL	599,242	
Palm Bay—Melbourne, FL	510,675	
Port St. Lucie, FL	437,745	
Bonita Springs—Estero, FL	425,675	Name Change.
Kissimmee—St. Cloud, FL	418,404	Name Change.
Daytona Beach—Palm Coast—Port Orange, FL	402,126	Name Change.
Pensacola, FL—AL	390,172	
Lakeland, FL	277,915	
Winter Haven, FL	253,251	
Tallahassee, FL	252,934	
Navarre—Miramar Beach—Destin, FL	226,213	New TMA.
Gainesville, FL	213,748	New TMA.
Deltona, FL	210,712	New TMA.
State Total	17,359,724	
Georgia:		
Atlanta, GA	4,999,259	
Augusta—Richmond County, GA-SC	431,480	
Savannah, GA	309,466	
Columbus, GA-AL	267,746	
Gainesville, GA	265,218	New TMA.
State Total	6,273,169	
Hawaii:		
Honolulu, HI	853,252	Name Change.
State Total	853,252	
Idaho:		
Boise City, ID	433,180	
State Total	433,180	
Illinois:		
Chicago, IL-IN	8,671,746	
Rockford, IL	276,443	
Round Lake Beach—McHenry—Grayslake, IL-WI	261,835	
Peoria, IL	259,781	
State Total	9,469,805	
Indiana:		
Indianapolis, IN	1,699,881	
Fort Wayne, IN	335,934	
South Bend, IN-MI	278,921	
Evansville, IN	206,855	Name Change.
State Total	2,521,591	
Iowa:		
Des Moines, IA	542,486	
Davenport, IA-IL	285,211	
State Total	827,697	
Kansas:		
Wichita, KS	500,231	
State Total	500,231	
Kentucky:		
Louisville/Jefferson County, KY-IN	974,397	
Lexington-Fayette, KY	315,631	
State Total	1,290,028	
Louisiana:		
New Orleans, LA	914,531	
Baton Rouge, LA	631,326	
Shreveport, LA	288,052	
Lafayette, LA	227,316	
State Total	2,061,225	
Maine:		
Portland, ME	205,356	
State Total	205,356	
Maryland:		
Baltimore, MD	2,212,038	

State/urbanized area (UZA)	UZA 2020 population	Area comparison to 2010 census TMAs; population
Bel Air—Aberdeen, MD	214,647	Name Change.
State Total	2,426,685	
Massachusetts:		
Boston, MA-NH	4,382,009	Name Change.
Worcester, MA-CT	482,085	
Springfield, MA-CT	442,145	
Barnstable Town, MA	303,269	
State Total	5,609,508	
Michigan:		
Detroit, MI	3,776,890	
Grand Rapids, MI	605,666	
Lansing, MI	318,300	
Ann Arbor, MI	317,689	
Flint, MI	298,964	
Kalamazoo, MI	204,562	
State Total	5,522,071	
Minnesota:		
Minneapolis—St. Paul, MN	2,914,866	Name Change.
State Total	2,914,866	
Mississippi:		
Jackson, MS	347,693	
Gulfport—Biloxi, MS	236,344	Name Change.
State Total	584,037	
Missouri:		
St. Louis, MO-IL	2,156,323	
Kansas City, MO-KS	1,674,218	
Springfield, MO	282,651	
State Total	4,113,192	
Montana:	N/A	
State Total.		
Nebraska:		
Omaha, NE-IA	819,508	
Lincoln, NE	291,217	
State Total	1,110,725	
Nevada:		
Las Vegas—Henderson—Paradise, NV	2,196,623	Name Change.
Reno, NV-CA	446,529	
State Total	2,643,152	
New Hampshire:		
Nashua, NH-MA	242,984	
State Total	242,984	
New Jersey:		
Trenton, NJ	370,422	
Atlantic City—Ocean City—Villas, NJ	294,921	Name Change.
State Total	665,343	
New Mexico:		
Albuquerque, NM	769,837	
State Total	769,837	
New York:		
New York—Jersey City—Newark, NY-NJ	19,426,449	Name Change.
Buffalo, NY	948,864	
Rochester, NY	704,327	
Albany—Schenectady, NY	593,142	
Syracuse, NY	413,660	
Poughkeepsie—Newburgh, NY	314,766	Name Change.
State Total	22,401,208	
North Carolina:		
Charlotte, NC-SC	1,379,873	
Raleigh, NC	1,106,646	
Winston-Salem, NC	420,924	

State/urbanized area (UZA)	UZA 2020 population	Area comparison to 2010 census TMAs; population
Durham, NC	396,118	
Greensboro, NC	338,928	
Fayetteville, NC	325,008	
Asheville, NC	285,776	
Concord, NC	278,612	
Wilmington, NC	255,329	
Hickory, NC	201,511	
State Total	4,988,725	
North Dakota:		
Fargo, ND-MN	216,214	New TMA.
State Total	216,214	
Ohio:		
Cleveland, OH	1,712,178	
Cincinnati, OH-KY	1,686,744	Name Change.
Columbus, OH	1,567,254	
Dayton, OH	674,046	
Akron, OH	541,879	
Toledo, OH-MI	497,952	
Youngstown, OH	320,901	Name Change.
Canton, OH	295,319	
State Total	7,296,273	
Oklahoma:		
Oklahoma City, OK	982,276	
Tulsa, OK	722,810	
State Total	1,705,086	
Oregon:		
Portland, OR-WA	2,104,238	
Eugene, OR	270,179	
Salem, OR	268,331	
State Total	2,642,748	
Pennsylvania:		
Philadelphia, PA-NJ-DE-MD	5,696,125	
Pittsburgh, PA	1,745,039	
Allentown—Bethlehem, PA-NJ	621,703	Name Change.
Harrisburg, PA	490,859	
Lancaster—Manheim, PA	394,530	Name Change.
Scranton, PA	366,713	
Reading, PA	276,278	
York, PA	238,549	
State Total	9,829,796	
Puerto Rico:		
San Juan, PR	1,844,410	
Aguadilla—Isabela—San Sebastian, PR	232,573	
State Total	2,076,983	
Rhode Island:		
Providence, RI-MA	1,285,806	
State Total	1,285,806	
South Carolina:		
Charleston, SC	684,773	Name Change.
Columbia, SC	590,407	
Greenville, SC	387,271	
Myrtle Beach—North Myrtle Beach, SC-NC	298,954	Name Change.
Rock Hill, SC	218,443	New TMA.
State Total	2,179,848	
South Dakota:	N/A	
State Total.		
Tennessee:		
Nashville-Davidson, TN	1,158,642	
Memphis, TN-MS-AR	1,056,190	
Knoxville, TN	597,257	
Chattanooga, TN-GA	398,569	
Clarksville, TN-KY	200,947	New TMA.

State/urbanized area (UZA)	UZA 2020 population	Area comparison to 2010 census TMAs; population
State Total	3,411,605	
Texas:		
Houston, TX	5,853,575	
Dallas—Fort Worth—Arlington, TX	5,732,354	
San Antonio, TX	1,992,689	
Austin, TX	1,809,888	
El Paso, TX-NM	854,584	
McAllen, TX	779,553	
McKinney—Frisco, TX	504,803	New TMA.
Denton—Lewisville, TX	429,461	
The Woodlands—Conroe, TX	402,454	Name Change.
Corpus Christi, TX	339,066	
Lubbock, TX	272,280	
Killeen, TX	257,222	
Laredo, TX	251,462	
Brownsville, TX	216,444	
College Station—Bryan, TX	206,137	New TMA.
Amarillo, TX	205,860	New TMA.
State Total	20,107,832	
Utah:		
Salt Lake City, UT	1,178,533	Name Change.
Ogden—Layton, UT	608,857	
Provo—Orem, UT	588,609	
State Total	2,375,999	
Vermont:	N/A	
State Total.		
Virginia:		
Virginia Beach—Norfolk, VA	1,451,578	Name Change.
Richmond, VA	1,059,150	
Roanoke, VA	217,312	
State Total	2,728,040	
Washington:		
Seattle—Tacoma, WA	3,544,011	Name Change.
Spokane, WA	447,279	
Kennewick—Richland—Pasco, WA	255,401	Name Change.
Bremerton, WA	224,449	New TMA.
Olympia—Lacey, WA	208,157	
State Total	4,679,297	
West Virginia:		
Huntington, WV-KY-OH	200,157	
State Total	200,157	
Wisconsin:		
Milwaukee, WI	1,306,795	
Madison, WI	450,305	
Appleton, WI	230,967	
Green Bay, WI	224,156	
State Total	2,212,223	
Wyoming:	N/A	
State Total.		

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 BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT-OST-2023-0087]

Department of Transportation Equity Action Plan Update

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Request for information.

SUMMARY: The Office of the Secretary of Transportation (OST) invites public comment regarding how our work to advance equity has impacted organizations and communities, as well as input on performance metrics, data sets, tools, and research to measure and advance transportation equity. The responses to this RFI will help the Department understand the impact of our equity activities to date and inform

what equity-related activities and performance metrics we prioritize through the 2023 update to DOT's Equity Action Plan.

DATES: Comments are requested by June 30, 2023. See the **SUPPLEMENTARY INFORMATION** section on "Public Participation," below, for more information about written comments.

Written Comments: Responses to this RFI are voluntary and may be submitted anonymously. Comments should refer to the docket number above and be submitted by one of the following methods:

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

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Except as provided below ("confidential business information"), all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or at <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Please email Equity@dot.gov or contact Ariel Gold at 202-695-6833 with questions. Office hours are from 8 a.m. to 5 p.m. EDT, Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: Through this Request for Information (RFI), the Department solicits input from the public regarding: how our work to advance equity has impacted organizations and communities; related partnerships and external activities; performance measures to measure and advance transportation equity; and data sets, research, and tools to help advance transportation equity. Specifically, the Department seeks responses to the questions outlined in the "Questions to the Public" section below.

The DOT Strategic Plan (available at <https://www.transportation.gov/dot-strategic-plan>) is a roadmap for the Department's implementation of six strategic goals, one of which is Equity. The Equity strategic goal states that the Department will "reduce inequities across our transportation systems and the communities they affect" and "support and engage people and communities to promote safe, affordable, accessible, and multimodal access to opportunities and services while reducing transportation-related disparities, adverse community impacts, and health effects."

In response to Executive Order (E.O.) 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (<https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>), the Department developed the DOT Equity Action Plan (<https://www.transportation.gov/priorities/equity/equity-action-plan>). It highlights key actions that the Department will undertake to expand access and opportunity to all communities while focusing on underserved, overburdened, and disadvantaged communities. The actions fall under four focus areas—Wealth Creation; Power of Community; Proactive Intervention, Planning, and Capacity Building; and Expanding Access. The DOT Equity Action Plan brings focus and accountability to the Department's Equity strategic goal.

The Bipartisan Infrastructure Law (BIL; enacted November 15, 2021) and Inflation Reduction Act (IRA; enacted August 16, 2022) make historic investments in the transportation sector, improving public safety and climate resilience, creating jobs across the country, and delivering a more equitable future. The Department is committed to reducing barriers to opportunity through the implementation of BIL and IRA, including through actions described in our Equity Action Plan.

E.O. 14091, *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (<https://www.federalregister.gov/documents/2023/02/22/2023-03779/further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal>), directs all federal agencies to update their Equity Action Plans by September 2023, and on an annual basis thereafter. Specifically, the update should include: the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan; potential barriers that underserved communities may face; strategies to address those barriers, and a description of how the agency intends to meaningfully engage with underserved communities.

Government-wide definitions of (a) equity, (b) underserved communities, and (c) disadvantaged communities have been established via Executive Order(s). DOT has adopted these government-wide definitions for the purpose of this RFI and our Equity Action Plan:

(a) The term "equity" means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities. [Source: E.O. 14091]

(b) The term "underserved communities" refers to those populations [included in the definition of "equity"] as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in E.O. 13985. [Source: E.O. 14091]

(c) The term "disadvantaged community" refers to a community that experiences disproportionately high and adverse health, environmental, climate related, economic, and other cumulative impacts. [Source: E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, <https://www.federalregister.gov/documents/2021/02/01/2021-02177/>]

tackling-the-climate-crisis-at-home-and-abroad]

In addition, DOT has adopted the following definitions of (d) overburdened community and (2) for the purpose of this RFI and our Equity Action Plan:

(d) The term “overburdened community” refers to minority, low-income, tribal, or Indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental and/or safety harms and risks. This disproportionality can be a result of greater vulnerability to environmental hazards, heightened safety risks, lack of opportunity for public participation, or other factors. [Source: <https://www.epa.gov/environmentaljustice/ej-2020-glossary>]

(e) The term “meaningful public involvement” refers to a process that proactively seeks full representation from the community, considers public comments and feedback, and incorporates that feedback into a project, program, or plan. [Source: <https://www.transportation.gov/public-involvement>]

The responses to this RFI will help the Department understand the impact of our equity activities to date and inform what efforts we prioritize as we update DOT’s Equity Action Plan. Through this request, the Department seeks information from stakeholders in public agencies, academic researchers involved in the study of equity in transportation decision-making, advocacy, community-based organizations, and not-for-profit institutions and individuals working in the transportation sector or the field of equity, and State, local, Tribal, and territorial areas, and the public.

The Department plans to host two public engagements, on June 20 and June 23, 2023, to discuss the topics covered in this RFI. Participation in these events is not required in order to respond to this RFI. Please visit our website for more information and to register for these events: <https://www.transportation.gov/priorities/equity/events>.

Equity Performance Metrics, Data Sets, Tools, and Research

1. Consider the equity-related performance measures in the Department’s Fiscal Year (FY) 2024 Performance Plan and FY 2022 Performance Report, as summarized at <https://www.transportation.gov/priorities/equity/equity-strategic-goal>.

(a) Which of DOT’s equity-related performance measures do you think are most relevant to accomplishing the

goals that are most important to you, and why? This could help inform which performance measures we focus on achieving through the Equity Action Plan.

(b) DOT’s performance measures are national-level measures. Which of DOT’s equity-related performance measures can be helpful to influence and advance equity at a local level? Please provide examples, where available.

2. Through previous requests for information and other engagements, the Department has identified data sets, research, and tools to help assess and address systemic barriers to opportunities and benefits for underserved communities through our programs and policies. For example, this includes the May 2021 Request for Information on Transportation Data and Assessment Methods (available at <https://www.regulations.gov/document/DOT-OST-2021-0056-0001>) and the February 2023 Request for Information on US DOT Equitable Transportation Community Explorer (ETCE) Tool and Index Methodology that supports the Administration’s Justice 40 initiative (available at <https://www.federalregister.gov/documents/2023/02/21/2023-03396/request-for-information-on-us-dot-equitable-transportation-community-explorer-etce-tool-and-index>).

(a) What recent data sets, research, or tools that have been published should U.S. DOT consider to inform updates to the next phase of our equity work, including assessing and addressing transportation-related disparities? Information submitted via the RFIs listed above does not need to be resubmitted through this RFI.

(b) What are some areas where you need more robust data sets, data standards, guides, or other tools to help you influence and advance equity at a more local level (*e.g.*, State, Territory, Tribal nation, Region, County, City, Community)?

Examples of Impacts and Partnerships

3. Please provide examples of how you or the organization that you represent have taken action or partnered with other entities, either governmental or non-governmental, to influence and advance transportation equity. Where possible, please briefly explain how your example reflects the Department’s focus areas (*i.e.*, Expanding Access; Wealth Creation; Power of Community; Proactive Intervention, Planning, and Capacity Building).

4. Please provide examples where you see the Department’s work to advance equity has impacted your organization

or community, including the extent to which you have seen equity incorporated into DOT’s implementation of the Bipartisan Infrastructure Law and Inflation Reduction Act. Where possible, please briefly explain how your example reflects the Department’s focus areas (*i.e.*, Expanding Access; Wealth Creation; Power of Community; Proactive Intervention, Planning, and Capacity Building).

The Department plans to host two public engagements, on June 20 and June 23, 2023, to discuss the topics covered in this RFI. Participation in these events is not required in order to respond to this RFI. Please visit our website for more information and to register for these events: <https://www.transportation.gov/priorities/equity/events>.

Public Participation

How do I prepare and submit comments?

To ensure that your comments are filed correctly, please include the docket number of this document (DOT–OST–2023–0087) in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including any attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the Agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to DOT in the following manner:

- Submitted in a sealed envelope marked “confidential treatment requested”;
- Document(s) or information that the submitter would like withheld from the public docket should be marked “PROPIN”;
- Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter’s grounds for

objecting to disclosing the information to the public.

DOT will treat such marked submissions as confidential under the FOIA and not include them in the public docket. DOT also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. If the submitter cannot provide a non-confidential version of its submission, DOT requests that the submitter post a notice in the docket stating that it has provided DOT with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the Agency consider late comments?

DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, the Agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under WRITTEN COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at <http://www.regulations.gov>.

Please note, this RFI is a planning document and will serve as such. The RFI should not be construed as policy, a solicitation for applications, or an obligation on the part of the government.

Issued in Washington, DC, on May 30, 2023.

Christopher Coes,

*Assistant Secretary for Transportation Policy,
Department of Transportation.*

[FR Doc. 2023-11806 Filed 6-2-23; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determinations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of determinations.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one sectoral determination issued pursuant to an April 15, 2021 Executive order, as well as a category of services determination issued pursuant to an April 6, 2022 Executive order. Each determination was previously issued on OFAC's website.

DATES: The May 19, 2023 Determination Pursuant to Section 1(a)(i) of Executive Order 14024 was issued on May 19, 2023 and took effect on May 19, 2023. The May 19, 2023 Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 was issued on May 19, 2023 and takes effect on June 18, 2023.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Compliance, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: www.treas.gov/ofac.

Background

On April 15, 2021, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14024 (86 FR 20249, April 19, 2022). Among other prohibitions, section 1(a) of E.O. 14024 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any U.S. person of, any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

On April 6, 2022, the President, invoking the authority of, *inter alia*, IEEPA, issued E.O. 14071, "Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression" (87 FR 20999, April 8, 2022). Among other prohibitions, section 1(a)(ii) of E.O. 14071 prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation.

On May 19, 2023, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued a sectoral determination pursuant to E.O. 14024. This determination took effect on May 19, 2023. Also on May 19, 2023, pursuant to delegated authority, the Director of OFAC, in consultation with the Department of State, issued a category of services determination pursuant to E.O. 14071. This determination takes effect at 12:01 a.m. eastern daylight time on June 18, 2023.

The texts of the determinations are below.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(i) of Executive Order 14024

Architecture, Engineering, Construction, Manufacturing, and Transportation Sectors of the Russian Federation Economy

Section 1(a)(i) of Executive Order (E.O.) 14024 of April 15, 2021 ("Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation") imposes economic sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, or the Secretary of State, in consultation with the Secretary of the Treasury, to operate or have operated in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State.

To further address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States described in E.O. 14024, and in consultation with the Department of State and pursuant to 31 CFR 587.802, I hereby determine that section 1(a)(i) of E.O. 14024 shall apply to the architecture, engineering,

construction, manufacturing, and transportation sectors of the Russian Federation economy. Any person determined, pursuant to section 1(a)(i) of E.O. 14024, to operate or have operated in such sectors shall be subject to sanctions pursuant to section 1(a)(i).

This determination shall take effect on May 19, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

May 19, 2023.

OFFICE OF FOREIGN ASSETS CONTROL

Determination Pursuant to Section 1(a)(ii) of Executive Order 14071

Prohibitions Related to Architecture Services and Engineering Services

Pursuant to sections 1(a)(ii), 1(b), and 5 of Executive Order (E.O.) 14071 of April 6, 2022 (“Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression”) and 31 CFR 587.802, and in consultation with the Department of State, I hereby determine that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to the following categories of services: architecture and engineering. As a result, the following activities are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States

person, wherever located, of architecture services or engineering services to any person located in the Russian Federation.

This determination excludes the following:

(1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person; and

(2) any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person.

This determination shall take effect beginning at 12:01 a.m. eastern daylight time on June 18, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

May 19, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023–11977 Filed 6–2–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names

of one or more persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable dates.

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On May 25, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

BILLING CODE 4810–AL–P

Individuals

1. BALWI, Muhammad Ma'ruf (Arabic: محمد معروف بلوي) (a.k.a. AL-BALAWI, Muhammad; a.k.a. AL-BALWI, Muhammad Ma'ruf), Sayyida Zeynab, Damascus, Syria; DOB 01 Jan 1981; POB Nubl, Syria; nationality Syria; Gender Male; Passport 1982538 (Syria) (individual) [SYRIA] [SYRIA-CAESAR] (Linked To: AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY).

Designated pursuant to Section 1(b)(i) of E.O. 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria," 76 FR 52209, 3 CFR, 2011 Comp., p. 264 (E.O. 13582) for having acted or purported to act for or on behalf of, directly or indirectly, AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13582. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

2. BALWI, Mut'i Ma'ruf (Arabic: مطيع معروف بلوي) (a.k.a. AL-BALAWI, Mut'i; a.k.a. BALAWI, Mut'i; a.k.a. BALWI, Maarouf; a.k.a. BALWI, Moutee Maarouf), Syria; DOB 01 Jan 1985; POB Nubl, Syria; nationality Syria; Gender Male; Passport 2488186 (Syria) (individual) [SYRIA] [SYRIA-CAESAR] (Linked To: AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY).

Designated pursuant to Section 1(b)(i) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13582. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

3. BALWI, Fadel Ma'ruf (Arabic: فاضل معروف بلوي) (a.k.a. AL-BALAWI, Fadel), Syria; DOB 01 Jan 1983; POB Nubl, Syria; nationality Syria; Gender Male; Passport 2251748 (Syria) (individual) [SYRIA] [SYRIA-CAESAR] (Linked To: AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY).

Designated pursuant to Section 1(b)(i) of E.O. 13582 for having acted or purported to act for or on behalf of, directly or indirectly, AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13582. Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial,

material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

Entities

1. AL-ADHAM EXCHANGE COMPANY (Arabic: شركة الادهم للصرافة) (a.k.a. AL-ADHAM FOREIGN EXCHANGE), May 29th Street, Saroujah, Damascus, Syria; Hisham Al-Atassi Street, Al-Salam Building, Ground Floor, Homs, Syria; Al-Assi Square, Al-Quwwatli Street, Hama, Syria; Al-Quds Street, Tartous, Syria; Website <https://aladham-exchange.com.sy>; Organization Established Date 16 Feb 2009; Commercial Registry Number 15691 (Syria) [SYRIA] [SYRIA-CAESAR].

Designated pursuant to Section 1(a) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the CENTRAL BANK OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582.

2. AL-FADEL EXCHANGE AND MONEY TRANSFER COMPANY (Arabic: شركة الفاضل للصرافة والتحويلات المالية) (a.k.a. AL-FADEL EXCHANGE AND INTERNATIONAL TRANSFER COMPANY; a.k.a. AL-FADEL EXCHANGE PRIVATE JOINT STOCK COMPANY; a.k.a. AL-FADEL MONEY TRANSFER AND EXCHANGE PRIVATE JSC), Al-Fardous Street, Damascus, Syria; March 8th Street, Al-Sarraj Building, Ground Floor, Lattakia, Syria; Al-Express Street, Al-Farqan Quarter, Aleppo, Syria; Al-Mazza Highway, Damascus, Syria; Sayyida Zeynab, Damascus, Syria; Main Street, Jeremana, Damascus, Syria; Website <https://alfadelex.com> [SYRIA] [SYRIA-CAESAR].

Designated pursuant to Section 1(a) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the GOVERNMENT OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582.

Dated: May 25, 2023.

Andrea M. Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-11862 Filed 6-2-23; 8:45 am]

BILLING CODE 4810-AL-C

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of Directive 4 (as Amended) Under Executive Order 14024 of April 15, 2021

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of one directive.

SUMMARY: The Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing one Russian Harmful Foreign Activities Sanctions directive in the **Federal Register**. The directive, issued pursuant to an April 15, 2021 Executive Order, was previously made available on OFAC's website.

DATES: Directive 4 (as amended) under Executive Order 14024, "Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation," was issued on May 19, 2023.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Compliance, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: www.treas.gov/ofac.

Background

On May 19, 2023, the Director of OFAC issued Directive 4 (as amended) under E.O. 14024, "Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation", replacing and superseding Directive 4 under E.O. 14024 of April 15, 2021 issued on February 28, 2022 (87 FR 32303, May 31, 2022). Directive 4 (as amended)

includes a new Reports section, to require that United States persons who are in possession or control of property in which any entity determined to be subject to the prohibitions of Directive 4 (as amended) has an interest of any nature whatsoever, direct or indirect, must submit a report to OFAC on or before June 18, 2023, and annually thereafter by June 30, 2023, and reflects technical and other non-substantive changes.

The text of this directive is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Directive 4 (as Amended)¹ Under Executive Order 14024

Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation

Pursuant to sections 1(a)(iv), 1(d), and 8 of Executive Order 14024, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation” (the “Order”), the Director of the Office of Foreign Assets Control has determined, in consultation with the Department of State, that the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation are political subdivisions, agencies, or instrumentalities of the Government of the Russian Federation, and that the following activities by a United States person are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control:

Any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities.

All other activities with entities determined to be subject to the prohibitions of this Directive, or involving their property or interests in property, are permitted, provided that such activities are not otherwise prohibited by law, the Order, or any

other sanctions program implemented by the Office of Foreign Assets Control.

Except to the extent otherwise provided by law or unless licensed or otherwise authorized by the Office of Foreign Assets Control, the following are also prohibited: (1) any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions of this Directive; and (2) any conspiracy formed to violate any of the prohibitions of this Directive.

A listing of entities determined to be subject to the prohibitions of this Directive can be found in the Office of Foreign Assets Control’s Non-SDN Menu-Based Sanctions (NS–MBS) List on the Office of Foreign Assets Control website (<https://ofac.treasury.gov/>).

Reports. United States persons who are in possession or control of property in which any entity determined to be subject to the prohibitions of this Directive has an interest of any nature whatsoever, direct or indirect, must submit a report to *OFACreport@treasury.gov* on or before June 18, 2023, and annually thereafter by June 30. Such reports shall include the following:

1. The name and address of the person in possession or control of the property;
2. The date the property came into the possession or control of such person;
3. The entity or entities subject to the prohibitions of this Directive having an interest in the property;
4. A description of the property and its location in the United States or otherwise, including any relevant account types, account numbers, reference numbers, dates, or other information necessary to identify the property;
5. The actual, or if unknown, estimated value of the property in U.S. dollars as of May 31, 2023, for the initial report, and annually thereafter as of May 31. Foreign currencies must be reported in U.S. dollars with the foreign currency amount and notional exchange rate in the narrative; and
6. A copy of the most recent relevant account statement or other documentation to support the estimated value of the property.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.
May 19, 2023.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.
[FR Doc. 2023–11980 Filed 6–2–23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Penalty on Income Tax Return Preparers Who Understate Taxpayer’s Liability on a Federal Income Tax Return or Claim for Refund

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning penalty on income tax return preparers who understate taxpayer’s liability on a federal income tax return or claim for refund.

DATES: Written comments should be received on or before August 4, 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 number 1545–1231 or Penalty on Income Tax Return Preparers Who Understate Taxpayer’s Liability on a Federal Income Tax Return or Claim for Refund on the subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.L.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer’s Liability on a Federal Income Tax Return or Claim for Refund.

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 (TD 9436–final).

Abstract: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer’s liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

¹ A prior version of this Directive, which was issued on February 28, 2022 and is superseded by this version, prohibited these same activities. This amended version of the Directive includes a new Reports section and reflects technical and other non-substantive changes.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 127,800,734.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 10,224,059 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023-11851 Filed 6-2-23; 8:45 am]

BILLING CODE 4830-01-P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: June 8, 2023, 12:00 p.m. to 3:00 p.m., Eastern Time.

PLACE: This meeting will be accessible via conference call and via Zoom

Meeting and Screenshare. Any interested person may call (i) 1-929-205-6099 (US Toll) or 1-669-900-6833 (US Toll), Meeting ID: 952 0476 1775, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is <https://kellen.zoom.us/join/95204761775>.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the "Board") will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Board Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

- Board actions taken only in designated areas on agenda.

IV. Approval of Minutes of the April 13 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Board Action

Draft Minutes from the April 13, 2023, UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on relevant activity.

VI. Discussion of Proposed Changes to UCR Agreement—UCR Board Chair, UCR Board Vice-Chair, UCR Audit Subcommittee Chair, UCR Executive Director, UCR Chief Legal Officer

The UCR Board Chair, UCR Board Vice-Chair, UCR Audit Subcommittee Chair, UCR Executive Director and the UCR Chief Legal Officer will discuss proposed changes to the UCR Agreement. No Board action will be taken on any proposed changes at this meeting.

VII. Proposal To Send a Letter to Certain Intrastate Motor Carriers From Non-Participating States and Rhode Island—UCR Executive Director and Seikosoft

For Discussion and Possible Board Action

The UCR Executive Director and a Seikosoft representative will present proposals to the UCR Board to send a letter to new intrastate USDOT motor carriers from non-participating states and Rhode Island that may be engaged in interstate commerce to provide educational information about UCR and instructions for UCR registration, should registration be applicable to the motor carrier. The Board may consider and approve the cost of sending such letters.

VIII. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. Update the Board on the Project To Replace the Retreat Audit Program With a Program That Relies on Roadside Inspection Data—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, DSL Transportation and Seikosoft Representatives

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and DSL Transportation and Seikosoft representatives will lead a discussion on options to replace the Retreat Audit Program currently utilized by the states with a roadside inspection data driven audit for non-IRP plated commercial motor vehicles and the motor carriers operating this type of registered equipment.

B. Update on the Recent Question and Answer Session for State Auditors—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, UCR Executive Director

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and UCR Executive Director will update the Board on the latest 60-minute virtual question and answer session conducted

with state auditors and provide the date and possible topics for discussion regarding the next session.

C. Report to the Board Highlighting the 2022 State Audit Report—UCR Audit Subcommittee Chair

For Discussion and Possible Board Action

The UCR Audit Subcommittee Chair will review audit compliance statistics for the states 2022 registration year regarding FARs, Retreat Audits and Registration Percentages and the States Unregistered Bracket 5 and 6 motor carriers. If applicable, the UCR Audit Subcommittee Chair will recommend to the Board that all non-compliant states have a representative report to the Board at the next Board Meeting to outline corrective action measures.

D. Options To Clean Up the Unregistered Motor Carrier UCR Universe in Shadow MCMIS—UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair, Seikosoftware Representative

The UCR Audit Subcommittee Chair, UCR Audit Subcommittee Vice-Chair and a Seikosoftware representative will lead a discussion on the steps necessary for the NRS and State Auditors to address the 2022/2023 unregistered motor carrier universe in Shadow MCMIS.

Finance Subcommittee—UCR Finance Subcommittee Chair

Discussion of UCR Investment Policy

The UCR Finance Subcommittee Chair will provide the Board an update on the latest developments and market factors regarding the account structures of UCR Funds.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives

The Education and Training Subcommittee Chair will provide an update on current and planned future training initiatives and the E-Certificate program.

Industry Advisory Subcommittee—UCR Industry Advisory Subcommittee Chair

Update on Current Initiatives

The UCR Industry Advisory Subcommittee Chair will provide an update on current and planned initiatives regarding motor carrier industry concerns.

Enforcement Subcommittee—UCR Enforcement Subcommittee Chair

Update on Current Initiatives

The UCR Enforcement Subcommittee Chair will provide an update on current and planned initiatives.

Dispute Resolution Subcommittee—UCR Dispute Resolution Subcommittee Chair

Update on Current Initiatives

The UCR Dispute Resolution Subcommittee Chair will provide an update on planned initiatives.

IX. Contractor Reports—UCR Board Chair

- UCR Executive Director Report

The UCR Executive Director will provide a report covering his recent activity for the UCR Plan.

- DSL Transportation Services, Inc.

DSL Transportation Services, Inc. will report on the latest data from the Focused Anomaly Reviews (FARs) program, discuss motor carrier inspection results, pilot projects and other matters.

- Seikosoftware

Seikosoftware will provide an update on recent/new activity related to the National Registration System (NRS).

- UCR Administrator Report (Kellen)

The UCR Chief of Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

X. Other Business—UCR Board Chair

The UCR Board Chair will call for any other business, old or new, from the floor.

XI. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, May 31, 2023, at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, eleaman@board.ucr.gov.

Alex B. Leath,
Chief Legal Officer, Unified Carrier Registration Plan.

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Part II

Environmental Protection Agency

40 CFR Parts 52, 75, 78, et al.

Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 52, 75, 78, and 97**

[EPA-HQ-OAR-2021-0668; FRL-8670-02-OAR]

RIN 2060-AV51

Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: This action finalizes Federal Implementation Plan (FIP) requirements to address 23 states’ obligations to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 ozone National Ambient Air Quality Standards (NAAQS) in other states. The U.S. Environmental Protection Agency (EPA) is taking this action under the “good neighbor” or “interstate transport” provision of the Clean Air Act (CAA or Act). The Agency is defining the amount of ozone-precursor emissions (specifically, nitrogen oxides) that constitute significant contribution to nonattainment and interference with maintenance from these 23 states. With respect to fossil fuel-fired power plants in 22 states, this action will prohibit those emissions by implementing an allowance-based trading program beginning in the 2023 ozone season. With respect to certain other industrial stationary sources in 20 states, this action will prohibit those emissions through emissions limitations and associated requirements beginning in the 2026 ozone season. These industrial source types are: reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators.

DATES: This final rule is effective on August 4, 2023.**ADDRESSES:** The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2021-0668. All documents in the docket are listed in the <https://www.regulations.gov> index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the U.S. Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. 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 Office of Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Selbst, Air Quality Policy Division, Office of Air Quality Planning and Standards (C539-01), Environmental Protection Agency, 109 TW Alexander Drive, Research Triangle Park, NC 27711; telephone number: (312) 886-4746; email address: selbst.elizabeth@epa.gov.

SUPPLEMENTARY INFORMATION:**Preamble Glossary of Terms and Abbreviations**

The following are abbreviations of terms used in the preamble.

2016v1 2016 Version 1 Emissions Modeling Platform
 2016v2 2016 Version 2 Emissions Modeling Platform
 4-Step Framework 4-Step Interstate Transport Framework
 ABC Associated Builders and Contractors
 ACS American Community Survey
 ACT Alternative Control Techniques
 AEO Annual Energy Outlook
 AQAT Air Quality Assessment Tool
 AQS Air Quality System
 BACT Best Available Control Technology
 BART Best Available Retrofit Technology
 BOF Basic Oxygen Furnace
 BPT Benefit Per Ton
 C1C2 Category 1 and Category 2
 C3 Category 3
 CAA or Act Clean Air Act
 CAIR Clean Air Interstate Rule
 CBI Confidential Business Information
 CCR Coal Combustion Residual
 CDC Centers for Disease Control and Prevention
 CDX Central Data Exchange
 CEDRI Compliance and Emissions Data Reporting Interface
 CEMS Continuous Emissions Monitoring Systems
 CES Clean Energy Standards
 CFB Circulating Fluidized Bed Units
 CHP Combined Heat and Power
 CMDB Control Measures Database
 CMV Commercial Marine Vehicle

CoST Control Strategy Tool
 CPT Cost Per Ton
 CRA Congressional Review Act
 CSAPR Cross-State Air Pollution Rule
 DAHS Data Acquisition and Handling System
 DOE Department of Energy
 EAF Electric Arc Furnace
 EGU Electric Generating Unit
 EIA U.S. Energy Information Agency
 EIS Emissions Inventory System
 EISA Energy Independence and Security Act
 ELG Effluent Limitation Guidelines
 E.O. Executive Order
 EPA or the Agency United States Environmental Protection Agency
 ERT Electronic Reporting Tool
 FERC Federal Energy Regulatory Commission
 FFS Findings of Failure to Submit
 FIP Federal Implementation Plan
 GIS Geographic Information System
 g/hp-hr grams per horsepower per hour
 HDGHG Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles
 HEDD High Electricity Demand Days
 ICI Industrial, Commercial, and Institutional
 I/M Inspection and Maintenance
 IPM Integrated Planning Model
 IRA Inflation Reduction Act
 LAER Lowest Achievable Emission Rate
 LDC Local Distribution Company
 LME Low Mass Emissions
 LNB Low-NO_x Burners
 MATS Mercury and Air Toxics Standards
 MCM Menu of Control Measures
 MDA8 Maximum Daily Average 8-Hour
 MJO Multi-Jurisdictional Organization
 MOU Memorandum of Understanding
 MOVES Motor Vehicle Emissions Simulator
 MSAT2 Mobile Source Air Toxics Rule
 MWC Municipal Waste Combustor
 NAAQS National Ambient Air Quality Standards
 NACAA National Association of Clean Air Agencies
 NAICS North American Industry Classification System
 NEEDS National Electric Energy Data System
 NEI National Emissions Inventory
 NERC North American Electric Reliability Corporation
 NESHAP National Emissions Standards for Hazardous Air Pollutants
 NMB Normalized Mean Bias
 NME Normalized Mean Error
 No SISNOSE No Significant Economic Impact on a Substantial Number of Small Entities
 Non-EGU Non-Electric Generating Unit
 NODA Notice of Data Availability
 NO_x Nitrogen Oxides
 NREL National Renewable Energy Lab
 NSCR Non-Selective Catalytic Reduction
 NSPS New Source Performance Standard
 NSR New Source Review
 NTTAA National Technology Transfer and Advancement Act
 OFA Over-Fire Air
 OMB United States Office of Management and Budget

OSAT/APCA Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis

OTC Ozone Transport Commission

OTR Ozone Transport Region

OTSA Oklahoma Tribal Statistical Area

PDF Portable Document Format

PEMS Predictive Emissions Monitoring Systems

PM_{2.5} Fine Particulate Matter

ppb parts per billion

ppm parts per million

ppmv parts per million by volume

ppmvd parts per million by volume, dry

PRA Paperwork Reduction Act

PSD Prevention of Significant Deterioration

PTE Potential to Emit

RACT Reasonably Available Control Technology

RATA Relative Accuracy Test Audit

RCF Relative Contribution Factor

RFA Regulatory Flexibility Act

RICE Reciprocating Internal Combustion Engines

ROP Rate of Progress

RPS Renewable Portfolio Standards

RRF Relative Response Factor

RTC Response to Comments

RTO Regional Transmission Organization

SAFETEA Safe, Accountable, Flexible, Efficient, Transportation Equity Act

SCC Source Classification Code

SCR Selective Catalytic Reduction

SIL Significant Impact Level

SIP State Implementation Plan

SMOKE Sparse Matrix Operator Kernel Emissions

SNCR Selective Non-Catalytic Reduction

SO₂ Sulfur Dioxide

tpd ton per day

TAS Treatment as State

TSD Technical Support Document

UMRA Unfunded Mandates Reform Act

VMT Vehicle Miles Traveled

VOCs Volatile Organic Compounds

WRAP Western Regional Air Partnership

WRF Weather Research and Forecasting

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I. Executive Summary

This final rule resolves the interstate transport obligations of 23 states under CAA section 110(a)(2)(D)(i)(I), referred to as the “good neighbor provision” or the “interstate transport provision” of the Act, for the 2015 ozone NAAQS. On October 1, 2015, the EPA revised the primary and secondary 8-hour standards for ozone to 70 parts per billion (ppb).¹ States were required to submit to EPA ozone infrastructure State Implementation Plan (SIP) revisions to fulfill interstate transport obligations for the 2015 ozone NAAQS by October 1, 2018. The EPA proposed the subject rule to address outstanding interstate ozone transport obligations for the 2015 ozone NAAQS in the **Federal Register** on April 6, 2022 (87 FR 20036).

The EPA is making a finding that interstate transport of ozone precursor emissions from 23 upwind states (Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New

Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin) is significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS in downwind states, based on projected ozone precursor emissions in the 2023 ozone season. The EPA is issuing FIP requirements to eliminate interstate transport of ozone precursor emissions from these 23 states that significantly contributes to nonattainment or interferes with maintenance of the NAAQS in downwind states. The EPA is not finalizing its proposed error correction for Delaware’s ozone transport SIP, and we are deferring final action at this time on the proposed FIPs for Tennessee and Wyoming pending further review of the updated air quality and contribution modeling and analysis developed for this final action. As discussed in section III of this document, the EPA’s updated analysis of 2023 suggests that the states of Arizona, Iowa, Kansas, and New Mexico may be significantly contributing to one or more nonattainment or maintenance receptors. The EPA is not making any final determinations with respect to these states in this action but intends to address these states, along with Tennessee and Wyoming, in a subsequent action or actions.

The EPA is finalizing FIP requirements for 21 states for which the Agency has, in a separate action, disapproved (or partially disapproved) ozone transport SIP revisions that were submitted for the 2015 ozone NAAQS: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Texas, Utah, West Virginia, and Wisconsin. *See* 88 FR 9336. In this final rule, the EPA is issuing FIPs for two states—Pennsylvania and Virginia—for which the EPA issued Findings of Failure to Submit for 2015 ozone NAAQS transport SIPs. *See* 84 FR 66612 (December 5, 2019). Under CAA section 301(d)(4), the EPA is extending FIP requirements to apply in Indian country located within the upwind geography of the final rule, including Indian reservation lands and other areas of Indian country over which the EPA or a tribe has demonstrated that a tribe has jurisdiction.²

This final rule defines ozone season nitrogen oxides (NO_x) emissions

² In general, specific tribal names or reservations are not identified separately in this final rule except as needed. *See* section III.C.2 of this document for further discussion about the application of this rule in Indian Country.

¹ *See* 80 FR 65291 (October 26, 2015).

performance obligations for Electric Generating Unit (EGU) sources and fulfills those obligations by implementing an allowance-based ozone season trading program beginning in 2023. This rule also establishes emissions limitations beginning in 2026 for certain other industrial stationary sources (referred to generally as “non-Electric Generating Units” (non-EGUs)). Taken together, these regulatory requirements will fully eliminate the amount of emissions that constitute the covered states’ significant contribution to nonattainment and interference with maintenance in downwind states for purposes of the 2015 ozone NAAQS.

This final rule implements the necessary emissions reductions as follows. Under the FIP requirements, EGUs in 22 states (Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin) are required to participate in a revised version of the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 3 Trading Program that was previously established in the Revised CSAPR Update.³ In addition to reflecting emissions reductions based on the Agency’s determination of the necessary control stringency in this rule, the revised trading program includes several enhancements to the program’s design to better ensure achievement of the selected control stringency on all days of the ozone season and over time. For 12 states already required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program (Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia) under the Revised CSAPR Update (with respect to the 2008 ozone NAAQS), the FIPs are amended by the revisions to the Group 3 trading program regulations. For seven states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program under SIPs or FIPs, the EPA is issuing new FIPs for two states (Alabama and Missouri) and amending existing FIPs for five states (Arkansas, Mississippi, Oklahoma, Texas, and Wisconsin) to transition EGU sources in these states from the Group 2 program to the revised Group 3 trading program, beginning with the 2023 ozone season. The EPA is

issuing new FIPs for three states not currently covered by any CSAPR NO_x ozone season trading program: Minnesota, Nevada, and Utah.

This rulemaking requires emissions reductions in the selected control stringency to be achieved as expeditiously as practicable and, to the extent possible, by the next applicable nonattainment dates for downwind areas for the 2015 ozone NAAQS. Thus, initial emissions reductions from EGUs will be required beginning in the 2023 ozone season and prior to the August 3, 2024, attainment date for areas classified as Moderate nonattainment for the 2015 ozone NAAQS.

The remaining emissions reduction obligations will be phased in as soon as possible thereafter. Substantial additional reductions from potential new post-combustion control installations at EGUs as well as from installation of new pollution controls at non-EGUs, also referred to in this action as industrial sources, will phase in beginning in the 2026 ozone season, associated with the August 3, 2027, attainment date for areas classified as Serious nonattainment for the 2015 ozone NAAQS. The EPA had proposed to require all emissions reductions to eliminate significant contribution to be in place by the 2026 ozone season. While we continue to view 2026 as the appropriate analytic year for purposes of applying the 4-step interstate transport framework, as discussed in section V.D.4 and VI.A.2 of this document, the final rule will allow individual facilities limited additional time to fully implement the required emissions reductions where the owner or operator demonstrates to the EPA’s satisfaction that more rapid compliance is not possible. For EGUs, the emissions trading program budget stringency associated with retrofit of post-combustion controls will be phased in over two ozone seasons (2026–2027). For industrial sources, this final rule provides a process for individual facilities to seek a one year extension, with the possibility of up to two additional years, based on a specific showing of necessity.

The EGU emissions reductions are based on the feasibility of control installation for EGUs in 19 states that remain linked to downwind nonattainment and maintenance receptors in 2026. These 19 states are: Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. The emissions reductions required for EGUs in these

states are based primarily on the potential retrofit of additional post-combustion controls for NO_x on most coal-fired EGUs and a portion of oil/gas-fired EGUs that are currently lacking such controls.

The EPA is finalizing, with some modifications from proposal in response to comments, certain additional features in the allowance-based trading program approach for EGUs, including dynamic adjustments of the emissions budgets and recalibration of the allowance bank over time as well as backstop daily emissions rate limits for large coal-fired units. The purpose of these enhancements is to better ensure that the emissions control stringency the EPA found necessary to eliminate significant contribution at Step 3 of the 4-step interstate transport framework is maintained over time in Step 4 implementation and is durable to changes in the power sector. These enhancements ensure the elimination of significant contribution is maintained both in terms of geographical distribution (by limiting the degree to which individual sources can avoid making emissions reductions) and in terms of temporal distribution (by better ensuring emissions reductions are maintained throughout each ozone season, year over year). As we further discuss in section V.D of this document, these changes do not alter the stringency of the emissions trading program over time. Rather, they ensure that the trading program (as the method of implementation at Step 4) remains aligned with the determinations made at Step 3. These enhancements are further discussed in section VI.B of this document.

The EPA is making a finding that NO_x emissions from certain non-EGU sources are significantly contributing to nonattainment or interfering with maintenance of the 2015 ozone NAAQS and that cost-effective controls for NO_x emissions reductions are available in certain industrial source categories that would result in meaningful air quality improvements in downwind receptors. The EPA is establishing emissions limitations beginning in 2026 for non-EGU sources located within 20 states: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. The final rule establishes NO_x emissions limitations during the ozone season for the following unit types for sources in

³ As explained in section V.C.1 of this document, the EPA is making a finding that EGU sources within the State of California are sufficiently controlled such that no further emissions reductions are needed from them to eliminate significant contribution to downwind states.

non-EGU industries:⁴ reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators.

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to protect public health and the environment by reducing interstate transport of certain air pollutants that significantly contribute to nonattainment, or interfere with maintenance, of the 2015 ozone NAAQS in downwind states. Ground-level ozone has detrimental effects on human health as well as vegetation and ecosystems. Acute and chronic exposure to ozone in humans is associated with premature mortality and certain morbidity effects, such as asthma exacerbation. Ozone exposure can also negatively impact ecosystems by limiting tree growth, causing foliar injury, and changing ecosystem community composition. Section III of this document provides additional evidence of the harmful effects of ozone exposure on human health and the environment. Studies have established that ozone air pollution can be transported over hundreds of miles, with elevated ground-level ozone concentrations occurring in rural and metropolitan areas.^{5,6} Assessments of ozone control approaches have concluded that control strategies targeting reduction of NO_x emissions are an effective method to reduce regional-scale ozone transport.⁷

CAA section 110(a)(2)(D)(i)(I) requires states to prohibit emissions that will contribute significantly to nonattainment or interfere with maintenance in any other state with

respect to any primary or secondary NAAQS.⁸ Within 3 years of the EPA promulgating a new or revised NAAQS, all states are required to provide SIP submittals, often referred to as “infrastructure SIPs,” addressing certain requirements, including the good neighbor provision. See CAA section 110(a)(1) and (2). The EPA must either approve or disapprove such submittals or make a finding that a state has failed to submit a complete SIP revision. As with any other type of SIP under the Act, when the EPA disapproves an interstate transport SIP or finds that a state failed to submit an interstate transport SIP, the CAA requires the EPA to issue a FIP to directly implement the measures necessary to eliminate significant contribution under the good neighbor provision. See generally CAA section 110(k) and 110(c). As such, in this rule, the EPA is finalizing requirements to fully address good neighbor obligations for the covered states for the 2015 ozone NAAQS under its authority to promulgate FIPs under CAA section 110(c). By eliminating significant contribution from these upwind states, this rule will make substantial and meaningful improvements in air quality by reducing ozone levels at the identified downwind receptors as well as many other areas of the country. At any time after the effective date of this rule, states may submit a Good Neighbor SIP to replace the FIP requirements contained in this rule, subject to EPA approval under CAA section 110(a).

The EPA conducted air quality modeling for the 2023 and 2026 analytic years to identify (1) the downwind areas identified as “receptors” (which are associated with monitoring sites) that are expected to have trouble attaining or maintaining the 2015 ozone NAAQS in the future and (2) the contribution of ozone transport from upwind states to the downwind air quality problems. We use the term “downwind” to describe those states or areas where a receptor is located, and we use the term “upwind” to describe states whose emissions are linked to one or more receptors. States may be both downwind and upwind depending on the receptor or linkage in question. Section IV of this document provides a full description of the results of the EPA’s updated air quality modeling and relevant analyses for the rulemaking, including a discussion of how updates to the modeling and air quality analysis following the proposed rule have resulted in some modest changes in the overall geography of the final rule. Based on the EPA’s air quality

analysis, the 23 upwind states covered in this action are linked above the 1 percent of the NAAQS threshold to downwind air quality problems in downwind states. The EPA intends to expeditiously review the updated air quality modeling and related analyses to address potential good neighbor requirements of six additional states—Arizona, Iowa, Kansas, New Mexico, Tennessee, and Wyoming—in a subsequent action. The EPA had previously approved 2015 ozone transport SIPs submitted by Oregon and Delaware, but in the proposed FIP action the EPA found these states potentially to be linked in the modeling supporting our proposal. We proposed to issue an error correction for our prior approval of Delaware’s 2015 ozone transport SIP; however, in this final rule, the EPA is withdrawing the proposed error correction and the proposed FIP for Delaware, because our updated modeling for this final rule confirms that Delaware is not linked above the 1 percent of NAAQS threshold (see section III.C.1 of this document for additional information). The EPA is deferring finalizing a finding at this time for Oregon (see section IV.G of this document for additional information).

1. Emissions Limitations for EGUs Established by the Final Rule

In this rule, the EPA is issuing FIP requirements that apply the provisions of the CSAPR NO_x Ozone Season Group 3 Trading Program as revised in the rule to EGU sources within the borders of the following 22 states: Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin. Implementation of the revised trading program provisions begins in the 2023 ozone season.

The EPA is expanding the CSAPR NO_x Ozone Season Group 3 Trading Program beginning in the 2023 ozone season. Specifically, the FIPs require power plants within the borders of the 22 states listed in the previous paragraph to participate in an expanded and revised version of the CSAPR NO_x Ozone Season Group 3 Trading Program created by the Revised CSAPR Update. Affected EGUs within the borders of the following 12 states currently participating in the Group 3 Trading Program under existing FIPs remain in the program, with revised provisions beginning in the 2023 ozone season, under this rule: Illinois, Indiana, Kentucky, Louisiana, Maryland,

⁴ We use the terms “emissions limitation” and “emissions limit” to refer to both numeric emissions limitations and control technology requirements that specify levels of emissions reductions to be achieved.

⁵ Bergin, M.S. et al. (2007) Regional air quality: local and interstate impacts of NO_x and SO₂ emissions on ozone and fine particulate matter in the eastern United States. *Environmental Sci & Tech.* 41: 4677–4689.

⁶ Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. *Atmospheric Environment* 84, 100–112.

⁷ See 82 FR 51238, 51248 (November 3, 2017) [citing 76 FR 48208, 48222 (August 8, 2011)] and 63 FR 57381 (October 27, 1998).

⁸ 42 U.S.C. 7410(a)(2)(D)(i)(I).

Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The FIPs also require affected EGUs within the borders of the following seven states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the “Group 2 trading program”) under existing FIPs or existing SIPs to transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 control period: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.⁹ Finally, the EPA is issuing new FIPs for EGUs within the borders of three states not currently covered by any existing CSAPR trading program for seasonal NO_x emissions: Minnesota, Nevada, and Utah. Sources in these states will enter the Group 3 trading program in the 2023 control period following the effective date of the final rule.¹⁰ Refer to section VI.B of this document for details on EGU regulatory requirements.

2. Emissions Limitations for Industrial Stationary Point Sources Established by the Final Rule

The EPA is issuing FIP requirements that include new NO_x emissions limitations for industrial or non-EGU sources in 20 states, with sources expected to demonstrate compliance no later than 2026. The EPA is requiring emissions reductions from non-EGU sources to address interstate transport obligations for the 2015 ozone NAAQS for the following 20 states: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia and West Virginia.

The EPA is establishing emissions limitations for the following unit types in non-EGU industries: reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy

Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators. Refer to Table II.A–1 for a list of North American Industry Classification System (NAICS) codes for each entity included for regulation under this rule.

B. Summary of the Regulatory Framework of the Rule

The EPA is applying the 4-step interstate transport framework developed and used in CSAPR, the CSAPR Update, the Revised CSAPR Update, and other previous ozone transport rules under the authority provided in CAA section 110(a)(2)(D)(i)(I). The 4-step interstate transport framework provides a stepwise method for the EPA to define and implement good neighbor obligations for the 2015 ozone NAAQS. The four steps are as follows: (Step 1) identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (Step 2) determining which upwind states contribute to these identified problems in amounts sufficient to “link” them to the downwind air quality problems (*i.e.*, in this rule as in prior transport rules beginning with CSAPR in 2011, above a contribution threshold of 1 percent of the NAAQS); (Step 3) for states linked to downwind air quality problems, identifying upwind emissions that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS through a multifactor analysis; and (Step 4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind areas, implementing the necessary emissions reductions through enforceable measures. The remainder of this section provides a general overview of the EPA’s application of the 4-step framework as it applies to the provisions of the rule; additional details regarding the EPA’s approach are found in section III of this document.

To apply the first step of the 4-step framework to the 2015 ozone NAAQS, the EPA performed air quality modeling to project ozone concentrations at air quality monitoring sites in 2023 and 2026.¹¹ The EPA evaluated projected

ozone concentrations for the 2023 analytic year at individual monitoring sites and considered current ozone monitoring data at these sites to identify receptors that are anticipated to have problems attaining or maintaining the 2015 ozone NAAQS. This analysis of projected ozone concentrations was then repeated for 2026.

To apply the second step of the framework, the EPA used air quality modeling to quantify the contributions from upwind states to ozone concentrations in 2023 and 2026 at downwind receptors.¹² Once quantified, the EPA then evaluated these contributions relative to a screening threshold of 1 percent of the NAAQS (*i.e.*, 0.70 ppb).¹³ States with contributions that equaled or exceeded 1 percent of the NAAQS were identified as warranting further analysis at Step 3 of the 4-step framework to determine if the upwind state significantly contributes to nonattainment or interference with maintenance in a downwind state. States with contributions below 1 percent of the NAAQS were considered not to significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states.

Based on the EPA’s most recent air quality modeling and contribution analysis using 2023 as the analytic year, the EPA finds that the following 23 states have contributions that equal or exceed 1 percent of the 2015 ozone NAAQS, and, thereby, warrant further analysis of significant contribution to nonattainment or interference with maintenance of the NAAQS: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin.

There are locations in California to which Oregon contributes greater than 1 percent of the NAAQS; the EPA

August 3, 2024, for areas classified as Moderate nonattainment, and August 3, 2027, for areas classified as Serious nonattainment. *See* 83 FR 25776.

¹² The EPA performed air quality modeling for 2032 in the proposed rulemaking, but did not perform contribution modeling for 2032 since contribution data for this year were not needed to identify upwind states to be analyzed in Step 3. The modeling of 2032 done at proposal using the 2016v2 platform does not constitute or represent any final agency determinations respecting air quality conditions or regulatory judgments with respect to good neighbor obligations or any other CAA requirements.

¹³ *See* section IV.F of this document for explanation of EPA’s use of the 1 percent of the NAAQS threshold in the Step 2 analysis.

⁹ Five of these seven states (Arkansas, Mississippi, Oklahoma, Texas, and Wisconsin) currently participate in the Federal Group 2 trading program pursuant to the FIPs finalized in the CSAPR Update. The FIPs required under this rule amend the existing FIPs for these states. The other two states (Alabama and Missouri) have already replaced the FIPs finalized in the CSAPR Update with approved SIP revisions that require their EGUs to participate in state Group 2 trading programs integrated with the Federal Group 2 trading program, so the FIPs required in this action constitute new FIPs for these states. The EPA will cease implementation of the state Group 2 trading programs included in the two states’ SIPs on the effective date of this rule.

¹⁰ Three states, Kansas, Iowa, and Tennessee, will remain in the Group 2 Trading Program.

¹¹ These 2 analytic years are the last full ozone seasons before, and thus align with, upcoming attainment dates for the 2015 ozone NAAQS:

proposed that downwind areas represented by these monitoring sites in California should not be considered interstate ozone transport receptors at Step 1. However, the EPA is deferring finalizing a finding at this time for Oregon (*see* section IV.G of this document for additional information).

Based on the air quality analysis presented in section IV of this document, the EPA finds that, with the exception of Alabama, Minnesota, and Wisconsin, the states found linked in 2023 will continue to contribute above the 1 percent of the NAAQS threshold to at least one receptor whose nonattainment and maintenance concerns persist through the 2026 ozone season. As a result, the EPA's evaluation of significantly contributing emissions at Step 3 for Alabama, Minnesota, and Wisconsin is limited to emissions reductions achievable by the 2023 and 2024 ozone seasons.

At the third step of the 4-step framework, the EPA applied a multifactor test that incorporates cost, availability of emissions reductions, and air quality impacts at the downwind receptors to determine the amount of ozone precursor emissions from the linked upwind states that "significantly" contribute to downwind nonattainment or maintenance receptors. The EPA is applying the multifactor test described in section V.A of this document to both EGU and industrial sources. The EPA assessed the potential emissions reductions in 2023 and 2026,¹⁴ as well as in intervening and later years to determine the emissions reductions required to eliminate significant contribution in 2023 and future years where downwind areas are projected to have potential problems attaining or maintaining the 2015 ozone NAAQS.

For EGU sources, the EPA evaluated the following set of widely-available NO_x emissions control technologies: (1) fully operating existing selective catalytic reduction (SCR) controls, including both optimizing NO_x removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_x

combustion controls; (3) fully operating existing selective non-catalytic reduction (SNCR) controls, including both optimizing NO_x removal by existing operational SNCRs and turning on and optimizing existing idled SNCRs; (4) installing new SCRs; (5) installing new SCRs; and (6) generation shifting. For the reasons explained in section V of this document and supported by the "Technical Support Document (TSD) for the Final Federal Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standard, Docket ID No. EPA-HQ-OAR-2021-0668, EGU NO_x Mitigation Strategies Final Rule TSD" (Mar. 2023), hereinafter referred to as the EGU NO_x Mitigation Strategies Final Rule TSD, included in the docket for this action, the EPA determines that for the regional, multi-state scale of this rulemaking, only fully operating and optimizing existing SCRs and existing SNCRs (EGU NO_x emissions controls options 1 and 3 in the list earlier) are possible for the 2023 ozone season. The EPA determined that state-of-the-art NO_x combustion controls at EGUs (emissions control option 2 in the list above) are available by the beginning of the 2024 ozone season. *See* section V.B.1 of this document for a full discussion of EPA's analysis of NO_x emissions mitigation strategies for EGU sources.

The EPA is requiring control stringency levels that offer the most incremental NO_x emissions reduction potential from EGUs—among the uniform mitigation measures assessed for the covered region—and the most corresponding downwind ozone air quality improvements to the extent feasible in each year analyzed. The EPA is making a finding that the required controls provide cost-effective reductions of NO_x emissions that will provide substantial improvements in downwind ozone air quality to address interstate transport obligations for the 2015 ozone NAAQS in a timely manner. These controls represent greater stringency in upwind EGU controls than in the EPA's most recent ozone transport rulemakings, such as the CSAPR Update and the Revised CSAPR Update. However, programs to address interstate ozone transport based on the retrofit of post-combustion controls are by no means unprecedented. In prior ozone transport rulemakings such as the NO_x SIP Call and the Clean Air Interstate Rule (CAIR), the EPA established EGU budgets premised on the widespread availability of retrofitting EGUs with post-combustion

emissions controls such as SCR.¹⁵ While these programs successfully drove many EGUs to retrofit post-combustion controls, other EGUs throughout the present geography of linked upwind states continue to operate without such controls and continue to emit at relatively high rates more than 20 years after similar units reduced these emissions under prior interstate ozone transport rulemakings.

Furthermore, the CSAPR Update provided only a partial remedy for eliminating significant contribution for the 2008 ozone NAAQS, as needed to obtain available reductions by the 2017 ozone season. In that rule, the EPA made no determination regarding the appropriateness of more stringent EGU NO_x controls that would be required for a *full* remedy for interstate transport for the 2008 ozone NAAQS. Following the remand of the CSAPR Update in *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*), the EPA again declined to require the retrofit of new post-combustion controls on EGUs in the Revised CSAPR Update, but that determination was based on a specific timing consideration: downwind air quality problems under the 2008 ozone NAAQS were projected to resolve before post-combustion control retrofits could be accomplished on a fleetwide, regional scale. *See* 86 FR 23054, 23110 (April 30, 2021).

In this rulemaking, the EPA is addressing good neighbor obligations for the more protective 2015 ozone NAAQS, and the Agency observes ongoing and persistent contribution from upwind states to ozone nonattainment and maintenance receptors in downwind states under that NAAQS. As further discussed in section V of this document, the nature of this contribution warrants a greater degree of control stringency than the EPA determined to be necessary to eliminate significant contribution of ozone transport in prior CSAPR rulemakings. In this rule, the EPA is requiring emissions performance levels for EGU NO_x control strategies commensurate with those determined to be necessary in the NO_x SIP Call and CAIR.

Based on the Step 3 analysis described in section V of this document, the EPA finds that emissions reductions commensurate with the full operation of all existing post-combustion controls (both SCRs and SNCRs) and state-of-the-art combustion control upgrades constitute the Agency's selected control stringency for EGUs within the borders of 22 states linked to downwind

¹⁴ The EPA included emissions reductions from the potential installation of SCRs at all affected large coal-fired EGUs in the 2026 analytic year for the purposes of assessing significant contribution to nonattainment and interference with maintenance, which is consistent with the associated attainment date. However, in response to comments identifying potential supply chain and outage scheduling challenges if the full breadth of these assumed SCR installations were to occur, the EPA is implementing half of this emissions reduction potential in 2026 ozone-season NO_x budgets for states containing these EGUs and the other half of this emissions reduction potential in 2027 ozone-season NO_x budgets for those states.

¹⁵ *See, e.g.*, 70 FR 25162, 25205–06 (May 12, 2005).

nonattainment or maintenance in 2023 (Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin). For 19 of those states that are also linked in 2026 (Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia), the EPA is determining that the selected EGU control stringency also includes emissions reductions commensurate with the retrofit of SCR at coal-fired units of 100 MW or greater capacity (excepting circulating fluidized bed units (CFB)), new SNCR on coal-fired units of less than 100 MW capacity and on CFBs of any capacity size, and SCR on oil/gas steam units greater than 100 MW that have historically emitted at least 150 tons of NO_x per ozone season.

To identify appropriate control strategies for non-EGU sources to achieve NO_x emissions reductions that would result in meaningful air quality improvements in downwind areas, for the proposed FIP, the EPA evaluated air quality modeling information, annual emissions, and information about potential controls to determine which industries, beyond the power sector, could have the greatest impact in providing ozone air quality improvements in affected downwind states. Once the EPA identified the industries, the EPA used its Control Strategy Tool to identify potential emissions units and control measures and to estimate emissions reductions and compliance costs associated with application of non-EGU emissions control measures. The technical memorandum *Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026* lays out the analytical framework and data used to prepare proxy estimates for 2026 of potentially affected non-EGU facilities and emissions units, emissions reductions, and costs.^{16 17} This

¹⁶ The memorandum is available in the docket at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0150>.

¹⁷ This screening assessment was not intended to identify the specific emissions units subject to the proposed emissions limits for non-EGU sources but was intended to inform the development of the proposed rule by identifying proxies for (1) non-EGU emissions units that had emissions reduction potential, (2) potential controls for and emissions reductions from these emissions units, and (3) control costs from the potential controls on these

information helped shape the proposal and final rule. To further evaluate the industries and emissions unit types identified by the screening assessment and to establish the applicability criteria and proposed emissions limits, the EPA reviewed Reasonably Available Control Technology (RACT) rules, New Source Performance Standards (NSPS) rules, National Emissions Standards for Hazardous Air Pollutants (NESHAP) rules, existing technical studies, rules in approved SIPs, consent decrees, and permit limits. That evaluation is detailed in the “Technical Support Document (TSD) for the Proposed Rule, Docket ID No. EPA-HQ-OAR-2021-0668, Non-EGU Sectors TSD” (Dec. 2021), hereinafter referred to as the Proposed Non-EGU Sectors TSD, prepared for the proposed FIP.¹⁸

In this final rule, the EPA is retaining the industries and many of the emissions unit types included in the proposal in its findings of significant contribution at Step 3, as discussed in section V of this document. As discussed in the memorandum for the final rule, titled “Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs,” the EPA uses the 2019 emissions inventory, the list of emissions units estimated to be captured by the applicability criteria, the assumed control technologies that would meet the emissions limits, and information on control efficiencies and default cost/ton values from the Control Measures Database,¹⁹ to estimate NO_x emissions reductions and costs for the year 2026. In this final rule, the EPA made changes to the applicability criteria and emissions limits following consideration of comments on the proposal and reassessed the overall non-EGU emissions reduction strategy based on the factors at Step 3 to render a judgment as to whether the level of emissions control that would be achievable from these units meets the criteria for “significant contribution.” In the final rule, we affirm our proposed determinations of which industries and emissions units are potentially

emissions units. This information helped shape the proposed rule.

¹⁸ The TSD is available in the docket at <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0145>.

¹⁹ More information about the control measures database (CMDB) can be found at the following link: <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modelstools-air-pollution>.

impactful and warrant further analysis at Step 3, and we find that the available emissions reductions are cost-effective and make meaningful improvements at the identified downwind receptors. For a detailed discussion of the changes, between the proposal and this final rule, in emissions unit types included and in emissions limits, see section VI.C. of this document.

The EPA performed air quality analysis using the Ozone Air Quality Assessment Tool (AQAT) to evaluate the air quality improvements anticipated to result from the implementation of the selected EGU and non-EGU emissions reduction strategies. See section V.D of this document.²⁰ We also used AQAT to determine whether the emissions reductions for both EGUs and non-EGUs potentially create an “over-control” scenario. As in prior transport rules following the holdings in *EME Homer City*, overcontrol would be established if the record indicated that, for any given state, there is a less stringent emissions control approach for that state, by which (1) the expected ozone improvements would be sufficient to resolve all of the downwind receptor(s) to which that state is linked; or (2) the expected ozone improvements would reduce the upwind state’s ozone contributions below the screening threshold (*i.e.*, 1 percent of the NAAQS or 0.70 ppb) to all of linked receptors. The EPA’s over-control analysis, discussed in section V.D.4 of this document, shows that the control stringencies for EGU and non-EGU sources in this final rule do not over-control upwind states’ emissions either with respect to the downwind air quality problems to which they are linked or with respect to the 1 percent of the NAAQS contribution threshold, such that over-control would trigger re-evaluation at Step 3 for any linked upwind state.

Based on the multi-factor test applied to both EGU and non-EGU sources and

²⁰ The use of AQAT and other simplified modeling tools to generate “appropriately reliable projections of air quality conditions and contributions” when there is limited time to conduct full-scale photochemical grid modeling was upheld by the D.C. Circuit in *MOG v. EPA*, No. 21–1146 (D.C. Cir. March 3, 2023). The EPA has used AQAT for the purpose of air quality and overcontrol assessments at Step 3 in the prior CSAPR rulemakings, and we continue to find it reliable for such purposes. We discuss the calibration of AQAT for this action and the multiple sensitivity checks we performed to ensure its reliability in the Ozone Transport Policy Analysis Final Rule TSD in the docket. Because we were able to conduct a photochemical grid modeling run of the 2026 final rule policy scenario, these results are also included in the docket and confirm the regulatory conclusions reached with AQAT. See section VIII of this document and Appendix 3A of the Final Rule RIA for more information.

our subsequent assessment of over-control, the EPA finds that the selected EGU and non-EGU control stringencies constitute the elimination of significant contribution and interference with maintenance, without over-controlling emissions, from the 23 upwind states subject to EGU and non-EGU emissions reductions requirements under the rule. For additional details about the multi-factor test and the over-control analysis, see the document titled “Technical Support Document (TSD) for the Final Federal Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standard, Docket ID No. EPA–HQ–OAR–2021–0668, Ozone Transport Policy Analysis Proposed Rule TSD” (Mar. 2023), hereinafter referred to as Ozone Transport Policy Analysis Final Rule TSD, included in the docket for this rulemaking.

In this fourth step of the 4-step framework, the EPA is including enforceable measures in the promulgated FIPs to achieve the required emissions reductions in each of the 23 states. Specifically, the FIPs require covered power plants within the borders of 22 states (Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin) to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program created by the Revised CSAPR Update. Affected EGUs within the borders of the following 12 states currently participating in the Group 3 Trading Program will remain in the program, with revised provisions beginning in the 2023 ozone season, under this rule: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Affected EGUs within the borders of the following seven states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the “Group 2 trading program”)—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin—will transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 control period,²¹ and affected

EGUs within the borders of three states not currently covered by any CSAPR trading program for seasonal NO_x emissions—Minnesota, Nevada, and Utah—will enter the Group 3 trading program in the 2023 control period following the effective date of the final rule. In addition, the EPA is revising other aspects of the Group 3 trading program to better ensure that this method of implementation at Step 4 provides a durable remedy for the elimination of the amount of emissions deemed to constitute significant contribution at Step 3 of the interstate transport framework. These enhancements, summarized later in this section, are designed to operate together to maintain that degree of control stringency over time, thus improving emissions performance at individual units and offering a necessary measure of assurance that NO_x pollution controls will be operated throughout each ozone season, as described in section VI.B of this document. This rulemaking does not revise the budget stringency and geography of the existing CSAPR NO_x Ozone Season Group 1 trading program. Aside from the seven states moving from the Group 2 trading program to the Group 3 trading program under the final rule, this rule otherwise leaves unchanged the budget stringency of the existing CSAPR NO_x Ozone Season Group 2 trading program.

The EPA is establishing preset ozone season NO_x emissions budgets for each ozone season from 2023 through 2029, using generally the same Group 3 trading program budget-setting methodology used in the Revised CSAPR Update, as explained in section VI.B of this document and as shown in Table I.B–1. The preset budgets for the 2026 through 2029 ozone seasons incorporate EGU emissions reductions to eliminate significant contribution and also take into account a substantial number of known retirements over that period to ensure the elimination of significant contribution is maintained as intended by this rule. These budgets serve as floors and may be supplanted by a budget that the EPA calculates for that control period using more recent information (a “dynamic budget”) if that dynamic budget yields a higher level of allowable emissions—still consistent with the Step 3 level of emissions control stringency—than the preset budget. As reflected in Table I.B–1, and accounting for both the stringency of the rule and known fleet change, the 2026 preset budget is 23 percent lower than the 2025 preset budget; the 2027 preset budget is 20 percent lower than the 2026 preset budget; the 2028 preset

budget is 4 percent lower than the 2027 preset budget; and the 2029 preset budget is 8 percent lower than the 2028 preset budget.

While it is possible that additional EGUs may seek to retire in this 2026–2029 period than are currently scheduled and captured in the preset emissions budgets, it is also possible that EGUs with currently scheduled retirements may adjust their retirement timing to accommodate the timing of replacement generation and/or transmission upgrades necessitated by their retirement. While the EPA designed this final rule to provide preset budgets through 2029 to incorporate known retirement-related emissions reductions to ensure the elimination of significant contribution as identified at Step 3 is maintained over time, the use of these floors also provides generators and grid operators enhanced certainty regarding the minimum amount of allowable NO_x emissions for reliability planning through the 2020s. By providing the opportunity for dynamic budgets to subsequently calibrate budgets to any unforeseen increases in fleet demand, it also ensures this rule will not interfere with ongoing retirement scheduling or adjustments and thus is robust to future uncertainty during a transition period.

The EPA also believes the likelihood and magnitude of a scenario in which a state’s preset emissions budgets during this period would authorize more emissions than the corresponding dynamic budget is low. As described elsewhere, dynamic budgets are incorporated to best calibrate the rule’s stringency to future unknown changes to the fleet. The circumstances in which a dynamic budget would produce a level of allowable emissions less than preset budgets is most pronounced for future periods in which there is a high degree of unknown retirements (increasing the risk that budgets are not appropriately calibrated to the reduced fossil fuel heat input post retirement). However, the 2026–2029 period presents a case where retirement planning has been announced with greater lead time than normal due to a combination of utility 2030 decarbonization commitments, and Effluent Limitation Guideline (ELG) and Coal Combustion Residual (CCR) alternative compliance pathways available to units planning to cease combustion of coal by December 31, 2028. For each of these existing rules, facilities that are planning to retire have already conveyed that intention to EPA in order to take advantage of the alternative compliance pathways

²¹ The EPA will deem participation in the Group 3 trading program by the EGUs in these seven states as also addressing the respective states’ good neighbor obligations with respect to the 2008 ozone NAAQS (for all seven states), the 1997 ozone NAAQS (for all the states except Texas), and the 1979 ozone NAAQS (for Alabama and Missouri) to the same extent that those obligations are currently being addressed by participation of the states’ EGUs in the Group 2 trading program.

available to such facilities.²² Therefore, the likelihood of unknown retirements—leading to lower dynamic budgets—is much lower than typical for this time horizon. This makes EPA's balanced use of preset emissions budgets or dynamic budgets if they exceed preset levels a reasonable

mechanism to accommodate planning and fleet transition dynamics during this period. The need and reasoning for the limited-period preset budget floor is further discussed in section VI.B.4.

For control periods in 2030 and thereafter, the emissions budgets will be the amounts calculated for each state and noticed to the public roughly one

year before the control period, using the dynamic budget-setting methodology. In this manner, the stringency of the program will be secured and sustained in the dynamic budgets of this program, regardless of whatever EGU transition activities ultimately occur in this 2026–2029 transition period.

TABLE I.B–1—PRESET CSAPR NO_x OZONE SEASON GROUP 3 STATE EMISSIONS BUDGETS (TONS) FOR 2023 THROUGH 2029 CONTROL PERIODS *

State	2023 State budget	2024 State budget	2025 State budget	2026 State budget **	2027 State budget **	2028 State budget **	2029 State budget **
Alabama	6,379	6,489	6,489	6,339	6,236	6,236	5,105
Arkansas	8,927	8,927	8,927	6,365	4,031	4,031	3,582
Illinois	7,474	7,325	7,325	5,889	5,363	4,555	4,050
Indiana	12,440	11,413	11,413	8,410	8,135	7,280	5,808
Kentucky	13,601	12,999	12,472	10,190	7,908	7,837	7,392
Louisiana	9,363	9,363	9,107	6,370	3,792	3,792	3,639
Maryland	1,206	1,206	1,206	842	842	842	842
Michigan	10,727	10,275	10,275	6,743	5,691	5,691	4,656
Minnesota	5,504	4,058	4,058	4,058	2,905	2,905	2,578
Mississippi	6,210	5,058	5,037	3,484	2,084	1,752	1,752
Missouri	12,598	11,116	11,116	9,248	7,329	7,329	7,329
Nevada	2,368	2,589	2,545	1,142	1,113	1,113	880
New Jersey	773	773	773	773	773	773	773
New York	3,912	3,912	3,912	3,650	3,388	3,388	3,388
Ohio	9,110	7,929	7,929	7,929	7,929	6,911	6,409
Oklahoma	10,271	9,384	9,376	6,631	3,917	3,917	3,917
Pennsylvania	8,138	8,138	8,138	7,512	7,158	7,158	4,828
Texas	40,134	40,134	38,542	31,123	23,009	21,623	20,635
Utah	15,755	15,917	15,917	6,258	2,593	2,593	2,593
Virginia	3,143	2,756	2,756	2,565	2,373	2,373	1,951
West Virginia	13,791	11,958	11,958	10,818	9,678	9,678	9,678
Wisconsin	6,295	6,295	5,988	4,990	3,416	3,416	3,416
Total	208,119	198,014	195,259	151,329	119,663	115,193	105,201

* Further information on the state-level emissions budget calculations pertaining to Table I.B–1 is provided in section VI.B.4 of this document as well as the Ozone Transport Policy Analysis Final Rule TSD. Further information on the approach for allocating a portion of Utah's emissions budget for each control period to the existing EGU in the Uintah and Ouray Reservation within Utah's borders is provided in section VI.B.9 of this document.

** As described in section VI of this document, the budget for these years will be subsequently determined and equal the greater of the value above or that derived from the dynamic budget methodology.

The budget-setting methodology that the EPA will use to determine dynamic budgets for each control period starting with 2026 is an extension of the methodology used to determine the preset budgets and will be used routinely to determine emissions budgets for each future control period in the year before that control period, with each emissions budget reflecting the latest available information on the composition and utilization of the EGU fleet at the time that emissions budget is determined. The stringency of the dynamic emissions budgets will simply reflect the stringency of the emissions control strategies selected in the rulemaking more consistently over time and ensure that the annual updates would eliminate emissions determined to be unlawful under the good neighbor

provision. As already noted, for the control periods in which both preset budgets and dynamic budgets are determined for a state (*i.e.*, 2026 through 2029), the state's dynamic budget will apply only if it is higher than the state's preset budget. See section VI.B of this document for additional discussion of the EPA's method for adjusting emissions budgets to ensure elimination of significant contribution from EGU sources in the linked upwind states.

In conjunction with the levels of the emissions budgets, the carryover of unused allowances for use in future control periods as banked allowances affects the ability of a trading program to maintain the rule's selected control stringency and related EGU effective emissions rate performance level as the EGU fleet evolves over time.

Unrestricted banking of allowances allows what might otherwise be temporary surpluses of allowances in some individual control periods to accumulate into a long-term allowance surplus that reduces allowance prices and weakens the trading program's incentives to control emissions. To prevent this outcome, the EPA is also revising the Group 3 trading program by adding provisions that establish a routine recalibration process for banked allowances using a target percentage of 21 percent for the 2024–2029 control periods and 10.5 percent for control periods in 2030 and later years.

As an enhancement to the structure of the trading program originally promulgated in the Revised CSAPR Update, the EPA is also establishing backstop daily emissions rates for coal

²² Notices of Planned Participation for the ELG Reconsideration Rule were due October 31, 2021

(85 FR 64708, 64679). For the CCR Action, facilities

had to indicate their future plans to cease receipt of waste by April 11, 2021 (85 FR 53517).

steam EGUs greater than or equal to 100 MW in covered states. Starting with the 2024 control period, a 3-for-1 allowance surrender ratio (instead of the usual 1-for-1 surrender ratio) will apply to emissions during the ozone season from any large coal-fired EGU with existing SCR controls exceeding by more than 50 tons a daily average NO_x emissions rate of 0.14 lb/mmBtu. The daily average emissions rate provisions will apply to large coal-fired EGUs without existing SCR controls starting with the second control period in which newly installed SCR controls are operational at the unit, but not later than the 2030 control period.

The backstop daily emissions rates work in tandem with the ozone season emissions budgets to ensure the elimination of significant contribution as determined at Step 3 is maintained over time and more consistently throughout each ozone season. They will offer downwind receptor areas a necessary measure of assurance that they will be protected on a daily basis during the ozone season by more continuous and consistent operation of installed pollution controls. The EPA's experience with the CSAPR trading programs has revealed instances where EGUs have reduced their SCR's performance on a given day, or across the entire ozone seasons in some cases, including high ozone days.²³ In addition to maintaining a mass-based seasonal requirement, this rule will achieve a much more consistent level of emissions control in line with our Step 3 determination of significant contribution while maintaining

compliance flexibility consistent with that determination. These trading program improvements will promote consistent emissions control performance across the power sector in the linked upwind states, which protects communities living in downwind ozone nonattainment areas from exceedances of the NAAQS that might otherwise occur.

The EPA is including enforceable emissions control requirements that will apply during the ozone season (annually from May to September) for nine non-EGU industries in the promulgated FIPs to achieve the required emissions reductions in 20 states with remaining interstate transport obligations for the 2015 ozone NAAQS in 2026: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. These requirements would apply to all existing emissions units and to any future emissions units constructed in the covered states that meet the relevant applicability criteria. Thus, the emissions limitations for non-EGU sources and associated compliance requirements would apply in all 20 states listed in this paragraph, even if some of these states do not currently have any existing emissions units meeting the applicability criteria for the identified industries.

Based on our evaluation of the time required to install controls at the types of non-EGU sources covered by this rule, the EPA has identified the 2026 ozone season as a reasonable

compliance date for industrial sources. The EPA is therefore finalizing control requirements for non-EGU sources that take effect in 2026. However, in recognition of comments and additional information indicating that not all facilities may be capable of meeting the control requirements by that time, the final rule provides a process by which the EPA may grant compliance extensions of up to 1 year, which if approved by the EPA, would require compliance no later than the 2027 ozone season, followed by an additional possible extension of up to 2 more years, where specific criteria are met. For sources located in the 20 states listed in the previous paragraph, the EPA is finalizing the NO_x emissions limits listed in Table I.B-2 for reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; the NO_x emissions limits listed in Table I.B-3 for kilns in Cement and Cement Product Manufacturing; the NO_x emissions limits listed in Table I.B-4 for reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; the NO_x emissions limits listed in Table I.B-5 for furnaces in Glass and Glass Product Manufacturing; the NO_x emissions limits listed in Table I.B-6 for boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and the NO_x emissions limits listed in Table I.B-7 for combustors and incinerators in Solid Waste Combustors or Incinerators.

TABLE I.B-2—SUMMARY OF NO_x EMISSIONS LIMITS FOR PIPELINE TRANSPORTATION OF NATURAL GAS

Engine type and fuel	NO _x emissions limit (g/hp-hr)
Natural Gas Fired Four Stroke Rich Burn	1.0
Natural Gas Fired Four Stroke Lean Burn	1.5
Natural Gas Fired Two Stroke Lean Burn	3.0

TABLE I.B-3—SUMMARY OF NO_x EMISSIONS LIMITS FOR KILN TYPES IN CEMENT AND CONCRETE PRODUCT MANUFACTURING

Kiln type	NO _x emissions limit (lb/ton of clinker)
Long Wet	4.0
Long Dry	3.0
Preheater	3.8
Precalciner	2.3
Preheater/Precalciner	2.8

²³ See 86 FR 23090. The EPA highlighted the Miami Fort Unit 7 (possessing a SCR) more than

tripled its ozone-season NO_x emission rate between 2017 and 2019.

Based on evaluation of comments received, the EPA is not, at this time, finalizing the source cap limit as proposed at 87 FR 20046 (see section VII.C.2 of the April 6, 2022, Proposal).

TABLE I.B-4—SUMMARY OF NO_x CONTROL REQUIREMENTS FOR IRON AND STEEL AND FERROALLOY EMISSIONS UNITS

Emissions unit	NO _x emissions standard or requirement (lb/mmBtu)
Reheat furnace	Test and set limit based on installation of Low-NO _x Burners.

TABLE I.B-5—SUMMARY OF NO_x EMISSIONS LIMITS FOR FURNACE UNIT TYPES IN GLASS AND GLASS PRODUCT MANUFACTURING

Furnace type	NO _x emissions limit (lb/ton of glass produced)
Container Glass Manufacturing Furnace	4.0
Pressed/Blown Glass Manufacturing Furnace or Fiberglass Manufacturing Furnace	4.0
Flat Glass Manufacturing Furnace	7.0

TABLE I.B-6—SUMMARY OF NO_x EMISSIONS LIMITS FOR BOILERS IN IRON AND STEEL AND FERROALLOY MANUFACTURING, METAL ORE MINING, BASIC CHEMICAL MANUFACTURING, PETROLEUM AND COAL PRODUCTS MANUFACTURING, AND PULP, PAPER, AND PAPERBOARD MILLS

Unit type	Emissions limit (lbs NO _x /mmBtu)
Coal	0.20
Residual oil	0.20
Distillate oil	0.12
Natural gas	0.08

TABLE I.B-7—SUMMARY OF NO_x EMISSIONS LIMITS FOR COMBUSTORS AND INCINERATORS IN SOLID WASTE COMBUSTORS OR INCINERATORS

Combustor or incinerator, averaging period	NO _x emissions limit (ppmvd)
ppmvd on a 24-hour block averaging period	110
ppmvd on a 30-day rolling averaging period	105

Section VI.C of this document provides an overview of the applicability criteria, compliance assurance requirements, and the EPA’s rationale for establishing these emissions limits and control requirements for each of the non-EGU industries covered by the rule.

The remainder of this preamble is organized as follows: section II of this document outlines general applicability criteria and describes the EPA’s legal authority for this rule and the relationship of the rule to previous interstate ozone transport rulemakings. Section III of this document describes the human health and environmental challenges posed by interstate transport contributions to ozone air quality problems, as well as the EPA’s overall approach for addressing interstate transport for the 2015 ozone NAAQS in this rule. Section IV of this document describes the Agency’s analyses of air quality data to inform this rulemaking, including descriptions of the air quality

modeling platform and emissions inventories used in the rule, as well as the EPA’s methods for identifying downwind air quality problems and upwind states’ ozone transport contributions to downwind states. Section V of this document describes the EPA’s approach to quantifying upwind states’ obligations in the form of EGU NO_x control stringencies and non-EGU emissions limits. Section VI of this document describes key elements of the implementation schedule for EGU and non-EGU emissions reductions requirements, including details regarding the revised aspects of the CSAPR NO_x Group 3 trading program and compliance deadlines, as well as regulatory requirements and compliance deadlines for non-EGU sources. Section VII of this document discusses the environmental justice analysis of the rule, as well as outreach and engagement efforts. Section VIII of this document describes the expected costs, benefits, and other impacts of this rule.

Section IX of this document provides a summary of changes to the existing regulatory text applicable to the EGUs covered by this rule; and section X of this document discusses the statutory and executive orders affecting this rulemaking.

C. Costs and Benefits

A summary of the key results of the cost-benefit analysis that was prepared for this final rule is presented in Table I.C-1. Table I.C-1 presents estimates of the present values (PV) and equivalent annualized values (EAV), calculated using discount rates of 3 and 7 percent as recommended by OMB’s Circular A-4, of the health and climate benefits, compliance costs, and net benefits of the final rule, in 2016 dollars, discounted to 2023. The estimated monetized net benefits are the estimated monetized benefits minus the estimated monetized costs of the final rule. These results present an incomplete overview of the effects of the rule because important

categories of benefits—including benefits from reducing other types of air pollutants, and water pollution—were not monetized and are therefore not reflected in the cost-benefit tables. We anticipate that taking non-monetized effects into account would show the rule to be more net beneficial than this table reflects.

TABLE I.C–1—ESTIMATED MONETIZED HEALTH AND CLIMATE BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE FINAL RULE, 2023 THROUGH 2042
[Millions 2016\$, discounted to 2023]^a

	3% Discount rate	7% Discount rate
Present Value:		
Health Benefits ^b	\$200,000	\$130,000
Climate Benefits ^c	15,000	15,000
Compliance Costs ^d	14,000	9,400
Net Benefits	200,000	140,000
Equivalent Annualized Value:		
Health Benefits	13,000	12,000
Climate Benefits	970	970
Compliance Costs	910	770
Net Benefits	13,000	12,000

^a Rows may not appear to add correctly due to rounding.
^b The annualized present value of costs and benefits are calculated over a 20-year period from 2023 to 2042. Monetized benefits include those related to public health associated with reductions in ozone and PM_{2.5} concentrations. The health benefits are associated with two point estimates and are presented at real discount rates of 3 and 7 percent. Several categories of benefits remain unmonetized and are thus not reflected in the table.
^c Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO₂ (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For presentational purposes in this table, the climate benefits associated with the average SC-CO₂ at a 3-percent discount rate are used in the columns displaying results of other costs and benefits that are discounted at either a 3-percent or 7-percent discount rate.
^d The costs presented in this table are consistent with the costs presented in Chapter 4 of the *Regulatory Impact Analysis (RIA)*. To estimate these annualized costs for EGUs, the EPA uses a conventional and widely accepted approach that applies a capital recovery factor (CRF) multiplier to capital investments and adds that to the annual incremental operating expenses. Costs were calculated using a 3.76 percent real discount rate consistent with the rate used in IPM's objective function for cost-minimization. For further information on the discount rate use, please see Chapter 4, Table 4–8 in the RIA.

As shown in Table I.C–1, the PV of the monetized health benefits, associated with reductions in ozone and PM_{2.5} concentrations, of this final rule, discounted at a 3-percent discount rate, is estimated to be about \$200 billion (\$200,000 million), with an EAV of about \$13 billion (\$13,000 million). At a 7-percent discount rate, the PV of the monetized health benefits is estimated to be \$130 billion (\$130,000 million), with an EAV of about \$12 billion

(\$12,000 million). The PV of the monetized climate benefits, associated with reductions in GHG emissions, of this final rule, discounted at a 3-percent discount rate, is estimated to be about \$15 billion (\$15,000 million), with an EAV of about \$970 million. The PV of the monetized compliance costs, discounted at a 3-percent rate, is estimated to be about \$14 billion (\$14,000 million), with an EAV of about \$910 million. At a 7-percent discount

rate, the PV of the compliance costs is estimated to be about \$9.4 billion (\$9,400 million), with an EAV of about \$770 million.

II. General Information

A. Does this action apply to me?

This rule affects EGU and non-EGU sources, and regulates the groups identified in Table II.A–1.

TABLE II.A–1—REGULATED GROUPS

Industry group	NAICS
Fossil fuel-fired electric power generation	221112
Pipeline Transportation of Natural Gas	4862
Metal Ore Mining	2122
Cement and Concrete Product Manufacturing	3273
Iron and Steel Mills and Ferroalloy Manufacturing	3311
Glass and Glass Product Manufacturing	3272
Basic Chemical Manufacturing	3251
Petroleum and Coal Products Manufacturing	3241
Pulp, Paper, and Paperboard Mills	3221
Solid Waste Combustors and Incinerators	562213

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this rule. This table lists the types of entities that the EPA is now aware could potentially be regulated by this rule. Other types of entities not

listed in the table could also be regulated. To determine whether your EGU entity is regulated by this rule, you should carefully examine the applicability criteria found in 40 CFR 97.1004, which are unchanged in this rule. If you have questions regarding the

applicability of this rule to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

The EPA evaluated whether interstate ozone transport emissions from upwind states are significantly contributing to nonattainment, or interfering with maintenance, of the 2015 ozone NAAQS in any downwind state using the same 4-step interstate transport framework that was developed in previous ozone transport rulemakings. The EPA finds that emissions reductions are required from EGU and non-EGU sources in a total of 23 upwind states to eliminate significant contribution to downwind air quality problems for the 2015 ozone standard under the interstate transport provision of the CAA. The EPA will ensure that these NO_x emissions reductions are achieved by issuing FIP requirements for 23 states: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin.

The EPA is revising the existing CSAPR Group 3 Trading Program to include additional states beginning in the 2023 ozone season. EGUs in three states not currently covered by any CSAPR trading program for seasonal NO_x emissions—Minnesota, Nevada, and Utah—will be added to the CSAPR Group 3 Trading Program under this rule. EGUs in twelve states currently participating in the Group 3 Trading Program will remain in the program under this rule: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. EGUs in seven states (Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin) will transition from the CSAPR Group 2 Trading Program to the CSAPR Group 3 Trading Program under this rule beginning in the 2023 ozone season. The EPA is establishing control stringency levels reflecting installation of state-of-the-art combustion controls on certain covered EGU sources in emissions budgets beginning in the 2024 ozone season. The EPA is establishing control stringency levels reflecting installation of new SCR or SNCR controls on certain covered EGU sources in emissions budgets beginning in the 2026 ozone season.

As a complement to the ozone season emissions budgets, the EPA is also establishing a backstop daily emissions rate of 0.14 lb/mmBtu for coal-fired steam units greater than or equal to 100 MW in covered states. The backstop emissions rate will first apply in 2024

for coal-fired steam sources with existing SCRs, and in the second control period in which a new SCR operates, but not later than 2030, for those currently without SCRs.

This rule establishes emissions limitations for non-EGU sources in 20 states: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. In these states, the EPA is establishing control requirements for the following unit types in non-EGU industries: reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; kilns in Cement and Cement Product Manufacturing; reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; furnaces in Glass and Glass Product Manufacturing; boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators. See Table II.A–1 in this document for a list of NAICS codes for each entity included for regulation in this rule.

This rule reduces the transport of ozone precursor emissions to downwind areas, which is protective of human health and the environment because acute and chronic exposure to ozone are both associated with negative health impacts. Ozone exposure is also associated with negative effects on ecosystems. Additional information on the air quality issues addressed by this rule are included in section III of this document.

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

The statutory authority for this rule is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this rule. The most relevant portions of CAA section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)) and 110(c)(1).

CAA section 110(a)(1) provides that states must make SIP submissions “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and that these SIP submissions are to provide for the “implementation, maintenance, and

enforcement” of such NAAQS.²⁴ The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS.²⁵

The EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” or “iSIP” submissions. CAA section 110(a)(1) addresses the timing and general requirements for iSIP submissions, and CAA section 110(a)(2) provides more details concerning the required content of these submissions.²⁶ It includes a list of specific elements that “[e]ach such plan” must address.²⁷

CAA section 110(c)(1) requires the Administrator to promulgate a FIP at any time within 2 years after the Administrator: (1) finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.²⁸

CAA section 110(a)(2)(D)(i)(I), also known as the “good neighbor” provision, provides the primary basis for this rule.²⁹ It requires that each state SIP include provisions sufficient to “prohibit[], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].”³⁰ The EPA often refers to the emissions reduction requirements under this provision as “good neighbor obligations” and submissions addressing these requirements as “good neighbor SIPs.”

²⁴ 42 U.S.C. 7410(a)(1).

²⁵ See *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509–10 (2014).

²⁶ 42 U.S.C. 7410(a)(2).

²⁷ The EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. See, e.g., Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (September 13, 2013).

²⁸ 42 U.S.C. 7410(c)(1).

²⁹ 42 U.S.C. 7410(a)(2)(D)(i)(I).

³⁰ *Id.*

Once the EPA promulgates a NAAQS, the EPA must designate areas as being in “attainment” or “nonattainment” of the NAAQS, or “unclassifiable.” CAA section 107(d).³¹ For ozone, nonattainment is further split into five classifications based on the severity of the violation—Marginal, Moderate, Serious, Severe, or Extreme. Higher classifications provide states with progressively more time to attain while imposing progressively more stringent control requirements. See CAA sections 181, 182.³² In general, states with nonattainment areas classified as Moderate or higher must submit plans to the EPA to bring these areas into attainment according to the statutory schedule. CAA section 182.³³ If an area fails to attain the NAAQS by the attainment date associated with its classification, it is “bumped up” to the next classification. CAA section 181(b).³⁴

Section 301(a)(1) of the CAA gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.³⁵ Pursuant to this section, the EPA has authority to clarify the applicability of CAA requirements and undertake other rulemaking action as necessary to implement CAA requirements. CAA section 301 affords the Agency any additional authority that may be needed to make certain other changes to its regulations under 40 CFR parts 52, 75, 78, and 97, to effectuate the purposes of the Act. Such changes are discussed in section IX of this document.

Tribes are not required to submit state implementation plans. However, as explained in the EPA’s regulations outlining Tribal Clean Air Act authority, the EPA is authorized to promulgate FIPs for Indian country as necessary or appropriate to protect air quality if a tribe does not submit, and obtain the EPA’s approval of, an implementation plan. See 40 CFR 49.11(a); see also CAA section 301(d)(4).³⁶ In the proposed rule, the EPA proposed an “appropriate or necessary” finding under CAA section 301(d) and proposed tribal FIP(s) as necessary to implement the relevant requirements. The EPA is finalizing these determinations, as further discussed in section III.C.2 of this document.

D. What actions has the EPA previously issued to address regional ozone transport?

The EPA has issued several previous rules interpreting and clarifying the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the regional transport of ozone. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of CAA section 110(a)(2)(D)(i)(I).

The “NO_x SIP Call,” promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.³⁷ The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_x emissions that contribute to ozone nonattainment in downwind states. The EPA set ozone season NO_x budgets for each state, and the states were given the option to participate in a regional allowance trading program, known as the NO_x Budget Trading Program.³⁸ The D.C. Circuit largely upheld the NO_x SIP Call in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), cert. denied, 532 U.S. 904 (2001).

The EPA’s next rule addressing the good neighbor provision, CAIR, was promulgated in 2005 and addressed both the 1997 fine particulate matter (PM_{2.5}) NAAQS and 1997 ozone NAAQS.³⁹ CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO₂) or NO_x—important precursors of regionally transported PM_{2.5} (SO₂ and annual NO_x) and ozone (summer-time NO_x). As in the NO_x SIP Call, states were given the option to participate in regional trading programs to achieve the reductions. When the EPA promulgated the final CAIR in 2005, the EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997

PM_{2.5} and 1997 ozone NAAQS.⁴⁰ On March 15, 2006, the EPA promulgated FIPs to implement the emissions reductions required by CAIR.⁴¹ CAIR was remanded to EPA by the D.C. Circuit in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir.), modified on reh’g, 550 F.3d 1176 (D.C. Cir. 2008). For more information on the legal issues underlying CAIR and the D.C. Circuit’s holding in *North Carolina*, refer to the preamble of the CSAPR rule.⁴²

In 2011, the EPA promulgated CSAPR to address the issues raised by the remand of CAIR. CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 PM_{2.5} NAAQS.⁴³ CSAPR required 28 states to reduce SO₂ emissions, annual NO_x emissions, or ozone season NO_x emissions that significantly contribute to other states’ nonattainment or interfere with other states’ abilities to maintain these air quality standards.⁴⁴ To align implementation with the applicable attainment deadlines, the EPA promulgated FIPs for each of the 28 states covered by CSAPR. The FIPs require EGUs in the covered states to participate in regional trading programs to achieve the necessary emissions reductions. Each state can submit a good neighbor SIP at any time that, if approved by EPA, would replace the CSAPR FIP for that state.

CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.⁴⁵ However, this decision was reversed in April 2014 by the Supreme Court, which largely upheld the rule, including the EPA’s approach to addressing interstate transport in CSAPR. *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014) (*EME Homer City I*). The rule was remanded to the D.C. Circuit to consider claims not addressed by the Supreme Court. *Id.* In July 2015 the D.C. Circuit

⁴⁰ 70 FR 21147 (April 25, 2005).

⁴¹ 71 FR 25328 (April 28, 2006).

⁴² *Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals*, 76 FR 48208, 48217 (August 8, 2011).

⁴³ 76 FR 48208.

⁴⁴ CSAPR was revised by several rulemakings after its initial promulgation to revise certain states’ budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. See 76 FR 80760 (December 27, 2011); 77 FR 10324 (February 21, 2012); 77 FR 34830 (June 12, 2012).

⁴⁵ On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), vacating CSAPR. The EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider the EPA’s appeal *en banc*. *EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying EPA’s motion for rehearing *en banc*).

³⁷ *Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone*, 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_x SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed and later rescinded the rule’s provisions with respect to that standard. See 84 FR 8422 (March 8, 2019).

³⁸ “Allowance Trading,” sometimes referred to as “cap and trade,” is an approach to reducing pollution that has been used successfully to protect human health and the environment. The design elements of the EPA’s most recent trading programs are discussed in section VI.B.1.a of this document.

³⁹ *Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call*, 70 FR 25162 (May 12, 2005).

³¹ 42 U.S.C. 7407(d).

³² 42 U.S.C. 7511, 7511a.

³³ 42 U.S.C. 7511a.

³⁴ 42 U.S.C. 7511(b).

³⁵ 42 U.S.C. 7601(a)(1).

³⁶ 42 U.S.C. 7601(d)(4).

generally affirmed the EPA's interpretation of various statutory provisions and the EPA's technical decisions. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (2015) (*EME Homer City II*). However, the court remanded the rule without vacatur for reconsideration of the EPA's emissions budgets for certain states, which the court found may have over-controlled those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal issues associated with CSAPR and the Supreme Court's and D.C. Circuit's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.⁴⁶

In 2016, the EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.⁴⁷ The final rule updated the CSAPR ozone season NO_x emissions budgets for 22 states to achieve cost-effective and immediately feasible NO_x emissions reductions from EGUs within those states.⁴⁸ The EPA aligned the analysis and implementation of the CSAPR Update with the 2017 ozone season to assist downwind states with timely attainment of the 2008 ozone NAAQS.⁴⁹ The CSAPR Update implemented the budgets through FIPs requiring sources to participate in a revised CSAPR NO_x ozone season trading program beginning with the 2017 ozone season. As under CSAPR, each state could submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR Update FIP for that state. The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' CSAPR phase 2 ozone season NO_x emissions budgets in *EME Homer City II*.

In December 2018, the EPA promulgated the CSAPR "Close-Out," which determined that no further enforceable reductions in emissions of

NO_x were required with respect to the 2008 ozone NAAQS for 20 of the 22 eastern states covered by the CSAPR Update.⁵⁰

The CSAPR Update and the CSAPR Close-Out were both subject to legal challenges in the D.C. Circuit. *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019) (*Wisconsin*); *New York v. EPA*, 781 Fed. App'x 4 (D.C. Cir. 2019) (*New York*). In September 2019, the D.C. Circuit upheld the CSAPR Update in virtually all respects but remanded the rule because it was partial in nature and did not fully eliminate upwind states' significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS by "the relevant downwind attainment deadlines" in the CAA. *Wisconsin*, 938 F.3d at 313–15. In October 2019, the D.C. Circuit vacated the CSAPR Close-Out on the same grounds that it remanded the CSAPR Update in *Wisconsin*, specifically because the Close-Out rule did not address good neighbor obligations by "the next applicable attainment date" of downwind states. *New York*, 781 Fed. App'x at 7.⁵¹

In response to the *Wisconsin* remand of the CSAPR Update and the *New York* vacatur of the CSAPR Close-Out, the EPA promulgated the Revised CSAPR Update on April 30, 2021.⁵² The Revised CSAPR Update found that the CSAPR Update was a full remedy for nine of the covered states. For the 12 remaining states, the EPA found that their projected 2021 ozone season NO_x emissions would significantly contribute to downwind states' nonattainment or maintenance problems. The EPA issued new or amended FIPs for these 12 states and required implementation of revised emissions budgets for EGUs beginning

with the 2021 ozone season. Based on the EPA's assessment of remaining air quality issues and additional emissions control strategies for EGUs and emissions sources in other industry sectors (non-EGUs), the EPA determined that the NO_x emissions reductions achieved by the Revised CSAPR Update fully eliminated these states' significant contributions to downwind air quality problems for the 2008 ozone NAAQS. As under the CSAPR and the CSAPR Update, each state can submit a good neighbor SIP at any time that, if approved by the EPA, would replace the Revised CSAPR Update FIP for that state.

On March 3, 2023, the D.C. Circuit Court of Appeals denied the Midwest Ozone Group's (MOG) petition for review of the Revised CSAPR Update. *MOG v. EPA*, No. 21–1146 (D.C. Cir. March 3, 2023). The court noted that it has "exhaustively" addressed the interstate transport framework before, citing relevant cases, and "incorporate them herein by reference." Slip Op. 1 n.1. In response to MOG's arguments, the court upheld the Agency's air quality analysis. *Id.* at 10–11. The court noted that in light of the statutory timing framework and court-ordered schedule the EPA was under, the Agency's methodological choices were reasonable and provided "an appropriately reliable projection of air quality conditions and contributions in 2021." *Id.* at 11–12.

III. Air Quality Issues Addressed and Overall Rule Approach

A. The Interstate Ozone Transport Air Quality Challenge

1. Nature of Ozone and the Ozone NAAQS

Ground-level ozone is not emitted directly into the air but is created by chemical reactions between NO_x and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of NO_x and VOCs.

Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer months. Increased temperature also increases emissions of volatile man-made and biogenic organics and can also indirectly increase NO_x emissions (*e.g.*, increased electricity generation for air conditioning).

On October 1, 2015, the EPA strengthened the primary and secondary ozone standards to 70 ppb as an 8-hour

⁴⁶ *Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 81 FR 74504, 74511 (October 26, 2016).

⁴⁷ 81 FR 74504.

⁴⁸ One state, Kansas, was made newly subject to ozone season NO_x requirements by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_x requirements under CSAPR.

⁴⁹ 81 FR 74516. The EPA's final 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (March 6, 2015), revised the attainment deadline for ozone nonattainment areas designated as Moderate to July 20, 2018. See 40 CFR 51.1103. To demonstrate attainment by this deadline, states were required to rely on design values calculated using ozone season data from 2015 through 2017, since the July 20, 2018, deadline did not afford enough time for measured data of the full 2018 ozone season.

⁵⁰ *Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard*, 83 FR 65878, 65882 (December 21, 2018). After promulgating the CSAPR Update and before promulgating the CSAPR Close-Out, the EPA approved a SIP from Kentucky resolving the Commonwealth's good neighbor obligations for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018). In the Revised CSAPR Update, the EPA made an error correction under CAA section 110(k)(6) to convert this approval to a disapproval, because the Kentucky approval relied on the same analysis which the D.C. Circuit determined to be unlawful in the CSAPR Close-Out.

⁵¹ Subsequently, the D.C. Circuit made clear in a decision reviewing the EPA's denial of a petition under CAA section 126 that the holding in *Wisconsin* regarding alignment with downwind area's attainment schedules applies with equal force to the Marginal area attainment date established under CAA section 181(a). See *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020).

⁵² *Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 86 FR 23054 (April 30, 2021).

level.⁵³ Specifically, the standards require that the 3-year average of the fourth highest 24-hour maximum 8-hour average ozone concentration may not exceed 70 ppb as a truncated value (*i.e.*, digits to right of decimal removed).⁵⁴ In general, areas that exceed the ozone standard are designated as nonattainment areas, pursuant to the designations process under CAA section 107(d), and are subject to heightened planning requirements depending on the severity of their nonattainment classification, *see* CAA sections 181, 182.

In the process of setting the 2015 ozone NAAQS, the EPA noted that the conditions conducive to the formation of ozone (*i.e.*, seasonally-dependent factors such as ambient temperature, strength of solar insolation, and length of day) differ by location, and that the Agency believes it is important that ozone monitors operate during all periods when there is a reasonable possibility of ambient levels approaching the level of the NAAQS. At that time, the EPA stated that ambient ozone concentrations in many areas could approach or exceed the level of the NAAQS, more frequently and during more months of the year compared with the historical ozone season monitoring lengths. Consequently, the EPA extended the ozone monitoring season for many locations. *See* 80 FR 65416 for more details.

Furthermore, the EPA stated that in addition to being affected by changing emissions, future ozone concentrations may also be affected by climate change. Modeling studies in the EPA's Interim Assessment (U.S. EPA, 2009a) that are cited in support of the 2009 Greenhouse Gas Endangerment Finding under CAA section 202(a) (74 FR 66496, Dec. 15, 2009) as well as a recent assessment of potential climate change impacts (Fann et al., 2015) project that climate change may lead to future increases in summer ozone concentrations across the contiguous U.S.⁵⁵ (80 FR 65300). The U.S. Global Change Research Program's *Impacts of Climate Change on Human Health in the United States: A Scientific Assessment*⁵⁶ and *Impacts, Risks, and*

*Adaptation in the United States: Fourth National Climate Assessment, Volume II*⁵⁷ reinforced these findings. The increase in ozone results from changes in local weather conditions, including temperature and atmospheric circulation patterns, as well as changes in ozone precursor emissions that are influenced by meteorology (Nolte et al., 2018). While the projected impact may not be uniform, climate change has the potential to increase average summertime ozone relative to a future without climate change.^{58 59 60} Climate change has the potential to offset some of the improvements in ozone air quality, and therefore some of the improvements in public health, that are expected from reductions in emissions of ozone precursors (80 FR 65300). The EPA responds to comments received on the impacts of climate change on ozone formation in section 11 of the *Response to Comments (RTC)* document.

2. Ozone Transport

Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.*, thousands of kilometers) over much of the U.S.⁶¹ While substantial progress has been made in reducing ozone in many areas, the interstate transport of ozone precursor emissions remains an

Assessment. Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. <https://dx.doi.org/10.7930/JOR49NQX>.

⁵⁷ USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018.

⁵⁸ Fann NL, Nolte CG, Sarofim MC, Martinich J, Nassikas NJ. Associations Between Simulated Future Changes in Climate, Air Quality, and Human Health. *JAMA Netw Open*. 2021;4(1):e2032064. doi:10.1001/jamanetworkopen.2020.32064

⁵⁹ Christopher G Nolte, Tanya L Spero, Jared H Bowden, Marcus C Sarofim, Jeremy Martinich, Megan S Mallard. Regional temperature-ozone relationships across the U.S. under multiple climate and emissions scenarios. *J Air Waste Manag Assoc*. 2021 Oct;71(10):1251–1264. doi: 10.1080/10962247.2021.1970048.

⁶⁰ Nolte, C.G., P.D. Dolwick, N. Fann, L.W. Horowitz, V. Naik, R.W. Pinder, T.L. Spero, D.A. Winner, and L.H. Ziska, 2018: Air Quality. In *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, pp. 512–538. doi: 10.7930/NCA4.2018.CH13

⁶¹ Bergin, M.S. et al. (2007) Regional air quality: Local and interstate impacts of NO_x and SO₂ emissions on ozone and fine particulate matter in the eastern United States. *Environmental Sci & Tech*. 41: 4677–4689.

important contributor to peak ozone concentrations and high-ozone days during the summer ozone season.

The EPA has previously concluded in the NO_x SIP Call, CAIR, CSAPR, the CSAPR Update, and the Revised CSAPR Update that a regional NO_x control strategy would be effective in reducing regional-scale transport of ozone precursor emissions. NO_x emissions can be transported downwind as NO_x or as ozone after transformation in the atmosphere. In any given location, ozone pollution levels are impacted by a combination of background ozone concentration, local emissions, and emissions from upwind sources resulting from ozone transport, in conjunction with variable meteorological conditions. Downwind states' ability to meet health-based air quality standards such as the NAAQS is challenged by the transport of ozone pollution across state borders. For example, ozone assessments conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone⁶² continue to show the importance of NO_x emissions for ozone transport. This analysis is included in the docket for this rulemaking.

Further, studies have found that EGU NO_x emissions reductions can be effective in reducing individual 8-hour peak ozone concentrations and in reducing 8-hour peak ozone concentrations averaged across the ozone season. For example, a study of the EGU NO_x reductions achieved under the NO_x Budget Trading Program (*i.e.*, the NO_x SIP Call) shows that regulating NO_x emissions in that program was highly effective in reducing ozone concentrations during the ozone season.⁶³

Previous regional ozone transport efforts, including the NO_x SIP Call, CAIR, CSAPR, the CSAPR Update, and the Revised CSAPR Update, required ozone season NO_x reductions from EGU sources to address interstate transport of ozone. Together with NO_x, the EPA has also identified VOCs as a precursor in forming ground-level ozone. Ozone formation chemistry can be “NO_x-limited,” where ozone production is primarily determined by the amount of NO_x emissions or “VOC-limited,” where ozone production is primarily

⁶² Available in the docket for the October 2015 Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone at <https://www.regulations.gov/docket/EPA-HQ-OAR-2008-0699>.

⁶³ Butler, et al., “Response of Ozone and Nitrate to Stationary Source Reductions in the Eastern USA.” *Atmospheric Environment*, 2011.

⁵³ 80 FR 65291.

⁵⁴ 40 CFR part 50, appendix P.

⁵⁵ These modeling studies are based on coupled global climate and regional air quality models and are designed to assess the sensitivity of U.S. air quality to climate change. A wide range of future climate scenarios and future years have been modeled and there can be variations in the expected response in U.S. O₃ by scenario and across models and years, within the overall signal of higher summer O₃ concentrations in a warmer climate.

⁵⁶ U.S. Global Change Research Program (USGCRP), 2016: *The Impacts of Climate Change on Human Health in the United States: A Scientific*

determined by the amount of VOC emissions.⁶⁴ The EPA and others have long regarded NO_x to be the more significant ozone precursor in the context of interstate ozone transport.⁶⁵

The EPA has determined that the regulation of VOCs as an ozone precursor is not necessary to eliminate significant contribution of ozone transport to downwind areas in this rule. As described in section V.A of this document, the EPA examined the results of the contribution modeling performed for this rule to identify the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state to each downwind receptor. Our analysis of the ozone contribution from upwind states subject to regulation demonstrates that regional ozone concentrations affecting the vast majority of the downwind areas of air quality concern are NO_x-limited, rather than VOC-limited. Therefore, the rule's strategy for reducing regional-scale transport of ozone targets NO_x emissions from stationary sources to achieve the most effective reductions of ozone transport over the geography of the affected downwind areas. The potential impacts of NO_x mitigation strategies from other sources are discussed in section V.B of this document.

In section V of this document, the EPA describes the multi-factor test that is used to determine NO_x emissions reductions that are cost-effective and reduce interstate transport of ground-level ozone. Our analysis indicates that the EGU and non-EGU control requirements included in this rule will provide meaningful improvements in air quality at the downwind receptors. Based on the implementation schedule established in section VI.A of this document, the EPA finds that the regulatory requirements included in the rule are as expeditious as practicable and are aligned with the attainment schedule of downwind areas.

3. Health and Environmental Effects

Exposure to ambient ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and certain morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury, decreases plant growth, and affects ecosystem

community composition. See EPA's October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone⁶⁶ in the docket for this rulemaking for more information on the human health and ecosystem effects associated with ambient ozone exposure.

Commenters on prior ozone transport rules have asserted that VOC emissions harm underserved and overburdened communities experiencing disproportionate environmental health burdens and facing other environmental injustices. The EPA acknowledges that VOCs can contain toxic chemicals that are detrimental to public health. The EPA conducted a demographic analysis as part of the regulatory impact analysis for the 2015 revisions to the primary and secondary ozone NAAQS. This analysis, which is included in the docket for this rulemaking, found greater representation of minority populations in areas with poor air quality relative to the revised ozone standard than in the U.S. as a whole. The EPA concluded that populations in these areas would be expected to benefit from implementation of future air pollution control actions from state and local air agencies in implementing the strengthened standard. This rule is an example of air pollution control actions implemented by the Federal Government in support of the more protective 2015 ozone NAAQS, and populations living in downwind ozone nonattainment and maintenance areas are expected to benefit from improved air quality that will result from reducing ozone transport. Further discussion of the environmental justice analysis of this rule is located in section VII of this document and in the accompanying regulatory impact analysis, titled "Regulatory Impact Analysis for Final Federal Good Neighbor Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard" [EPA-452/D-22-001], which is available in the docket for this rulemaking.

The Agency regulates exposure to toxic pollutant concentrations and ambient exposure to criteria pollutants other than ozone through other sections of the Act, such as the regulation of hazardous air pollutants under CAA section 112 or the process for revising and implementing the NAAQS under CAA sections 107-110. The purpose of the subject rulemaking is to protect public health and the environment by eliminating significant contribution

from 23 states to nonattainment or maintenance of the 2015 ozone NAAQS to meet the requirements of the CAA's interstate transport provision. In this rule, the EPA continues to observe that requiring NO_x emissions reductions from stationary sources is an effective strategy for reducing regional ozone transport in the U.S.

The EPA responds to other comments received on the health and environmental impacts of ozone exposure in section 11 of the *RTC* document.

B. Final Rule Approach

1. The 4-Step Interstate Transport Framework

The EPA first developed a multi-step process to address the requirements of the good neighbor provision in the 1998 NO_x SIP Call and the 2005 CAIR. The Agency built upon this framework and further refined the methodology for addressing interstate transport obligations in subsequent rules such as CSAPR in 2011, the CSAPR Update in 2016, and the Revised CSAPR Update in 2021.⁶⁷ In CSAPR, the EPA first articulated a "4-step framework" within which to assess interstate transport obligations for ozone. In this rule to address interstate transport obligations for the 2015 ozone NAAQS, the EPA is again utilizing the 4-step interstate transport framework. These steps are: (1) identifying downwind receptors that are expected to have problems attaining the NAAQS (nonattainment receptors) or maintaining the NAAQS (maintenance receptors); (2) determining which upwind states are "linked" to these identified downwind receptors based on a numerical contribution threshold; (3) for states linked to downwind air quality problems, identifying upwind emissions on a statewide basis that significantly contribute to downwind nonattainment or interfere with downwind maintenance of the NAAQS, considering cost- and air quality-based factors; and (4) for upwind states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any downwind state, implementing the necessary emissions reductions through enforceable measures.

Comment: The EPA received comments supporting the Agency's use of the 4-step interstate transport framework as a permissible method for assigning the required amount of

⁶⁴ "Ozone Air Pollution." *Introduction to Atmospheric Chemistry*, by Daniel J. Jacob, Princeton University Press, Princeton, New Jersey, 1999, pp. 231-244.

⁶⁵ 81 FR 74514.

⁶⁶ Available at <https://www.epa.gov/sites/default/files/2016-02/documents/20151001ria.pdf>.

⁶⁷ See CSAPR, Final Rule, 76 FR 48208, 48248-48249 (August 8, 2011); CSAPR Update, Final Rule, 81 FR 74504, 74517-74521 (October 26, 2016).

emissions reductions necessary to eliminate upwind states' significant contribution. Commenters also noted that the 4-step interstate transport framework was reviewed by the Supreme Court in *EPA vs. EME Homer City Generation*, 572 U.S. 489 (2014), and upheld. However, other commenters took exception to the overall approach of this proposed action. These commenters alleged that the EPA is ignoring the "flexibility" in addressing good neighbor obligations that it had purportedly suggested to states would be permissible in memoranda that the EPA issued in 2018. Commenters also raised concerns that the air quality modeling (2016v2) the EPA used to propose to disapprove SIP submittals and as the basis for the proposed FIP was not available to states at the time they made their submissions and that the changes in results at Steps 1 and 2 from prior rounds of modeling rendered the new modeling unreliable. Commenters also raised a number of arguments that the EPA should allow states an additional opportunity to submit SIPs before promulgating a FIP, advocated that the EPA should issue a "SIP call" under CAA section 110(k)(5), asked for the EPA to issue new or more specific guidance, or otherwise suggested that the EPA should defer acting to promulgate a FIP at this time.

Response: As an initial matter, comments regarding the EPA's basis for disapproving SIPs are beyond the scope of this action.⁶⁸ To the extent these comments relate to the legal basis for the EPA to promulgate a FIP, the EPA disagrees that it is acting in a manner contrary to the memoranda it released in 2018 related to good neighbor obligations for the 2015 ozone NAAQS. Arguments that the EPA must or should allow states to re-submit SIP submissions based on the most recent modeling information before the EPA promulgates a FIP ignore the plain language of the statute and relevant caselaw. CAA section 110(c) authorizes the EPA to promulgate a FIP "at any time within 2 years" of a SIP disapproval. No provision of the Act requires the EPA to give states an additional opportunity to prepare a new SIP submittal once the EPA has proposed a FIP or proposed disapproval of a SIP submittal. Comments regarding the timing of the EPA's actions and calls

⁶⁸ We nonetheless further respond to comments regarding the timing and sequence of the EPA's SIP and FIP actions, the relevance of judicial consent decrees, the requests for a SIP call, and related comments—to the extent any of these issues are within scope of the present action—in Sections 1 and 2 of the *RTC* document located in the docket for this action.

for the EPA to allow time for states to resubmit SIPs are further addressed in *RTC* sections 1.1 and 2.4.

With regard to the need for the EPA to develop and issue guidance in addressing good neighbor obligations, in *EPA v. EME Homer City Generation, L.P.*, the Supreme Court held that "nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations."⁶⁹ While we have taken a different approach in some prior rulemakings by providing states with an opportunity to submit a SIP after we quantified the states' budgets (e.g., the NO_x SIP Call and CAIR⁷⁰), the CAA does not require such an approach.

2018 Memoranda. As commenters point out, the EPA issued three "memoranda" in 2018 to provide some assistance to states in developing these SIP submittals.⁷¹ Each memorandum made clear that the EPA's action on SIP submissions would be through a separate notice-and-comment rulemaking process and that SIP submissions seeking to rely on or take advantage of any so-called "flexibilities" in these memoranda would be carefully reviewed against the relevant legal requirements and technical information available to the EPA at the time it would take such rulemaking action. Further, certain aspects of discussions in those memoranda were specifically identified as not constituting agency guidance (especially Attachment A to the March

⁶⁹ 572 U.S. 489, 510 (2014). "Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Rather, the statute speaks without reservation: Once a NAAQS has been issued, a State 'shall' propose a SIP within three years, § 7410(a)(1), and that SIP 'shall' include, among other components, provisions adequate to satisfy the Good Neighbor Provision, § 7410(a)(2)." *EPA v. EME Homer City Generation, L.P.*, 572 U.S. at 515.

⁷⁰ For information on the NO_x SIP call see 63 FR 57356 (October 27, 1998). For information on CAIR see 70 FR 25162 (May 12, 2005).

⁷¹ See Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (March 27, 2018) ("March 2018 memorandum"); Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, August 31, 2018 ("August 2018 memorandum"); Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 ("October 2018 memorandum"). These are available in the docket or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>.

2018 memorandum, which comprised an unvetted list of external stakeholders' ideas). And, although outside the scope of this action, as the EPA has explained in disapproving states' SIP submittals, those submittals did not meet the terms of the August 2018 or October 2018 memoranda addressing contribution thresholds and maintenance receptors, respectively.

Commenters mistakenly view Attachment A to the March 2018 memorandum as constituting agency guidance. This memorandum was primarily issued to share modeling results for 2023 that represented the best information available to the Agency as of March 2018, while Attachment A then listed certain ideas from certain stakeholders that the EPA said could be further discussed among states and stakeholders. The EPA disagrees with commenters' characterization of the EPA's stance regarding these so-called "flexibilities" listed (without analysis) in Attachment A. The March 2018 memorandum provided, "While the information in this memorandum and the associated air quality analysis data could be used to inform the development of these SIPs, the information is not a final determination regarding states' obligations under the good neighbor provision." The EPA again affirms that the concepts listed in Attachment A to the March 2018 memorandum require unique consideration, and these ideas do not constitute agency guidance with respect to transport obligations for the 2015 ozone NAAQS. Attachment A to the March 2018 memorandum identified a "Preliminary List of Potential Flexibilities" that could potentially inform SIP development. However, the EPA made clear in both the March 2018 memorandum⁷² and in Attachment A that the list of ideas was not endorsed by the Agency but rather "comments provided in various forums" on which the EPA sought "feedback from interested stakeholders."⁷³ Further, Attachment A stated, "EPA is not at this time making any determination that the ideas discussed below are consistent with the requirements of the CAA, nor are we specifically recommending that states use these approaches."⁷⁴ Attachment A to the March 2018 memorandum, therefore, does not

⁷² "In addition, the memorandum is accompanied by Attachment A, which provides a preliminary list of potential flexibilities in analytical approaches for developing a good neighbor SIP that may warrant further discussion between EPA and states." March 2018 memorandum at 1.

⁷³ March 2018 memorandum, Attachment A at A-1.

⁷⁴ *Id.*

constitute agency guidance, but was intended to generate further discussion around potential approaches to addressing ozone transport among interested stakeholders. The EPA emphasized in these memoranda that such alternative approaches must be technically justified and appropriate in light of the facts and circumstances of each particular state's submittal. To the extent states sought to develop or rely on one or more of these ideas in support of their SIP submissions, the EPA reviewed their technical and legal justifications for doing so.⁷⁵

Regarding the October 2018 memorandum, that document recognized that states may be able to demonstrate in their SIPs that conditions exist that would justify treating a monitoring site as not being a maintenance receptor despite results from our modeling methodology identifying it as such a receptor. The EPA explained that this demonstration could be appropriate under two circumstances: (1) the site currently has "clean data" indicating attainment of the 2015 ozone NAAQS based on measured air quality concentrations, or (2) the state believes there is a technical reason to justify using a design value from the baseline period that is lower than the maximum design value based on monitored data during the same baseline period. To justify such an approach, the EPA anticipated that any such showing would be based on an analytical demonstration that (1) meteorological conditions in the area of the monitoring site were conducive to ozone formation during the period of clean data or during the alternative base period design value used for projections; (2) ozone concentrations have been trending downward at the site since 2011 (and ozone precursor emissions of NO_x and VOC have also decreased); and (3) emissions are expected to continue to decline in the upwind and downwind states out to the attainment date of the receptor. Although this is beyond the scope of this action, the EPA explained in its final SIP disapproval action that no state successfully demonstrated that one of these alternative approaches is justified. In this action, our analysis of the air quality data and projections in section IV of this document indicate that trends in historic measured data do not necessarily support adopting a less

stringent approach for identifying maintenance receptors for purposes of the 2015 ozone NAAQS. In fact, as explained in section III.B.1.a and IV.D of this document, the EPA has found in its analysis for this final rule that, in general, recent measured data from regulatory ambient air quality ozone monitoring sites suggest that a number of receptors with elevated ozone levels will persist in 2023 even though our traditional methodology at Step 1 did not identify these monitoring sites as receptors in 2023. Thus, the EPA is not acting inconsistently with that memorandum—the factual conditions that would need to exist for the suggested approaches of that memorandum to be applicable have not been demonstrated as being applicable or appropriate based on the relevant data.

Regarding the August 2018 memorandum, as discussed in section IV.F.2 of this document, for purposes of Step 2 of our ozone transport evaluation framework, we are applying a 1 percent of NAAQS threshold rather than a 1 ppb threshold, as this memorandum had suggested might be appropriate for states to apply as an alternative. The EPA is finalizing its proposed approach of consistently using a 1 percent of the NAAQS contribution threshold at Step 2 to evaluate whether states are linked to downwind nonattainment and maintenance concerns for purposes of this FIP.

The approach of this FIP ensures both national consistency across all states and consistency and continuity with our prior interstate transport actions for other NAAQS. Further, in this action the EPA is promulgating FIPs under the authority of CAA section 110(c). In doing so, the EPA has exercised its discretion to determine how to define and apply good neighbor obligations in place of the discretion states otherwise would exercise (subject to the EPA's approval as compliant with the Act). In general, the EPA is applying the 4-step interstate transport framework it devised over the course of its prior good neighbor rulemakings, including applying a consistent definition of nonattainment and maintenance-only receptors, and applying the 1 percent of NAAQS threshold at Step 2. The basis for these decisions is further explained in sections IV.F.1 and IV.F.2 of the document. These policy judgments reflect consistency with relevant good neighbor case law and past agency practice implementing the good neighbor provision as reflected in the original CSAPR, CSAPR Update, Revised CSAPR Update, and related rulemakings. Nationwide consistency in

approach is particularly important in the context of interstate ozone transport, which is a regional-scale pollution problem involving the collective emissions of many smaller contributors. Effective policy solutions to the problem of interstate ozone transport dating back to the NO_x SIP Call (63 FR 57356 (October 27, 1998)) have necessitated the application of a uniform framework of policy judgments, and the EPA's framework applied here has been upheld as ensuring an "efficient and equitable" approach. See *EME Homer City Generation, LP v. EPA*, 572 U.S. 489, 519 (2014).

Updated modeling. The EPA had originally provided 2023 modeling results in its March 2018 memorandum, which used a 2011-based platform. Many states used this modeling in providing good neighbor SIP submittals for the 2015 ozone NAAQS. While our action on the SIP submittals is not within scope of this action, commenters claim the use of new modeling or other information not available to states at the time they made their submittals renders this action promulgating a FIP unlawful. Notwithstanding whether that is an accurate characterization of the EPA's basis for disapproving the SIPs, we note that the court in *Wisconsin* rejected this precise argument against the CSAPR Update FIPs as a collateral attack on the SIP disapprovals. 938 F.3d at 336 ("That is the hallmark of an improper collateral attack. The true gravamen of the claim lies in the agency's failure to timely act upon the States' SIP submissions and, relatedly, its reliance on data compiled after the SIP action deadline. Both go directly to the legitimacy of the SIP denials.").

Nonetheless, we offer the following explanation of the evolution of the EPA's understanding of projected air quality conditions and contributions in 2023 resulting from the iterative nature of our modeling efforts. These modeling efforts are further addressed in section IV of this document. We acknowledge that to evaluate transport SIPs and support our proposed FIP the EPA reassessed receptors at Step 1 and states' contribution levels at Step 2 through additional modeling (2016v2) before proposing this action and have reassessed again to inform the final action (2016v3). At proposal, we relied on CAMx Version 7.10 and the 2016v2 emissions platform to make updated determinations regarding which receptors would likely exist in 2023 and which states are projected to contribute above the contribution threshold to those receptors. As explained in the preamble of the EPA's proposed FIP and further detailed in the "Air Quality

⁷⁵ E.g., 87 FR 64423–64425 (Alabama); 87 FR 31453–31454 (California); 87 FR 9852–9854 (Illinois); 87 FR 9859–9860 (Indiana); 87 FR 9508, 9515 (Kentucky); 87 FR 9861–9862 (Michigan); 87 FR 9869–9870 (Ohio); 87 FR 9798, 9818–9820 (Oklahoma); 87 FR 31477–31481 (Utah); 87 FR 9526–9527 (West Virginia).

Modeling Technical Support Document for the Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards Proposed Rulemaking” (Dec. 2021), hereinafter referred to as Air Quality Modeling Proposed Rule TSD, and the “Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform” (Dec. 2021), hereinafter referred to as the 2016v2 Emissions Inventory TSD, both available in the docket for this action (docket ID no. EPA-HQ-OAR-2021-0668), this modeling built off of previous modeling iterations used to support the EPA’s action on interstate transport obligations. The EPA periodically refines its modeling to ensure the results are as indicative as possible of air quality in future years. This includes making any necessary adjustments to our modeling platform and updating our emissions inventories to reflect current information, including information submitted during public comments on proposed actions.

For this final rule, the EPA has evaluated a raft of technical information and critiques of its 2016v2 modeling provided by commenters on this action (as well as comments on the SIP actions) and has responded to those comments and incorporated updates into the version of the modeling used to support this final rule (2016v3). As explained in section IV.B of the document, in response to additional information provided by stakeholders following a solicitation of feedback during the release of the 2016v2 emissions inventory and during the comment periods on the proposed SIP actions, the EPA has reviewed and revised its 2016v2 modeling platform and input since the platform was made available for comment. The new modeling platform 2016v3 was developed from this input, and the modeling results using platform 2016v3 are available with this action. See section IV of this document for further discussion. Thus, the EPA’s final rule is based on a comprehensive record of data and technical evaluation, including the updated modeling information used at proposal (2016v2), the comments received on that modeling, and the latest modeling used in this final rule (2016v3).

The changes in projected outcomes at Steps 1 and 2 are a product of these changes; these updates between the data released in 2018 to now are an outgrowth of this iterative process, including updating the platform from a 2011 to a 2016 base year, updates to the

emissions inventory information and other updates. It is reasonable for the Agency to improve its understanding of a situation before taking final action, and the Agency uses the best information available to it in taking this action.

Further, these modeling updates have not uniformly resulted in new linkages—the 2016v2 modeling, for instance, corroborated the proposed approval of Montana and supported approval of Colorado’s SIP in October of 2022.⁷⁶ Although some commenters indicate that our modeling iterations have provided differing outcomes and are therefore unreliable, this is not what the overall record indicates. Rather, in general, although the specifics of states’ linkages may have changed to some extent, our modeling on the whole has provided consistent outcomes regarding which states are linked to downwind air quality problems. For example, the EPA’s modeling shows that most states that were linked to one or more receptors using the 2011-based platform (*i.e.*, the March 2018 data release) are also linked to one or more receptors using the newer 2016-based platform. Because the new platform uses different meteorology (*i.e.*, 2016 instead of 2011), it is not unexpected that an upwind state would be linked to different receptors using 2011 versus 2016 meteorology. In addition, although a state may be linked to a different set of receptors, those receptors are within the same areas that have historically had a persistent air quality problem. Only three upwind states included in the FIP went from being unlinked to being linked in 2023 between the 2011-based modeling provided in the March 2018 memorandum and the 2016v3-based modeling—Alabama, Minnesota, and Nevada.

Additionally, we disagree with commenters who claim that the 2016v2 modeling results were sprung upon the states with the publication of the proposed SIP disapprovals. In fact, states had prior access to a series of data and modeling releases beginning as early as the publication of the 2016v1 modeling with the proposed Revised CSAPR Update in October 2020. States could have reviewed and used this technical information to understand and track how the EPA’s modeling updates were affecting the list of potential receptors and linkages for the 2015 ozone NAAQS in the 2023 analytic year.

⁷⁶ 87 FR 6095, 6097 at n. 15 (February 3, 2022) (Montana proposal); 87 FR 27050, 27056 (May 6, 2022) (Colorado, proposal); 87 FR 61249 (October 11, 2022) (Colorado, final).

The 2016-based meteorology and boundary conditions used in the modeling have been available through the 2016v1 platform, which was used for the Revised CSAPR Update (proposed, 85 FR 68964; October 30, 2020). The updated emissions inventory files used in the current modeling were publicly released September 21, 2021, for stakeholder feedback, and have been available on our website since that time.⁷⁷ The CAMx modeling software that the EPA used has likewise been publicly available for over a year before this final rule was proposed on April 6, 2022. CAMx version 7.10 was released by the model developer, Ramboll, in December 2020. On January 19, 2022, we released on our website and notified a wide range of stakeholders of the availability of both the modeling results for 2023 and 2026 (including contribution data) along with many key underlying input files.⁷⁸

By providing the 2016 meteorology and boundary conditions (used in the 2016v1 version) in fall of 2020, and by releasing updated emissions inventory information used in 2016v2 in September of 2021,⁷⁹ we gave states and other interested parties multiple opportunities prior to proposal of this rule on April 6, 2022, to consider how our modeling updates could affect their status for purposes of evaluating potential linkages for the 2015 ozone NAAQS. In this final rule, we have updated our modeling to 2016v3, incorporating and reflecting the feedback and additional information we received through the multiple public comment opportunities the EPA made available on the 2016v2 modeling.

The EPA’s development of and reliance on newer modeling is reasonable and is simply another iteration of the EPA’s longstanding scientific and technical work to improve our understanding of air quality issues and causes going back many decades.

Comment: Commenters asserted that the EPA lacks authority under the good neighbor provision to do more than establish state-wide emissions budgets, which states may then implement through their own choice of emissions controls. The commenters claim that the EPA lacks authority to directly regulate emissions sources under the good neighbor provision, and they cite to case law that they view as establishing a “federalism bar” to direct Federal regulation. Commenters assert that the

⁷⁷ See <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

⁷⁸ See <https://www.epa.gov/scram/photochemical-modeling-applications>.

⁷⁹ <https://www.epa.gov/air-emissions-modeling/2016v2-platform>.

term “amounts” as used in the good neighbor provision prevents the agency from establishing emissions limits at individual sources, such as the non-EGU industrial units that the EPA proposed to regulate or implementing “enhancements” in its mass-based emissions trading approach for EGUs as it had proposed. Commenters claim these aspects of the rule are an unlawful or arbitrary and capricious departure from the EPA’s prior transport rulemakings, which they claim only set mass-based emissions budgets as the means to eliminate “significant contribution.”

Response: To the extent these comments challenge the EPA’s disapproval of states’ 2015 ozone NAAQS good neighbor SIP submissions, they are out of scope of this action, which promulgates a FIP under the authority of CAA section 110(c)(1). To the extent commenters assert that the EPA does not have the authority to directly implement source-specific emissions control requirements or other emissions control measures, means, or techniques, including emissions trading programs, in the exercise of that FIP authority, the EPA disagrees. While the courts have long recognized that the states have wide discretion in the design of SIPs to attain and maintain the NAAQS, *see, e.g., Union Electric Co v. EPA*, 427 U.S. 246 (1976), when the EPA promulgates a FIP to cure a defective SIP, the Act, including the definition of a FIP in section 302(y), provides for the EPA to directly implement the Act’s requirements. The EPA is granted authority to choose among a broad range of “emission limitations or other control measures, means, or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances)” CAA section 302(y); *see also* CAA section 110(a)(2) (empowering states to implement an identical set of emissions control mechanisms).

The courts have also recognized that the EPA has broad authority to cure a defective SIP, that the EPA may exercise its own, independent regulatory authority in implementing a FIP in accordance with the CAA, and that the EPA in effect steps into the shoes of a state when it promulgates a FIP. *See, e.g., Central Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531 (9th Cir. 1993); *South Terminal Corp. v. EPA*, 504 F.2d 646 (1st Cir. 1974). *Accord Virginia v. EPA*, 108 F.3d 1397, 1406–07 (D.C. Cir. 1997) (“The Federal Plan ‘provides an additional incentive for state compliance because it rescinds state authority to make the many sensitive and policy choices that a

pollution control regime demands.’”) (quoting *Natural Resources Defense Council v. Browner*, 57 F.3d 1122, 1124 (D.C. Cir. 1995)). *Cf. District of Columbia v. Train*, 521 F.2d 971 (D.C. Cir. 1975), *vacated sub nom. EPA v. Brown*, 431 U.S. 99 (1977) (“[W]here cooperation [from states] is not forthcoming, we believe that the recourse contemplated by the commerce clause is direct federal regulation of the offending activity”).

These same principles apply where the EPA must promulgate a FIP to address good neighbor requirements under CAA section 110(a)(2)(D)(i)(I). The EPA has promulgated a series of FIPs in the past to address the relevant requirements for prior ozone and PM NAAQS. *See, e.g., CAIR FIP*, 71 FR 25328 (April 28, 2006); CSAPR, 76 FR 48208 (August 8, 2011); the CSAPR Update, 81 FR 74504 (October 26, 2016); and the Revised CSAPR Update, 86 FR 23054 (April 30, 2021). Courts have upheld the EPA’s exercise of this authority. *See EME Homer City Generation v. EPA*, 572 U.S. 489 (2014); *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019). Indeed, in *EME Homer City*, the U.S. Supreme Court held that the EPA is not obligated to provide guidance to states before acting on their good neighbor submissions or give states a second chance at correcting the deficiencies before promulgating a FIP, and the EPA may promulgate a FIP at any time after finalizing its disapproval of SIP submissions. 572 U.S. at 508–11.

The cases cited by commenters, which they refer to as establishing the *Train-Virginia* federalism bar, were not reviewing the exercise of the EPA’s authority in promulgating a FIP under CAA section 110(c)(1) but rather were describing the scope of the EPA’s authority in acting on SIP submissions under CAA section 110(k)(3) or in issuing a “SIP call” under section 110(k)(5). In those latter contexts, the courts have held that the EPA may not dictate the specific control measures states must implement to meet the Act’s requirements. *See Virginia*, 108 F.3d at 1409–10. In *Michigan*, the D.C. Circuit upheld the EPA’s exercise of CAA section 110(k)(5) authority in issuing the “NO_x SIP Call,” because, “EPA does not tell the states how to achieve SIP compliance. Rather, EPA looks to section 110(a)(2)(D) and merely provides the levels to be achieved by state-determined compliance mechanisms. . . . However, EPA made clear that states do not have to adopt the control scheme that EPA assumed for budget-setting purposes.” *Michigan v. EPA*, 213 F.3d 663, 687–88 (D.C. Cir. 2000).

Commenters’ position that the EPA must provide similar flexibility to the states in this action (*i.e.*, only provide a general emissions reduction target and leave to states how to meet that target) is a non sequitur. The EPA is implementing a FIP in this action and *must* directly implement the necessary emissions controls. The EPA is not empowered to require states to implement FIP mandates. Such an approach would conflict with constitutional anti-commandeering principles, is not provided for in the Act, and would only constitute a partial implementation of FIP obligations in contravention of the holding in *Wisconsin v. EPA*, 938 F.3d at 313–20.

Commenters’ attempt to contrast the implementation of source-specific emissions limitations at industrial sources with the establishment of a specific mass-based budget (as the EPA has set for power plants in prior good neighbor FIPs) is unavailing. CAA section 110(c)(1) and 302(y) authorize the EPA in promulgating a FIP to establish “enforceable emission limitations” in addition to other types of control measures like mass-based trading programs. Further, in this action, the EPA has developed an emissions control strategy that prohibits the “amount” of pollution that significantly contributes to nonattainment and/or interferes with maintenance. We determine that amount, as we have in prior transport actions, at Step 3 of the analysis, by applying a multifactor analysis that includes considering cost and downwind air quality effects. *See* section V.A of this document. With the implementation of the selected controls (at Step 4) through both an emissions trading program for power plants and source-specific emissions limitations for industrial sources, those “amounts” that had been emitted prior to imposition of the controls will be eliminated.

The Act does not mandate that the EPA must set a specific mass-based budget for each state to eliminate significant contribution based on the use of the term “amounts” in CAA section 110(a)(2)(D)(i). As the Supreme Court recognized, the statute “requires States to eliminate those ‘amounts’ of pollution that ‘contribute significantly to nonattainment’ in downwind States,” and it delegates to states or EPA acting in their stead discretion to determine *how* to apportion responsibility among those upwind states. 572 U.S. at 514 (emphasis added). The statute does not define the term “amount” in the way commenters suggest (or in any other way), and neither the Agency nor any court has reached that conclusion. The

Supreme Court itself has recognized that the language of the good neighbor provision is amenable to different types of metrics for quantification of “significant contribution.” See *EME Homer City Generation, L.P.*, 572 U.S. at 514 (“How is EPA to divide responsibility among the . . . States? Should the Agency allocate reductions proportionally . . . , on a per capita basis, on the basis of the cost of abatement, or by some other metric? . . . The Good Neighbor Provision does not answer that question for EPA.”); see also *Michigan v. EPA*, 213 F.3d 663, 677 D.C. Cir. 2000 (“Nothing in the text of . . . the statute spells out a criterion for classifying ‘emissions activity’ as ‘significant.’”); *id.* at 677 (“Must EPA simply pick some flat ‘amount’ of contribution . . . ?”). When the State of Delaware petitioned the Agency under CAA section 126(b) to establish daily emissions rates for EGUs to remedy what it saw as continuing violations of the good neighbor provision for the 2008 ozone NAAQS, neither the EPA nor the reviewing court questioned whether the Agency had the statutory authority to do so. The EPA’s decision not to was upheld on record grounds. See *Maryland v. EPA*, 958 F.3d 1185, 1207 D.C. Cir. 2020 (“In other words, Delaware’s concern makes sense but has not been observed in practice.”).⁸⁰

The term “amounts” can be interpreted to refer to any number of metrics, and in fact the CAA uses the term in several contexts where it is clear Congress did not intend the term to refer to a fixed, mass-based quantity of emissions. For example, in the definition of “lowest achievable emission rate” (LAER) in CAA section 171, the Act provides that the application of LAER shall not permit a proposed new or modified source to emit any pollutant in excess of “the amount allowable under applicable new source standards of performance [NSPS].” NSPS may be, and usually are, set as emissions standards or limitations that are rate- or concentration-based. See, e.g., 40 CFR part 60, subpart KKKK, table I (establishing concentration-based and rate-based emissions limits for stationary combustion turbines).⁸¹ Congress has elsewhere used the term “amount” in the CAA to refer to

concentration-based standards. For example, in CAA section 163(b), Congress provided that maximum allowable increases in concentrations of certain pollutants “shall not exceed the following amounts,” with a list of allowable increases provided that are expressed in micrograms per cubic meter.⁸² As a third example, in the 1990 CAA Amendments, Congress provided that ozone nonattainment areas classified as Serious must provide a reasonable further progress demonstration of reductions in VOC emissions “equal to the following amount,” which is then described as a percentage reduction from baseline emissions. CAA section 182(c)(2)(B). These examples illustrate that the word “amounts” is amenable to a variety of meanings depending on what is being measured or quantified. It would therefore be highly unlikely that Congress could have intended that “amount” as used in the good neighbor provision must signify only a fixed mass budget of emissions for each state expressed as total tons per ozone season.

Such an approach would, in fact, fail to address an important aspect of the problem of interstate transport. As explained in sections III.B.1.d, V.D.4, and VI.B.1, the EPA in this rule seeks to better address the need for emissions reductions on each day of the ozone season, reflecting the daily, but unpredictably recurring, nature of the air pollution problem, short-term health impacts, and the form of the 2015 ozone NAAQS, wherein nonattainment for downwind areas (and thus heightened regulatory requirements) could be based on ozone exceedances on just a few days of the year. The expression of the “amount” of pollution that should be eliminated to address upwind states’ “significant contribution” to that type of air pollution problem may appropriately take into account those aspects of the problem, and the EPA may appropriately conclude, as we do here, that a single, fixed, emissions budget covering an entire ozone season is not sufficient to the task at hand.

In this action, the EPA reasonably applies the good neighbor provision, including the term “amount,” through the 4-step interstate transport framework. Under this approach, the EPA here, as it has in prior transport rulemakings for regional pollutants like

ozone, identifies a uniform level of emissions reduction that the covered sources in the linked upwind states can achieve that cost-effectively delivers improvement in air quality at downwind receptors on a regional scale. The “amount” of pollution that is identified for elimination at Step 3 of the framework is therefore that amount of emissions that is in excess of the emissions control strategies the EPA has deemed cost-effective. Contrary to commenters’ views, in prior transport rules utilizing emissions trading, the mass budgets through which the elimination of significant contribution was effectuated did not constitute the “amounts” to be eliminated but rather the residual emissions remaining following the elimination of significant contribution through the control stringency selected based on our multifactor assessment at Step 3. Nor did the EPA consider a mass-based budget to be the sole expression, even indirectly, of what constituted “significant contribution.” See, e.g., CSAPR, 76 FR 48256–57 (discussing the evaluation of the control strategies that would eliminate significant contribution for the 1997 ozone NAAQS, including combustion controls, and explaining, “[I]t would be inappropriate for a state linked to downwind nonattainment or maintenance areas to stop operating existing pollution control equipment (which would increase their emissions and contribution).”).

In other actions the EPA has taken to implement good neighbor obligations, the EPA has required or allowed for reliance on source-specific emissions limitations rather than defining significant contribution as a mass-based budget. For example, the EPA imposed unit-specific emissions limitations in granting a CAA section 126(b) petition from the State of New Jersey in 2011. Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station, 76 FR 69052, 69063–64 (Nov. 7, 2011) (discussing the analytical basis for the establishment of emissions limits at specific units). This action was upheld by the Third Circuit in *Genon Rema LLC v. EPA*, 722 F.3d 513, 526 (3d. Cir. 2013).⁸³

⁸³ In CAA section 126(c), Congress provided for the EPA to directly impose “emission limitations” to eliminate prohibited significant contribution. Notably, the statute affords the EPA and states flexibility in how an “emissions limitation” may be expressed, including as a “quantity, rate, or concentration,” see CAA section 302(k). It would make little sense that the EPA could only establish a mass-based definition of “amounts” under CAA section 110(a)(2)(D)(i)(I), when the statute provides for rate- or concentration-based limitations in CAA section 126, which directly incorporates

⁸⁰ The Agency’s view of the basis for backstop daily emissions rates for certain EGUs within the trading program has changed since the time of its action on Delaware’s petition, as explained in section VI.B.

⁸¹ The EPA has interpreted the term “amount” as used in CAA section 111(a)(4) in the definition of the term “modifications” as an increase in a rate of emissions expressed as kilograms per hour. 40 CFR 60.14(b).

⁸² Notably, both the provisions of CAA section 171 and section 163 given as examples here were added by the CAA Amendments of 1977, in the same set of amendments that Congress first strengthened the good neighbor provision and added the term “amounts.” See Public Law 95–95, 91 Stat. 685, 693, 732, 746.

Even where the EPA has provided for implementation of good neighbor requirements through mass-based budgets, it has recognized that other approaches may be acceptable as providing an equivalent degree of emissions reduction to eliminate significant contribution. *See, e.g.*, NO_x SIP Call, 63 FR 57378–79 (discussing approvability of rate-based emissions limit approaches for implementing NO_x SIP Call and providing, “the 2007 overall budget is an important accounting tool. However, the State is not required to demonstrate that it has limited its total NO_x emissions to the budget amounts. Thus, the overall budget amount is not an independently enforceable requirement.”); CAIR, 70 FR 25261–62 (discussing ways states could implement CAIR obligations, including through emission-rate limitations, so long as adequately demonstrated to achieve comparable reductions to CAIR’s emissions budgets).

Finally, as it has in its prior transport FIP actions, the EPA has in this action provided guidance for states on methods by which they could replace this FIP with SIPs, and in so doing, continues to recognize substantial state flexibility in achieving an equivalent degree of emissions reduction that would successfully eliminate significant contribution for the 2015 ozone NAAQS. *See* section VI.D of this document. While the EPA has exercised the responsibility it has under CAA section 110(c)(1) to step into the shoes of the covered states and directly implement good neighbor requirements through a particular set of regulatory mechanisms in this action, we anticipate that states may identify alternative, equivalent mechanisms that we would be bound to evaluate and approve if satisfactory, should states seek to replace this FIP with a SIP.

For these reasons, the EPA disagrees with the contention that it is constrained by the good neighbor provision to define upwind state obligations solely by reference to a fixed, mass budget. We find it reasonable in this action to again determine the amount of “significant contribution” at Step 3 by reference to uniform levels of cost-effective emissions controls that can be applied across the upwind sources. And, we find it appropriate to implement those emissions reductions at Step 4 through

mechanisms that go beyond fixed, mass-based, ozone-season long budgets.

The EPA’s authority for its industrial source control strategies is further discussed in sections II.C. and III.B.1.c of this document. The relationship of the control strategy to the assessment of overcontrol is discussed in section V.D.4 of this document. The relationship of our FIP authority to state authorities and SIP calls under CAA section 110(k)(5) is further discussed in *RTC* sections 1 and 2.

a. Step 1 Approach

As proposed, the EPA applies the same basic method of the CSAPR Update and the Revised CSAPR Update for identifying nonattainment and maintenance receptors. However, we received comments arguing that the outcome of applying our methodology to identify receptors in 2023 appears overly optimistic in light of current measured data from the network of ambient air quality monitors across the country. These commenters suggest that the EPA give greater weight to current measured data as part of the method for identifying projected receptors. As discussed further in section IV.D of this document, the EPA has modified its approach for identifying receptors for this final rule in response to these comments.

This concern is more evident given that the 2023 ozone season is just a few months away, and the most recent measured ozone values in many areas strongly suggest that these areas will not likely see the substantial reduction in ozone levels that the 2016v2 and 2016v3 modeling continue to project.

It would not be reasonable to ignore recent measured ozone levels in many areas that are clearly not fully consistent with certain concentrations in the Step 1 analysis for 2023. Therefore, the EPA has developed an additional maintenance-only receptor category, which includes what we refer to as “violating monitor” receptors, based on current ozone concentrations measured by regulatory ambient air quality monitoring sites. We acknowledge that the traditional modeling plus monitoring methodology we used at proposal and in prior ozone transport rules would otherwise have identified such sites as being in attainment in 2023. Despite the implications of the current measured data suggesting there will be a nonattainment problem at these sites in 2023, we cannot definitively establish that such sites will be in nonattainment in 2023 in light of our modeling projections. In the face of this uncertainty, we regard our ability to consider such sites as receptors for

purposes of good neighbor analysis under CAA section 110(a)(2)(D)(i)(I) to be a function of the requirement to prohibit emissions that interfere with maintenance of the NAAQS; even if our transport modeling projects that an area may reach attainment in 2023, we have other information indicating that there is an identified risk that attainment will not in fact be achieved in 2023. The EPA’s analysis of these additional receptors further is explained in section IV.D of this document.

However, because we did not identify this basis for receptor-identification at proposal, in this final action we are only using this receptor category on a confirmatory basis. That is, for states that we find linked based on our traditional modeling-based methodology in 2023, we find in this final analysis that the linkage at Step 2 is strengthened and confirmed if that state is also linked to one or more “violating monitor” receptors. If a state is only linked to a violating-monitor receptor in this final analysis, we are deferring promulgating a final FIP (and we have also deferred taking final action on that state’s SIP submittal). This is the case for the State of Tennessee. Among the states that previously had their transport SIPs fully approved for the 2015 ozone NAAQS, the EPA has also identified a linkage to violating-monitor receptors for the State of Kansas. The EPA intends to further review its air quality modeling results and recent measured ozone levels, and we intend to address these states’ good neighbor obligations as expeditiously as practicable in a future action.

b. Step 2 Approach

The EPA applies the same approach for identifying which states are contributing to downwind nonattainment and maintenance receptors as it has applied in the three prior CSAPR rulemakings. CSAPR, the CSAPR Update, and the Revised CSAPR Update used a screening threshold of 1 percent of the NAAQS to identify upwind states that were “linked” to downwind air pollution problems. States with contributions greater than or equal to the threshold for at least one downwind nonattainment or maintenance receptor identified in Step 1 were identified in these rules as needing further evaluation of their good neighbor obligations to downwind states at Step 3.⁸⁴ The EPA evaluated each state’s contribution based on the average relative downwind impact calculated

⁸⁴For ozone, the impacts include those from VOC and NO_x from all sectors.

110(a)(2)(D)(i)(I). (In observing this, we do not concede that an “emissions limitation” itself could not also be expressed through a mass-based approach, which may be read as authorized by the term “quantity,” a term also used in CAA section 302(k).)

over multiple days.⁸⁵ States whose air quality impacts to all downwind receptors were below this threshold did not require further evaluation for measures to address transport. In other words, the EPA determined that these states did not contribute to downwind air quality problems and therefore had no emissions reduction obligations under the good neighbor provision. The EPA applies a relatively low contribution screening threshold because many downwind ozone nonattainment and maintenance receptors receive transport contributions from multiple upwind states. While the proportion of contribution from a single upwind state may be relatively small, the effect of collective contribution resulting from multiple upwind states may substantially contribute to nonattainment of or interference with maintenance of the NAAQS in downwind areas. The preambles to the proposed and final CSAPR rules discuss the use of the 1 percent threshold for CSAPR. *See* 75 FR 45237 (August 2, 2010); 76 FR 48238 (August 8, 2011). The same metric is discussed in the CSAPR Update, *see* 81 FR 74538, and in the Revised CSAPR Update, *see* 86 FR 23054. In this final rule, the EPA has updated the air quality modeling data used for determining contributions at Step 2 of the 4-step interstate transport framework using the 2016v3 modeling platform. The EPA continues to find that this threshold is appropriate to apply for the 2015 ozone NAAQS. This rule's application of the Step 2 approach is comprehensively described in section IV of this document.

Many commenters challenged the use of a 1 percent of NAAQS threshold or otherwise raised issues with the EPA's Step 2 methodology. These comments are addressed in section IV.F of this document and in the *RTC* document.

⁸⁵ The number of days used in calculating the average contribution metric has historically been determined in a manner that is generally consistent with the EPA's recommendations for projecting future year ozone design values. Our ozone attainment demonstration modeling guidance at the time of CSAPR recommended using all model-predicted days above the NAAQS to calculate future year design values (<https://www3.epa.gov/ttn/scram/guidance/guide/final-03-pm-rh-guidance.pdf>). In 2014, the EPA issued draft revised guidance that changed the recommended number of days to the top-10 model predicted days (https://www3.epa.gov/ttn/scram/guidance/guide/Draft-O3-PM-RH-Modeling_Guidance-2014.pdf). For the CSAPR Update, the EPA transitioned to calculating design values based on this draft revised approach. The revised modeling guidance was finalized in 2019 and, in this regard, the EPA is calculating both the ozone design values and the contributions based on a top-10 day approach (https://www3.epa.gov/ttn/scram/guidance/guide/O3-PM-RH-Modeling_Guidance-2018.pdf).

c. Step 3 Approach

The EPA continues to apply the same approach as the prior three CSAPR rulemakings for evaluating "significant contribution" at Step 3.⁸⁶ For states that are linked at Step 2 to downwind air quality problems, CSAPR, the CSAPR Update, and the Revised CSAPR Update evaluated NO_x reduction potential, cost, and downwind air quality improvements available at various mitigation technology breakpoints (represented by cost thresholds) in the multi-factor test. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA selected the technology breakpoint (represented by a cost threshold) that, in general, maximized cost-effectiveness—*i.e.*, that achieved a reasonable balance of incremental NO_x reduction potential and corresponding downwind ozone air quality improvements, relative to the other emissions budget levels evaluated. *See, e.g.*, 81 FR 74550. The EPA determined the level of emissions reductions associated with that level of control stringency to constitute significant contribution to nonattainment or interfere with maintenance of a NAAQS downwind. *See, e.g.*, 86 FR 23116. This approach was upheld by the U.S. Supreme Court in *EPA v. EME Homer City*.⁸⁷

In this action, the EPA applies this approach to identify EGU and non-EGU NO_x control stringencies necessary to address significant contribution for the 2015 ozone NAAQS. The EPA applies a multifactor assessment using cost-thresholds, total emissions reduction potential, and downwind air quality effects as key factors in determining a reasonable balance of NO_x controls in light of the downwind air quality problems. The EPA's evaluation of available NO_x mitigation strategies for EGUs focuses on the same core set of measures as prior transport rules, and

⁸⁶ For simplicity, the EPA (and courts) at times will refer to the Step 3 analysis as determining "significant contribution"; however, the EPA's approach at Step 3 also implements the "interference with maintenance" prong of the good neighbor provision by also addressing emissions that impact the maintenance receptors identified at Step 1. *See* 86 FR 23074 ("In effect, EPA's determination of what level of upwind contribution constitutes 'interference' with a maintenance receptor is the same determination as what constitutes 'significant contribution' for a nonattainment receptor. Nonetheless, this continues to give independent effect to prong 2 because the EPA applies a broader definition for identifying maintenance receptors, which accounts for the possibility of problems maintaining the NAAQS under realistic potential future conditions."). *See also EME Homer City*, 795 F.3d 118, 136 (upholding this approach to prong 2).

⁸⁷ *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014).

the EPA finalizes a control stringency for EGUs from these measures that is commensurate with the nature of the ongoing ozone nonattainment and maintenance problems observed for the 2015 ozone NAAQS. Similarly, in this action, the EPA includes other industrial sources (non-EGUs) in its Step 3 analysis and finalizes emissions limitations for certain non-EGU sources as needed to eliminate significant contribution and interference with maintenance. The available reductions and cost-levels for the non-EGU stringency is commensurate with the control strategy for EGUs.

In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA focused its Step 3 analysis on EGUs. In the Revised CSAPR Update, in response to the *Wisconsin* decision's finding that the EPA had not adequately evaluated potential non-EGU reductions, *see* 938 F.3d at 318, the EPA determined that the available NO_x emissions reductions from non-EGU sources, for purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, at a comparable cost threshold to the required EGU emissions reductions (for which the EPA used an adjusted representative cost of \$1,800 per ton), and based on the timing of when such measures could be implemented, did not provide a sufficiently meaningful and timely air quality improvement at the downwind receptors before those receptors were projected to resolve. *See* 86 FR 23110. On that basis, the EPA made a finding that emissions reductions from non-EGU sources were not required to eliminate significant contribution to downwind air quality problems under the interstate transport provision for the 2008 ozone NAAQS. In this rule, the EPA's "significant contribution" analysis at Step 3 of the 4-step framework includes a comprehensive evaluation of major stationary source non-EGU industries in the linked upwind states. The EPA finds that emissions from certain non-EGU sources in the upwind states significantly contribute to downwind air quality problems for the 2015 ozone NAAQS, and that cost-effective emissions reductions from these sources are required to eliminate significant contribution under the interstate transport provision. Therefore, this rule requires emissions reductions from non-EGU sources in upwind states to fulfill interstate transport obligations for the 2015 ozone NAAQS. This analysis is described fully in section V of this document.

In this rule, the EPA also continues to apply its approach for assessing and avoiding "over-control." In *EME Homer*

City, the Supreme Court held that “EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set.” 572 U.S. at 521. The Court acknowledged that “instances of ‘over-control’ in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere.” *Id.* at 492.

Because individual upwind States often ‘contribute significantly’ to nonattainment in multiple downwind locations, the emissions reductions required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line. As the Good Neighbor Provision seeks attainment in every downwind State, however, exceeding attainment in one State cannot rank as ‘over-control’ unless unnecessary to achieving attainment in any downwind State. Only reductions unnecessary to downwind attainment anywhere fall outside the Agency’s statutory authority. *Id.* at 522 (footnotes omitted).

The Court further explained that “while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid ‘under-control,’ *i.e.*, to maximize achievement of attainment downwind.” *Id.* at 523. Therefore, in the CSAPR Update and Revised CSAPR Update, the EPA evaluated possible over-control by considering whether an upwind state is linked solely to downwind air quality problems that can be resolved at a lower cost threshold, or if upwind states would reduce their emissions at a lower cost threshold to the extent that they would no longer meet or exceed the 1 percent air quality contribution threshold. *See, e.g.*, 81 FR 74551–52. *See also Wisconsin*, 938 F.3d at 325 (over-control must be proven through a “‘particularized, as-applied challenge’”) (quoting *EME Homer City Generation*, 572 U.S. at 523–24). The EPA continues to apply this framework for assessing over-control in this rule, and, as discussed in section V.D.4 of this document, does not find any over-control at the final control stringency selected.

This evaluation of cost, NO_x reductions, and air quality improvements, including consideration of whether there is proven over-control, results in the EPA’s determination of the appropriate level of upwind control stringency that would result in elimination of emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind areas.

Comment: Commenters alleged that the EPA lacks authority to regulate EGUs under the good neighbor provision of the CAA, or at least in the manner proposed, because in their view, this regulation would intrude into areas of regulation that are reserved to other Federal agencies or are beyond the EPA’s expertise. They focused in particular on the EGU trading program enhancements, which they alleged would threaten electric grid reliability, and asserted that EPA lacks authority or expertise to dictate the mix of electricity generation in the country.

Response: The EPA disagrees that the regulation of EGUs in this action is unlawful or unsupported. The Agency has consistently and successfully regulated EGUs’ ozone season NO_x emissions under the good neighbor provision for over 25 years, beginning with the 1997 NO_x SIP Call. This action does not intrude on other Federal agencies’ authorities and responsibilities with respect to managing the electric power grid and ensuring reliable electricity. While other agencies such as the Federal Energy Regulatory Commission (FERC) have primary responsibility for ensuring reliability of the bulk electric system, the EPA has ensured that its final rule here will not create electric reliability concerns. See section VI.B.1.d of this document. Thus, to the extent commenters are raising a record-based issue that the EPA through this action has created a reliability concern, we disagree. The EPA engaged in a series of stakeholder meetings with Reliability Coordinators who commented on the proposed rule, including several Regional Transmission Organizations (RTOs) as well as non-RTO entities throughout the rulemaking process.⁸⁸

To the extent commenters maintain that—despite this record of collaboration and sensitivity to the need to ensure reliability in the implementation of its mandates, including in this rule—the EPA nonetheless fundamentally lacks authority to regulate the electric-power sector in any way that “impact[s] national electricity and energy markets,” the EPA disagrees. The EPA has successfully regulated interstate ozone-precursor emissions from the power sector since the NO_x SIP Call and the establishment of the NO_x Budget Trading Program. *See generally Michigan v. EPA*, 213 F.3d 663 (D.C. Cir.

2000); *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir. 2001). In fact, each of the EPA’s interstate ozone transport rulemakings has focused on the regulation of ozone-precursor emissions from the power sector (all but the NO_x SIP Call exclusively), because substantial, cost-effective reductions in ozone-precursor emissions have been and continue to be available from fossil-fuel fired EGUs. *See, e.g.*, 63 FR 57399–400 (NO_x SIP Call); 70 FR 25165 and 71 FR 25343 (CAIR and CAIR FIP); 76 FR 48210–11 (CSAPR); 81 FR 74507 (CSAPR Update); 86 FR 23061 (Revised CSAPR Update).⁸⁹

This rule, like all prior EPA ozone-transport rulemakings, regulates only one aspect of the operation of fossil-fuel fired EGUs, that is, the emissions of NO_x as an ozone-precursor pollutant during the ozone season. This rule limits EGU NO_x emissions that interfere with downwind states’ ability to attain and maintain the 2015 ozone NAAQS. The rule does not regulate any other aspect of energy generation, distribution, or sale. For these reasons, the rule does not intrude on FERC’s power under the Federal Power Act, 16 U.S.C. 791a, *et seq.* And, as in prior transport rules, the EPA implements this regulation through a proven, flexible mass-based emissions trading program that integrates well with, and in no way intrudes upon, the management of the power sector under other state and Federal authorities. This rule will not alter the procedures system operators employ to dispatch resources or force changes to FERC-jurisdictional electricity markets, nor have commenters offered any explanation in this regard themselves.

The actual compliance requirement that the EGUs must meet in the allowance trading system finalized here—just as in all prior interstate transport trading programs—is simply to hold sufficient allowances to cover emissions during a given control period, not to undertake any specific

⁸⁹ There are myriad other examples of effective power sector regulation under the CAA and other environmental statutes, including for example, new source performance standards (NSPS), best available retrofit technology (BART) requirements, and mercury and air toxics standards (MATS) under the CAA; effluent limitation guidelines (ELGs) under the Clean Water Act; and coal combustion residuals (CCR) requirements under the Resource Conservation and Recovery Act. Whether implemented through unit- or facility-level pollution control requirements or through emissions-trading or other market-based programs, these regulations have been effective in reducing air and water pollution while not intruding into the regulatory arenas of other state and Federal entities. *See* Section 1 of the *RTC* for further discussion.

⁸⁸ See Documents no. EPA-HQ-OAR-2021-0668-0938, EPA-HQ-OAR-2021-0668-0940, EPA-HQ-OAR-2021-0668-0941, EPA-HQ-OAR-2021-0668-0942, EPA-HQ-OAR-2021-0668-0943, EPA-HQ-OAR-2021-0668-0944, and EPA-HQ-OAR-2021-0668-0945 in the docket for this rulemaking.

compliance strategy.⁹⁰ The owner or operator of an EGU has flexibility in determining how it will meet this requirement, whether through the add-on emissions controls that the EPA has selected in our Step 3 analysis, or through some other method or methods of compliance. The costs of meeting this allowance-holding requirement—just like the cost associated with meeting any other regulatory requirements—could possibly then be factored into what that unit bids in the wholesale electricity market (or in regulated jurisdictions, would factor into utility regulators' determinations of what can be cost-recovered).

Those costs could, in turn, result in a reduction in electricity generation from higher-emitting sources and an increase in electricity generation from lower-emitting or zero-emitting generators, but that kind of generation shifting (not mandated but occurring as an economic choice by the regulated sources) is consistent, and in no way interferes with, the existing security-constrained economic dispatch protocols of the modern electrical grid. Further, this type of "impact" on electricity markets—merely incidental, not mandated or even intended—is of the same type that results from any other kind of regulation, environmental or otherwise. Indeed, the U.S. Supreme Court recognizes that regulatory actions that may have some "effect," or impact, in electricity markets do not on that basis alone intrude into authorities reserved to electricity rate-setting regulators by the Federal Power Act. See *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 282–84 (2016) (distinguishing between actions that have an effect on retail rates and actual intrusion into retail rate-setting itself); see also *Hughes v. Talen*, 578 U.S. 150, 166 (2016). The Supreme Court again recognized this distinction between "incidental" effects caused by lawfully issued environmental regulations and

attempts to mandate a particular energy mix in *West Virginia v. EPA*. See 142 S. Ct. 2587, 2613 n.4 (2022) ("[T]here is an obvious difference between (1) issuing a rule that may end up causing an incidental loss of coal's market share, and (2) simply announcing what the market share of coal, natural gas, wind, and solar must be . . .").

This rule is squarely in the former camp; as the most stringent component of its emissions controls strategy for EGUs, the EPA has determined that to eliminate significant contribution to harmful levels of ozone in other states, certain fossil-fuel fired EGUs in "linked" upwind states that do not already have selective catalytic reduction (SCR) post-combustion control technology, should install it (or achieve emissions reductions commensurate with that technology). SCR is a well-established at-the-source NO_x control technology already in use by EGUs representing roughly 60 percent of the existing coal-fired generating capacity in the United States. This technology can be installed and operated to reduce NO_x emissions without forcing the retirement or reduced utilization of any EGU. However, if market conditions are such that an EGU faced with this mandate (again, as expressed through an emissions trading budget) finds it more economic to comply with the mandate through the purchase of allowances, installation of other types of pollution control, reduced utilization, and/or retirement, rather than installing SCR technology, that is a choice that the EGU owner/operator can freely make under this rule.⁹¹ Security constrained economic dispatch is thereby maintained and is in no way interfered with.

The EPA recognizes that cost to operate generators is one of the major factors that system operators utilize to determine "merit" order in dispatching resources. However, this rule does not intrude in any way into that process. To the extent that compliance with environmental regulations is a kind of cost that may need to be factored into generators' bids, this rule is no different

than many other such requirements EGUs are already subject to. Further, as in prior transport rules, this rule applies a uniform control stringency to EGUs within the covered upwind states. EGUs that may have enjoyed a competitive advantage in the past through not bearing the costs of installing and running state-of-the-art emissions control technology now must bear that cost just as their competitors with that technology already are. Cf. *EME Homer City*, 572 U.S. 489, 519 (CSAPR is "[e]quitable because, by imposing uniform cost thresholds on regulated States, EPA's rule subjects to stricter regulation those States that have done relatively less in the past to control their pollution. Upwind States that have not yet implemented pollution controls of the same stringency as their neighbors will be stopped from free riding on their neighbors' efforts to reduce pollution. They will have to bring down their emissions by installing devices of the kind in which neighboring States have already invested.").

Finally, we note that this final rule does not include "generation shifting" as a component of the budget-setting process, even in the limited way that it had been used in prior transport rules like CSAPR and the CSAPR Update, *i.e.*, to ensure the budget provided adequate incentive to ensure implementation of the selected emission-control strategy. See section V.B.1.f of this document. Further comments regarding legal authority for "generation shifting," relationship to state authorities, and expertise associated with grid reliability are addressed in section 1.3 of the *RTC*. We further discuss our consideration of grid reliability concerns and adjustments in the approach to the EGU emissions trading program from proposal in section VI.B.1.d of this document.

Comment: Commenters generally challenged the EPA's authority to establish emissions control requirements for non-EGU industrial sources in this action, or argued that such controls are unnecessary or unsupported, or run contrary to the EPA's prior actions under the good neighbor provision.

Response: The states and the EPA have authority under CAA section 110(a)(2)(D)(i)(I) to prohibit emissions from "any source or other type of emissions activity" that are found to significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. This language is not limited only to power plant emissions, nor is it limited only to "major" sources or "stationary" sources. Thus, as a legal

⁹⁰ The EPA has included in this trading program certain "enhancements" to ensure that the program continues to eliminate the emissions the EPA has determined constitute "significant contribution" over the entire life of the trading program. While one of the enhancements elevates a type of conduct that was already strongly discouraged into an enforceable violation, the other enhancements all simply modify the traditional allowance-based program structure to revise how the specific quantities of allowances that must be surrendered or the specific quantities of allowances available for surrender are determined. In finalizing this rule, the EPA has made a number of changes to its proposed enhancements to the trading program in response to comment and in part to ensure no impact on system reliability. Nonetheless, with these changes, the EPA has determined that the enhanced trading program can be implemented without impacting grid reliability. See section VI.B.1.d of this document.

⁹¹ As explained in section V.B of this document, the imposition of a backstop emissions rate beginning in 2030 for units that do not already have SCR installed could lead the owner of a given unit to decide that the unit's continued operation would be uneconomic without installation of SCR, but the establishment of technology-based emissions rates that require such decisions is consistent with decades of the EPA's rulemaking and permitting actions requiring source-specific pollution controls. Further, the backstop rate in this program is implemented through an enhanced allowance-surrender ratio, thus preserving some degree of flexibility through the emissions-trading program as the mechanism of compliance.

matter, the emissions control requirements for certain large “non-EGU” industrial sources in this action are grounded in unambiguous statutory authority, in particular the statute’s use of the broad term “any source.” Whereas the Act elsewhere includes definitions of “major stationary source,” “small source,” and “stationary source,” see, e.g., CAA section 302(j), (x), and (z), no such qualifying terms are used with respect to the term “any source” at CAA section 110(a)(2)(D)(i). Rather, the scope of authority in this provision expands to encompass “other type of emissions activity” in addition to “any source.” The EPA has previously included non-EGU industrial sources in findings quantifying states’ obligations under the good neighbor provision, in the 1998 NO_x SIP Call, see 63 FR 57365.⁹² See also *Michigan v. EPA*, 213 F.3d 663, 690–93 (upholding the inclusion of certain non-EGU boilers in the NO_x SIP Call). The EPA’s determinations in prior transport rules not to regulate sources beyond the power sector were grounded in considerations not related to the Agency’s statutory authority. For example, in the original CSAPR rulemaking, the EPA determined that the analytical effort needed to regulate non-EGU industrial sources would substantially delay the implementation of emissions reductions from the power sector. See, e.g., 76 FR 48247–48 (“[D]eveloping the additional information needed to consider NO_x emissions from non-EGU source categories to fully quantify upwind state responsibility with respect to the 1997 ozone NAAQS would substantially delay promulgation of the Transport Rule. . . . [W]e do not believe that effort should delay the emissions reductions and large health benefits this final rule will deliver[.]”). The EPA acknowledged that by not addressing non-EGUs, it may not have promulgated a complete remedy to good neighbor obligations in CSAPR, *id.* at 48248. Nonetheless, the EPA went on to explain that there were limited emissions reductions available from non-EGUs at the cost thresholds the EPA determined would deliver

substantial reductions from power plants. See *id.* at 48249 (the EPA’s “preliminary assessment in the rule proposal suggested that there likely would be very large emissions reductions available from EGUs before costs reach the point for which non-EGU sources have available reductions”). The EPA revisited these non-EGU reduction cost levels in this final rulemaking and verified that there are little or no reductions available from non-EGUs at costs lower than the thresholds that EPA has chosen”). The EPA noted in CSAPR that states retained the authority to regulate non-EGUs as a method of addressing their good neighbor obligations. *Id.* at 48320. The EPA also noted in CSAPR that “potentially substantial” non-EGU emissions reductions could be available in future rulemakings applying a higher cost threshold. See *id.* at 48256.

Similarly, in the CSAPR Update, which addressed good neighbor obligations for the 2008 ozone NAAQS, the EPA found that regulation of non-EGUs was not warranted as the analysis required could delay the expeditious implementation of power plant reductions. The EPA found that the availability and cost-effectiveness of non-EGU reductions was uncertain and further analysis could delay implementation of the EGU strategy beyond 2017. The EPA acknowledged that it was not promulgating a complete remedy for good neighbor obligations for the 2008 ozone NAAQS and indicated its intention to further review emissions-reduction opportunities from non-EGU and EGU sources. 81 FR 74521–22.

In *Wisconsin*, the court held that the EPA’s deferral of a complete good neighbor remedy by 2017, on the basis, among other things, of uncertainty regarding non-EGU emissions reductions and the need for further regulatory analysis, was unlawful. 938 F.3d at 318–19. The court noted that “the statutes and common sense demand regulatory action to prevent harm, even if the regulator is less than certain.” *Id.* at 319 (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 24–25 (D.C. Cir. 1976)), and that agencies can only avoid meeting their statutory obligations where “scientific uncertainty is so profound that it precludes EPA from making a reasoned judgment.” *Id.* (citing *Massachusetts v. EPA*, 549 U.S. 497, 534 (2007)). Further, the court rejected the EPA’s argument that it would have delayed its rulemaking if the EPA needed to complete a non-EGU analysis in a timely manner, holding that “administrative infeasibility” is not sufficient to “justify . . .

noncompliance with the statute.” *Id.* Rather, the Agency would need to “meet the ‘heavy burden to demonstrate the existence of an impossibility.’” *Id.* (quoting *Sierra Club v. EPA*, 719 F.2d 436, 462 (D.C. Cir. 1983)).

Following the remand of the CSAPR Update in *Wisconsin*, in the Revised CSAPR Update, the EPA conducted an analysis of non-EGUs to ensure it had implemented a complete remedy to eliminate significant contribution for the covered states for the 2008 ozone NAAQS. While acknowledging uncertainty in the datasets for non-EGUs, the EPA concluded: “[U]sing the best information currently available to the Agency, . . . the EPA is concluding that there are relatively fewer emissions reductions available at a cost threshold comparable to the cost threshold selected for EGUs. In the EPA’s reasoned judgment, the Agency concludes such reductions are estimated to have a much smaller effect on any downwind receptor in the year by which the EPA finds such controls could be installed.” 86 FR 23059. Therefore, the EPA determined control of non-EGU emissions was not required to eliminate significant contribution for the 2008 ozone NAAQS.

The circumstances that led the EPA to defer or decline regulation of non-EGU sources in CSAPR, the CSAPR Update, and the Revised CSAPR Update, are not present here, and the EPA’s determination in this action that prohibiting certain emissions from certain non-EGU sources is necessary to eliminate significant contribution for the 2015 ozone NAAQS is a logical extension of the analyses and evolution of regulatory policy development spanning its prior good neighbor rules, now applied to implement this more protective NAAQS. As the EPA explained at proposal, unlike in CSAPR and the Revised CSAPR Update, in this action the EPA finds that available reductions and cost-levels for the non-EGU stringency are commensurate with the control strategy for EGUs. Following consideration of comments and after some adjustments in the non-EGU analysis and control strategy, in this final rule, the EPA continues to find this to be the case. See sections V.C and V.D of this document.

In particular, the EPA continues to find that cost-effective emissions reductions are available for non-EGUs at a representative cost-threshold that is lower than the cost-threshold the EPA is applying for EGUs. See section V.C. of this document. These emissions control strategies are generally comparable to the emissions reduction requirements that similar sources in downwind states

⁹² Specifically, in the NO_x SIP Call, the EPA set statewide budgets while states could determine which sectors to regulate. The EPA recommended that states regulate certain types of non-EGUs and quantified the statewide budgets based in part on the emissions reductions from those types of non-EGUs. In the parallel rule that followed under the EPA’s CAA section 126(b) authority to directly regulate emissions to eliminate significant contribution, we promulgated an emissions trading program that would have included these same types of non-EGUs. Before this rule was implemented, all states adopted equivalent state trading programs using the NO_x SIP Call model rule.

are already required to meet. See section V.B.2 of this document. The EPA finds that the implementation of these emissions control strategies at non-EGUs, in conjunction with the strategies for EGU, will make a cost-effective and meaningful improvement in air quality through reducing ozone levels at the identified downwind receptors, and, therefore, the EPA has determined that these strategies will eliminate the amount of upwind emissions needed to address significant contribution under the good neighbor provision. The EPA's action here is focused on the most impactful industries and emissions units as determined by our evaluation of the power sector and the non-EGU screening assessment prepared for the proposal; indeed, of the 41 industries, as identified by North American Industry Classification System codes, we analyzed, only nine industries met the criteria for further evaluation of significant contribution. See section V.B.2 of this document. Further, the EPA finds that these strategies do not result in "overcontrol." See section V.D.4 of this document. As such, the EPA maintains that its final determinations regarding non-EGUs and its inclusion of non-EGU emissions sources within this final rule are statutorily authorized and lawful.⁹³

The EPA disagrees that it should defer regulation of industrial sources to the NSPS program under CAA section 111(b). CAA section 111(b) does not expressly provide for the elimination of "significant contribution" as is required under CAA section 110(a)(2)(D)(i)(I). In particular, commenter's statement that NSPS rulemakings under section 111(b) will appropriately address the emissions that we find must be eliminated in this action is not correct. Standards under section 111(b) apply only to new and modified sources, not existing sources. This action, however, finds that reductions in ongoing emissions from existing sources are needed to eliminate significant contribution. An NSPS standard for new and modified sources would not address such emissions from existing sources. To the extent that covered sources in this action also may be covered by an older NSPS, these sources nonetheless continue to have emissions that the EPA finds significantly contribute and can be eliminated through further emissions control as determined in this action. We further disagree with commenter's separate suggestion that the EPA use

section 111(b) and (d) to regulate both new and existing sources of ozone season NO_x, which is premised on the incorrect notion that the EPA's action here is an attempt to regulate entire source categories nationwide, rather than to eliminate significant contribution pursuant to CAA section 110(a)(2)(D)(i)(I). This action applies only to the extent a state is "linked" to downwind receptors, and therefore this action only regulates covered non-EGU industrial sources in 20 states. Further, this comment ignores that the regulation of criteria pollutant emissions from existing sources under CAA section 111(d) is limited by the criteria pollutant exclusion in CAA section 111(d)(1)(A)(i).

The EPA agrees with the commenters who assert that the EPA's authority to regulate non-EGUs under the good neighbor provision is well-grounded in administrative precedent and case law. Our previous discussion briefly recites several of the most salient aspects of that history. We also agree that the statutory language is not limited only to those sources that emit above 100 tons per year. The EPA's Step 3 and Step 4 analyses in this regard, which establish certain thresholds based on historical actual emissions, potential to emit and/or metrics for unit design capacity, reflect a reasoned judgment by the Agency regarding which emissions can be cost-effectively eliminated to address significant contribution, under the facts and circumstances of this action. That these thresholds are designed to exclude certain smaller or lower-emitting units does not reflect a determination that the EPA lacks legal authority to regulate such sources under different facts and circumstances.

The EPA identified two industry tiers of potential non-EGU emissions reductions in its non-EGU screening assessment at proposal, based on screening metrics intended to capture different kinds of impacts that non-EGU sources may have on identified receptors. The EPA agrees that it is only authorized to prohibit emissions under the good neighbor provision that significantly contribute to nonattainment or interfere with maintenance in downwind states, and we determined that these industries did so. The EPA sought comment on whether additional non-EGU industries significantly contributed to nonattainment or interfered with maintenance in downwind states. The EPA did not receive comments identifying other industrial stationary sources that are more impactful than should be regulated instead of those the EPA identified. We believed at proposal

and confirm here in our final rule that the methodology used in the screening assessment comported with the factors that we consider at Step 3. Further, the EPA's 4-step interstate transport framework, including the Step 3 analysis and an overcontrol assessment, ensure that the emissions reductions achieved at each source covered by this rule are in fact justified as part of an overall, complete remedy to eliminate significant contribution for the covered states for the 2015 ozone NAAQS. The EPA has decided to finalize emissions limitations for all of the non-EGU industries, with some modifications from proposal reflecting public input, as discussed in section VI.C of this document. The Agency's authority to establish unit- and/or source-specific emissions limitations in exercising our FIP authority is further discussed in section III.B.1 of this document.

Comment: Commenters raise additional issues with the overall approach of the rule at Step 3 to address significant contribution through our evaluation of EGU and non-EGU strategies through parallel but separate analyses. They stated that the EPA failed to establish that the identified non-EGU emissions reductions are needed to eliminate significant contribution. Commenters stated that the identified non-EGU emissions reductions are not impactful of air quality at receptors or that they are much less cost-effective than the EGU emissions reductions. Commenters stated that the EPA grouped all non-EGU emissions reductions together in making a cost-effectiveness determination that is only an average and ignores significant variation in costs associated with controls on different types of non-EGU emissions units. They also stated the EPA did not assess multiple control technologies in the way that it did for EGUs, and they argued there is great variation in the profile of non-EGU industries and emissions unit types in the different upwind states or that individual emissions units do not contribute to an out-of-state air quality problem at all. Commenters argued that certain non-EGU controls were not feasible, or that the EPA had applied a different standard for "feasibility" for non-EGUs than it did for EGUs. Commenters stated that the EPA should have provided a mass-based trading option for non-EGUs just as it had for EGUs. By contrast, other commenters supported the regulation of non-EGUs in this action as necessary to ensure a complete remedy to good neighbor obligations, since the statute is not limited to regulating power plants.

⁹³ Certain changes in the emissions control strategies for non-EGUs reflecting comments and updated information are explained in section VI.C of this document.

Some commenters further stated that EGUs should not face any further emissions reduction obligation because all cost-effective controls have already been identified through prior transport rules, and that any further regulation of EGUs would only lead to the retirement of coal plants, which they believe is the EPA's true objective. Finally, some commenters argued that the EPA had not ensured that it only regulated up to the minimum needed for downwind areas to come into attainment.

Response: Issues related to the specific technical bases for the Agency's determinations of what emissions constitute "significant contribution" at Step 3 of the 4-step framework are addressed in section V of this document. Here, we evaluate commenters' more general assertions that this action addresses non-EGU or EGU emissions in an inconsistent way. First, the EPA agrees with commenters that the task of evaluating significant contribution from the non-EGU industries is complex compared to EGUs in light of the much greater diversity in industries and emissions unit types. This, however, is not a valid basis to avoid emissions control requirements on such sources if needed to eliminate significant contribution. In this respect, the EPA's analysis in this final rule is that the 4-step framework, as upheld by the Supreme Court in *EME Homer City*, can be adequately applied even to this more complex set of sources in a way that parallels the analysis previously conducted only for EGUs. This analysis relies on evaluation of uniform levels of control stringency across all upwind states to find a level of emissions control that is cost-effective and collectively delivers meaningful downwind air quality improvement. For non-EGUs, the EPA identified the most impactful industries and emissions unit types and evaluated emissions control strategies for these units that have been demonstrated or applied across many similar facilities and emissions units. The EPA has evaluated whether these strategies are cost-effective on a cost-per-ton basis, and in particular has compared these strategies to those selected for EGUs. This analysis is set forth in sections V and VI of this document and associated technical support documents.

Commenter's statement that the establishment of a uniform level of control for each group of industrial units across the linked upwind states fails to assess with greater precision or define a state-specific proportion of emissions reduction that is needed for each downwind receptor is effectively an attempt to relitigate *EME Homer City*.

The Court in that case rejected that the EPA must define significant contribution by reference to a specific quantum of reductions that each state must achieve that is proportional to its impact at a downwind receptor. The Court agreed with the EPA's concerns as to why that approach would be problematically complicated or even impossible to apply in light of the complex set of linkages among states for a regional pollutant like ozone. *See* 572 U.S. at 515–17. The Court found that the use of uniform cost thresholds to allocate responsibility for good neighbor obligations to be efficient and equitable, in that it requires those sources that have done less to reduce their emissions to come up to a minimum level of performance to what other sources are already achieving. *Id.* at 519. The EPA's analysis in this action in section V of this document establishes that this continues to be an appropriate means of delivering meaningful air quality improvement to downwind receptors, taking into consideration the complexities of interstate pollution transport.

Not every upwind state has the same mix of non-EGU industries and emissions unit types, and it is also the case that the costs for installation of the selected level of control technology will vary from facility to facility based on site-specific considerations. This is also true for the set of EGU sources regulated here and in previous CSAPR rulemakings. These real-world complexities do not obviate the broader policy and technical judgements that the EPA makes at Step 3 regarding what level of emissions control performance can be achieved on a region-wide basis to resolve significant contribution for a regional-scale pollutant like ozone. The EPA's design of cost thresholds derives from the identification of discrete types of NO_x emissions control strategies. The EPA then identifies a representative cost-effectiveness on a per ton basis for that technology. In the Step 3 analysis, it is not the cost per ton value itself that is inherently meaningful, but rather how that cost-effectiveness value relates to other control stringencies, how many emissions reductions may be obtained, and how air quality is ultimately impacted. The selected level of control stringency reflects a point at which further emissions mitigation strategies become excessively costly on a per-ton basis while also delivering far fewer additional emissions reductions and air quality benefits. This is often referred to as a "knee in the curve" analysis. There are always inherent uncertainties in identifying a representative cost per ton

value for any particular control stringency, but this in itself does not upset the EPA's ability to render an overall policy judgment based on the Step 3 factors as to a set of emissions control strategies that together eliminate significant contribution. *See* 86 FR 23054, 23073 (responding to similar comments on the Revised CSAPR Update).

We note that the EPA has made a number of adjustments to the non-EGU emissions limits identified at Step 4 to accommodate legitimate concerns regarding the ability of certain non-EGU facilities to meet the emissions control requirements that the EPA had proposed. The Agency's determinations regarding feasibility and installation timing for pollution controls are comparable and not inconsistent between EGUs and non-EGUs. The EPA is not establishing a trading program for non-EGUs because the Agency does not have adequate baseline emissions data and information on monitoring currently at many of these emissions units to develop emissions budgets that could reliably implement the Step 3 determinations made in this action. However, for most of the non-EGU industries,⁹⁴ the EPA is not mandating a specific control technology and is instead establishing numeric emissions limits that are uniform across the region and that allow sources to choose how to comply. The EPA's analysis, including review of RACT determinations, consent decrees, and permitting actions, shows that these emissions limits and control requirements are achievable by existing units in the non-EGU industries covered by this final rule. This rule will therefore bring all of these impactful industries and unit types across the region of linked upwind states up to this standard of performance, and thus will result collectively in a relatively substantial decrease in ozone-season NO_x emissions, with associated reductions in ozone levels projected to result at the downwind receptors. This is further discussed in section V.D.

Some commenters alleged that the EPA's EGU control strategy goes beyond the cost-effectiveness determinations of prior transport rules, and they believe that the EPA's true objective is to force the retirement of coal plants. First, we note that the EGU emissions control strategy is premised entirely on at-the-

⁹⁴ For rehear furnaces in the Iron and Steel Mills and Ferroalloy Manufacturing industry, the EPA is establishing requirements to operate low-NO_x burners achieving a specified level of emissions reduction; this approach is needed to allow for unit-specific testing before an appropriate emissions limitation can be set. *See* section VI.C.3 of this document.

source emissions control technologies that are widely available and in use across the EGU fleet. It is not the EPA's intention in this rule to force the retirement of any EGU or non-EGU facilities or emissions units but to identify and eliminate significant contribution under CAA section 110(a)(2)(D)(i)(I) based on cost-effective and proven control technologies that are appropriate in relation to address the problem of interstate transport for the 2015 ozone NAAQS. Further, determinations of cost-effectiveness must be made in relation to the particular statutory provision and its purpose. The EPA recognized in CSAPR, for example, that additional emissions reductions beyond what were determined to be cost-effective in that action could be required to implement good neighbor obligations if a NAAQS were revised to a more protective level. See 76 FR 48210. Here it is not surprising that a more stringent level of control could be found justified in implementing transport obligations for the more protective 2015 ozone NAAQS. Those reductions are projected to deliver meaningful air quality improvement to downwind receptors, as discussed in section V.D of this document. Those air quality benefits continue to compare favorably to the air quality benefits that will be delivered through the combined non-EGU emissions limits, which apply to nine non-EGU industries (see section V.C of this document). We find that the implementation of both the EGU and non-EGU strategies identified in section V of this document together represent the appropriate level of emissions control stringency to eliminate significant contribution under CAA section 110(a)(2)(D)(i)(I).

Finally, the EPA also analyzed for overcontrol and does not identify any. Some commenters misstate the purpose of this rule as bringing downwind receptors into attainment. In line with the statutory directive in CAA section 110(a)(2)(D)(i)(I), this rule eliminates "significant contribution" from upwind states; while the rule has substantial air quality benefits for downwind receptors, in many cases we project that a nonattainment or maintenance problem will continue to persist through 2023 and 2026 despite the emissions reductions achieved by this rule. Commenters alleging overcontrol have not met the requirement that overcontrol be established by particularized evidence through as-applied challenges. The Supreme Court has recognized that the EPA also has an obligation to avoid under-control and

must have some leeway in fulfilling the good neighbor mandate of the Act given uncertainty in making forward projections of air quality and the efficacy or impact of emissions control determinations. See *EME Homer City*, 572 U.S. at 523. This is further addressed in section V.D.4 of this document.

d. Step 4 Approach

The EPA is finalizing an approach similar to its prior transport rulemakings to implement the necessary emissions reductions through permanent and enforceable measures. The EPA is requiring EGU sources to participate in an emissions trading program and is making additional enhancements to the trading regime to maintain the selected control stringency over time and improve emissions performance at individual units, offering a necessary measure of assurance that emissions controls will be operated throughout the ozone season. For non-EGUs, the EPA is finalizing permanent and enforceable emissions rate limits and work practice standards, and associated compliance requirements, for several types of NO_x-emitting combustion units across several industrial sectors. The measures for both EGUs and non-EGUs are required throughout the May 1-September 30 ozone season of each year. The EGU program will begin with the 2023 ozone season, and the non-EGU implementation schedule is targeted to the 2026 ozone season. Refer to section VI.A of this document for details on the implementation schedule.

Based on the EPA's experience in implementing prior transport rulemakings, the Agency is making several enhancements to its trading-program approach for implementing good neighbor requirements for EGUs. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA established interstate trading programs for EGUs to implement the necessary emissions reductions. In each of these rules, EGUs in each covered state are assigned an emissions budget in each control period for their collective emissions. Emissions allowances are allocated to units covered by the trading program, and the covered units then surrender allowances after the close of the control period, usually in an amount equal to their ozone season EGU NO_x emissions. While these programs have been effective in achieving overall reductions in emissions, experience has shown that these programs may not fully reflect in perpetuity the degree of emissions stringency determined necessary to eliminate significant

contribution in Step 3 and may not adequately ensure the control of emissions throughout all days of the ozone season. At the same time, the EPA continues to find that an interstate-trading program approach delivers substantial benefits at Step 4 in terms of affording an appropriate degree of compliance flexibility, certainty in emissions outcomes, data and performance transparency, and cost-effective achievement of a high degree of aggregate emissions reductions. As such, the EPA is retaining an interstate trading program approach while making several enhancements to that approach.

Thus, in this rulemaking, the EPA is including dynamic budget-setting procedures in the regulations that will allow state emissions budgets for control periods in 2026 and later years to reflect more current data on the composition and utilization of the EGU fleet (e.g., the 2026 budgets will reflect recent data through 2024 data, the 2027 budgets will reflect data through 2025, etc.). These enhancements will enable the trading program to better maintain over time the selected control stringency that was determined to be necessary to address states' good neighbor obligations with respect to the 2015 ozone NAAQS. In prior programs, where state emissions budgets were static across years rather than calibrated to yearly fleet changes, the EPA has observed instances of units idling their emissions controls in the latter years of the program. To provide greater certainty regarding the minimum quantities of allowances that will be available for compliance for the control periods in 2026 through 2029, the EPA is also establishing preset state emissions budgets for these control periods, and a dynamic state emissions budget determined for one of these control periods will apply only if it is higher than the state's preset budget for the control period.

In the trading programs established for ozone season NO_x emissions under CSAPR, the CSAPR Update, and the Revised CSAPR Update, the EPA included assurance provisions to limit state emissions to levels below 121 percent of the state's budget by requiring additional allowance surrenders in the instance that emissions in the state exceed this level. This limit on the degree to which a state's emissions can exceed its budget is designed to allow for a certain level of year-to-year variability in power sector emissions to account for fluctuations in demand and EGU operations and is responsive to previous court decisions (see discussion in section VI.B.5 of this document). In this

action, the EPA is maintaining the existing assurance provisions that limit state emissions to levels below a percentage of the state's budget by requiring additional allowance surrenders in any instance where emissions in the state exceed the specified level, but with adjustments that allow the level to exceed 121 percent of a state's budget in a given control period if necessary to account for actual operational conditions in that control period. In addition, the EPA is also making several additional enhancements to the EGU trading program in this action, including routine recalibrations of the total amount of banked allowances, unit-specific backstop daily emissions rates for certain units, and unit-specific secondary emissions limitations for certain units that contribute to exceedances of the assurance levels, to ensure EGU emissions control operation and associated air quality improvements. Implementation of the EGU emissions reductions using a CSAPR NO_x trading program is further described in section VI.B of this document.

In this rule, the EPA is also establishing emissions limitations for the non-EGU industry sources listed in Table II.A-1. The EPA has the authority to require emissions limitations from stationary sources, as well as from other sources and emissions activities, under CAA section 110(a)(2)(D)(i)(I). The EPA finds that requiring NO_x emissions reductions through emissions rate limits and control technology requirements for certain non-EGU industrial sources that the EPA found at Step 3 to be relatively impactful⁹⁵ on downwind air quality is an effective strategy for reducing regional ozone transport. Therefore, the EPA is establishing NO_x emissions limitations and associated compliance requirements for non-EGU sources to ensure the elimination of significant contribution of ozone precursor emissions required under the interstate transport provision for the 2015 ozone NAAQS.

Finally, the EPA finds that the control measures determined to be required for the identified EGU and non-EGU sources apply to both existing units and any new, modified, or reconstructed units meeting the applicability criteria established in this final rule. This is

consistent with the EPA's transport actions dating back to the NO_x SIP Call and the NO_x Budget Trading Program. In all CSAPR EGU trading programs, for instance, new EGUs are subject to the program, and the EPA has established provisions for the allocation of allowances to such units through "new unit set asides." See, e.g., 86 FR 23126. In the NO_x SIP Call, the EPA required that states cover new and existing units in the relevant source sectors through an enforceable cap or other emissions limitation. See 40 CFR 51.121(f). The EPA's approach of including new units in the NO_x Budget Trading Program promulgated under the EPA's CAA section 126 authority was upheld by the D.C. Circuit in *Appalachian Power v. EPA*, 249 F.3d 1032 (2001). As the court noted, the EPA explained in its action:

Once EPA has determined that the emissions from the existing sources in an upwind State already make a significant contribution to one or more petitioning downwind States, any additional emissions from a new source in that upwind State would also constitute a portion of that significant contribution, unless the emissions from that new source are limited to the level of highly effective controls.

Id. at 1058 (quoting EPA 1999 RTC at 39). The court affirmed this approach: "Indeed, it would be irrational to enable the EPA to make findings that a group of sources in an upwind state contribute to downwind nonattainment, but then preclude the EPA from regulating new sources that contribute to that same pollution." *Id.* at 1057-58. The EPA is implementing the same court-affirmed approach in this action because this reasoning is equally applicable to addressing interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.

Comment: Commenters took issue with aspects of the EPA's proposed Step 4 approach. Commenters argued the EPA could not set unit- or source-specific emissions limits or other control requirements, for EGUs or non-EGUs. Commenters argued that various aspects of the non-EGU emissions control strategy would not be feasible for their facilities or were otherwise flawed. Many industrial-source and EGU commenters argued that the EPA had not provided sufficient time for sources to come into compliance. Commenters also challenged the EGU trading program "enhancements" as unnecessary or beyond the EPA's authority. In this regard, commenters argued that these changes deviated from the EPA's prior approach, were unnecessary overcontrol, constituted a command-and-control approach, could

not be supported on the basis of environmental justice benefits, or were otherwise unlawful for other reasons. These commenters argue that the EPA's Step 4 dynamic budget approach for EGU regulation purportedly re-defines each state's "significant contribution" annually and independent of any impact (or lack thereof) on air quality. They further argue that under this dynamic budgeting approach, even if a state eliminates the "amount" the EPA has identified as the state's significant contribution by respecting a given control period's emissions budget, sources within that state are expected to continue to make further reductions by operating their controls in a particular manner in subsequent control periods under potentially lower emissions budgets, which these commenters argue is inconsistent with case law on prior CSAPR rules.

Response: Many of these comments regarding Step 4 issues are addressed elsewhere in this document or in the *RTC* document. The EPA's authority to establish unit- or source-specific emissions rates is addressed in section IV.B.1 of this document. Responses to comments and adjustments in the timing requirements of the final rule compared to proposal are discussed in VI.A. Responses to comments and adjustments in emissions control requirements for non-EGUs in the final rule compared to proposal are in section VI.C of this document.

Responses to comments on the EGU trading program enhancements and adjustments in the final rule are contained in section VI.B of this document. However, here, in light of the changes in the emissions trading program for EGUs that we are finalizing in this action as compared to prior EGU emissions trading programs promulgated to address good neighbor obligations under other NAAQS, we set forth responses to comments specific to this topic.

The EPA finds that these comments confuse Step 3 emissions reduction stringency determinations with Step 4 implementation program details. In this rulemaking's Step 3 analysis, the EPA is measuring emissions reduction potential from improving effective emissions rates across groups of EGUs adopting applicable pollution control measures and selecting a uniform control level whose effective emissions rates deliver an acceptable outcome under the multifactor test (including a finding of no overcontrol at the selected control stringency level). The "amounts" defined as significant contribution to nonattainment and interference with maintenance are

⁹⁵ Section III of the Non-EGU Screening Assessment memorandum in the docket for this rulemaking describes the EPA's approach to evaluating impacts on downwind air quality, considering estimated total, maximum, and average contributions from each industry and the total number of receptors with contributions from each industry.

emissions that occur at effective emissions rates above the control stringency level selected at Step 3. That is, if a state's affected EGUs fail to reduce their effective emissions rates in line with the widely available and cost-effective control measures identified, they have therefore failed to eliminate their significant contribution to nonattainment and interference with maintenance of this NAAQS.

In this rule, the EPA is finalizing several "enhancements" to its existing Group 3 emissions trading program for ozone season NO_x, for reasons explained in section VI.B.1 of this document. In general, these changes will ensure that the emissions control program promulgated for EGUs at Step 4 of the EPA's 4-step interstate transport framework is in alignment with the emissions control stringency determinations the EPA made at Step 3. These enhancements reflect lessons learned through the EPA's experience with prior trading programs implemented under the good neighbor provision and ensure that the implementation of the elimination of significant contribution through an emissions trading program remains durable through a period of power sector transition. None of commenters' arguments against the EPA's authority to implement these enhancements are persuasive.

First, the EPA is not mandating that any EGU must install SCR technology. All but one of the enhancements to the trading program continue to be implemented through allowance-holding requirements under the mass-based emissions budget and trading system, including the backstop rate. (The secondary emissions limitation, which is not implemented through allowance-holding requirements under the mass-based emissions budget and trading system, and which is discussed in section VI.B.1.c.ii of this document, merely establishes a stronger deterrent for a type of conduct that was already strongly discouraged under the pre-existing trading program regulations). Nonetheless, the EPA *does* have the authority to impose unit-specific emissions limits under the exercise of its FIP authority, and it has done so in this action for non-EGU industrial sources. This authority is distinct from the EPA's title I permitting authority as discussed by certain commenters, and the scope of that permitting authority is not relevant to this action.

The quantification of emissions budgets in an allowance-based emissions trading program is one of multiple potential Step 4 implementation program design choices

that states and the EPA have authority to select in securing the emissions reductions deemed necessary under Step 3. *See* CAA section 110(a)(2)(A). The EPA and the states routinely determine control stringency on an emissions rate basis in line with demonstrated pollution control opportunities, and both the EPA and the states have implementation program design discretion to determine what compliance requirements, whether expressed on a rate, mass, concentration, or percentage basis, will assure an emissions performance that reflects the control stringency required. Dynamic budgets in the Step 4 implementation of this rule are simply to ensure the trading program continues to incentivize the implementation of the EGU control strategies we find are necessary to eliminate significant contribution at Step 3. The key distinction between dynamic budget approaches and preset budget approaches is not one in stringency or authority, but rather in timing and data resources for determining the suitable mass-based limits that are as well-matched as possible to expected emissions of the affected EGUs achieving the emissions rate-based control stringency deemed necessary under Step 3 to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS.

The EPA does not agree that the administrative mechanisms by which it will implement "dynamic budgeting" conflict with CAA section 307(d) or the Administrative Procedure Act. The EPA is promulgating a complete FIP in this action, and the codified language of that FIP will not need to be modified as budgets are adjusted. This is because the FIP establishes the formula by which the budgets will be calculated each year (with preset budgets functioning as a floor from 2026 through 2029). This is no different than how the EPA has implemented other calculations such as updating allocations using a rolling set of data in its prior CSAPR trading programs. *See, e.g.,* 87 FR 10786. We view these actions as fundamentally ministerial in nature in that no exercise of Agency discretion is required. This process will rely on notices of availability of the relevant data in the **Federal Register**, coupled with an opportunity for the public to correct any errors they may identify in the data before the EPA sets each updated budget. *See* section VI.B.4 for more detail on how the EPA intends to implement dynamic budgeting. As in prior transport rules, this rule provides

the opportunity for administrative appeal should an interested party identify some flaw in the EPA's updated data. *See* 40 CFR 78.1(b)(19)(i) (2023). That process is coupled with the availability of judicial review should the party remain dissatisfied with the EPA's resolution of complaints. *See* 40 CFR 78.1(a)(2) (requiring administrative adjudication as a prerequisite for judicial review). This administrative process has worked well throughout the history of implementing good neighbor trading programs under Part 97, and no such disputes have necessitated judicial resolution.

Further, because the dynamic budgets simply implement the stringency level reflective of the emissions control performance the EPA has determined at Step 3 for the covered EGUs, the EPA does not agree that any "potential variables" that are unforeseeable now could upset the basis for the formula the EPA is establishing in this action. The EPA has adjusted the role of dynamic budgeting in this final rule as compared to the proposal. *See* sections VI.B.1 and VI.B.4 of the preamble. In particular, the EPA is applying an approach to budget setting through 2029 that will use the greater of either a preset budget based on information known to the Agency at the time of this action, or the dynamic budget to be calculated based upon future data yet to be reported. Thus, through 2029 the imposition of a dynamic budget would only increase rather than diminish the emissions allowed for that control period compared to the preset budgets established in this action. In addition, the EPA will determine each state's dynamic budget based on a rolling 3-year average of the state's heat input, thus smoothing out trends to account for interannual variability in demand and heat input and provide greater certainty and predictability as the budget updates from year to year.

Moreover, the EPA does not agree that the EPA is constrained by the statute to only implement good neighbor obligations through fixed, unchanging, mass-based emissions budgets. *See* section III.B.1 of this document. The EPA finds good reason based on its experience with trading programs using fixed budgets why this approach does not necessarily ensure the elimination of significant contribution in perpetuity. The EPA has already once adjusted its historical approach to better account for known, upcoming changes in the EGU fleet to ensure mass-based emissions budgets adequately incentivize the control strategy determined at Step 3. This adjustment was introduced in the Revised CSAPR Update. *See* 82 FR

23121–22.⁹⁶ The EPA now believes it is appropriate to ensure in a more comprehensive manner, and in perpetuity, that the mass-based emissions budget incentivize continuing implementation of the Step 3 control strategies to ensure significant contribution is eliminated in all upwind states and remains so. The dynamic budget-setting process preserves these incentives over time by calculating the state emissions budgets for each future control period so as to reflect the Step 3 control stringency finalized in this rule as applied to the most current information regarding the composition of the power sector in the control period. This is fully analogous in material respect to an approach to implementation at Step 4 that relies on application of unit-specific emissions rates that apply in perpetuity. The availability of unit-specific emissions rates as a means to eliminate significant contribution is discussed in further detail in section III.B.1 of this document. The EPA also explained this in the proposal. See 87 FR 20095–96. The EPA does not agree that either dynamic budgeting or the backstop rate results in overcontrol. See section V.D.4 of this document.

The EPA is enhancing the trading program to help reconcile the approach of using mass-based budgets to achieve the elimination of significant contribution with the *Wisconsin* directive to provide a complete remedy under the good neighbor provision. This approach also better accords with ensuring measures to attain and maintain the NAAQS are permanent and enforceable. The dynamic budget approach recognizes that the uncertainty around future fleet conditions increases the further into the future one looks (and the EPA must look further under the “full remedy” directive). To preserve its ability to successfully implement its identified Step 3 stringency, the EPA is designing the implementation of this rule’s emissions control program to benefit from the future availability of better data from the regulated sources to inform its

⁹⁶ Further, in the Revised CSAPR Update, the EPA acknowledged that a mechanism like dynamic budgeting could be appropriate for a transport rule with longer time horizons. We stated in response to comments that we were not “in this action, including an adjustment mechanism to further adjust state emission budgets to account for currently unknown or uncertain retirements after the finalization of this rule EPA observes that the commenter’s proposed mechanism would become increasingly valuable for rules where the timeframe extends further into the future where retirement uncertainty is higher.” Revised CSAPR Update Response to Comments, EPA–HQ–OAR–2020–0272–219, at 153.

application of its stringency measures identified in this rule.

The EPA does not agree with commenters who suggest that these enhancements are undertaken for the purpose of a non-statutory “environmental justice” objective. As explained in section VI.B of this document, certain enhancements to the trading program ensure that each EGU is adequately incentivized to continuously operate its emissions controls once those controls are installed. One commenter contends that the backstop emissions rate is not authorized based on environmental justice considerations, since it is not necessary and is overcontrol with respect to the EPA’s statutory authority to address good neighbor obligations. But the EPA disagrees with the premise that these enhancements are unrelated to the statutory obligation to eliminate significant contribution. Taking measures to ensure that each upwind source covered by an emissions trading program to eliminate significant contribution is operating its installed pollution controls on a more continuous and consistent basis throughout the ozone season is entirely appropriate in light of the daily nature of the ozone problem, the impacts to public health and the environment from ozone that can occur through short-term exposure (*e.g.*, over a course of hours), the fact that the 2015 ozone NAAQS is expressed as an 8-hour average, and that only a small number of days in excess of the ozone NAAQS are necessary to place a downwind area in nonattainment, resulting in continuing and/or increased regulatory burden on the downwind jurisdiction. See section III.A of this document.

Further, the D.C. Circuit has held that the EPA must ensure that its good neighbor program has eliminated *each* state’s sources from continuing to significantly contribute to nonattainment or interfere with maintenance in downwind states. See *North Carolina*, 531 F.3d at 921. The commenters neglect to acknowledge the scenario that has frequently borne out in prior programs, in which future fleet changes that were not known at the time of initial setting of state emissions budgets produce unexpected “hot air” in the budget that, if unaccounted for, other units can exploit to forgo identified cost-effective mitigation measures deemed necessary to eliminate significant contribution to nonattainment and interference with maintenance of the NAAQS.

The EPA’s experience is that fixed mass-based budgets that are determined based only on the profile of the power

sector at the time the rule is promulgated, and without any additional requirement for pollution controls operation, can become quickly obsolete if the composition of the group of affected EGUs changes notably over time. As some sources retire, other sources relax their operation of NO_x controls in response to a growing surplus of allowances, even though the EPA had concluded that ongoing operation of those controls is necessary to meet the statutory good neighbor requirements. For instance, under the CSAPR Update, in the 2018–2020 period, the fixed budget approach enabled large, frequently run units with existing SCR controls to not optimize those controls even though the EPA’s assessment (as reflected in the CSAPR Update) was that the optimization of those controls was necessary to eliminate significant contribution. This deterioration in emission rate at SCR-controlled coal plants was widely observed across the CSAPR Update geography as the program advanced into later years and allowance price deteriorated. Whereas coal sources with SCR performed, on average, at a 0.086 lb/mmBtu rate in 2017, that same set of sources saw their environmental performance worsen to a 0.099 lb/mmBtu rate in 2020. A Congressional Research Service Report on EPA prior CSAPR trading programs indicated low prices observed in later years “could lead to some decisions not to run some pollution controls at maximum output. This would, in turn, lead to higher emissions”.⁹⁷

In the case of individual units, this deterioration in performance can be quite pronounced and can occur as quickly as the second or third control period, as in the case of Miami Fort Unit 7 in Ohio in 2019, discussed in section V.B of this document. The absence of a sufficient incentive under the trading program to implement the identified control strategy at Step 3 can even result in collective emissions that exceed state-wide assurance levels. The EPA established these levels beginning with CSAPR, above which enhanced allowance-surrender requirements are triggered, in an effort to ensure sources in each state are held to eliminate their own significant contribution, which the D.C. Circuit has held is legally required, see *North Carolina*, 531 F.3d 896, 906–08 (D.C. Cir. 2008). In four instances over the course of the 2019, 2020, and

⁹⁷ Shouse, Kate. “The Clean Air Act’s Good Neighbor Provision: Overview of Interstate Air Pollution Control”. Congressional Research Services. August 30, 2018. Available at <https://sgp.fas.org/crs/misc/R45299.pdf>.

2021 control periods under the CSAPR Update, sources in Mississippi and Missouri collectively exceeded their state-wide assurance levels in part due to deterioration in emissions performance that can be attributed to a glut of allowances within the CSAPR Update. See section VI.B.8 of the preamble.

Thus, while this trading program structure may achieve some environmental benefit through fixed emissions budgets for initial control periods, over time those fixed budgets cease to have their intended effect, and remaining operating facilities can, and have, increased emissions or even discontinued the operation of their emissions controls. This, in turn, can lead to the continuation (or re-emergence) of significant contribution in terms of a recurrence of excessive emissions that had been slated for permanent elimination under the EPA's determinations at Step 3. Although the EPA has always intended for its trading programs to provide flexibility, the Agency did not expect and has certainly never endorsed the use of that flexibility to stop the operation of controls that have already been installed. See, e.g., 76 FR 48256–57 (“[I]t would be inappropriate for a state linked to downwind nonattainment or maintenance areas to stop operating existing pollution control equipment (which would increase their emissions and contribution).”). Despite the EPA's expectations in CSAPR, the historical data establishes a real risk of “under-control” if the existing trading framework is not improved upon. See *EME Homer City*, 572 U.S. at 523 (“[T]he Agency also has a statutory obligation to avoid ‘under-control,’ i.e., to maximize achievement of attainment downwind.”).

This result is also inconsistent with the statutory mandate to “prohibit” significant contribution and interference with maintenance of the NAAQS in downwind states, as evidenced most clearly in CAA section 126, which makes it unlawful for a source “to operate more than three months after [a finding that the source emits or would emit in violation of the good neighbor provision] has been made with respect to it.” 42 U.S.C. 7426(c)(2) (emphasis added). See also *North Carolina*, 531 F.3d at 906–08 (each state must be held to the elimination of its own significant contribution). The purpose of the Agency's interstate trading programs under the good neighbor provision is to afford sources some flexibility in achieving region-wide emissions reductions; however, there is no justification that can be sustained

within that framework for sources in certain areas within that region, or during periods of high ozone when good emissions performance is most essential, to emit at levels well in excess of the EPA's Step 3 determinations of significant contribution. Significant contribution, according to the statute, must be “prohibited.” CAA section 110(a)(2)(D)(i).

Thus, these trading program enhancements are within the EPA's authority under CAA section 110(a)(2)(D)(i)(I) to eliminate interstate ozone pollution that significantly contributes to nonattainment or interferes with maintenance in downwind states. These enhancements ensure the elimination of significant contribution across all upwind states and throughout each ozone season. We observe in the Ozone Transport Policy Analysis Final Rule TSD, section E, that the trading program enhancements may also benefit underserved and overburdened communities downwind of EGUs in the covered geography of the final rule. See section VI.B of this document. This does not detract from the statutorily-authorized basis for these changes, and the EPA finds nothing impermissible in acknowledging the reality of these potential benefits for underserved and overburdened communities.

The EPA appreciates a commenter's concern that our actions be legally defensible. The EPA acknowledges that the changes to the trading program structure for implementing good neighbor obligations discussed here constitute a change in the policy underlying its prior transport-rule trading programs for EGUs. However, the EPA is confident that these changes are in compliance with the holdings in judicial decisions reviewing prior transport rules. The fact that the EPA is making changes does not somehow render these enhancements legally impermissible or even subject to a heightened standard of review. See *FCC v. Fox Television Stations*, 556 U.S. 502, 514 (2009) (“We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review.”). We have explained previously and elsewhere in the record that there are “good reasons” for the “new policy.” See *id.* at 515. And, we are of course fully aware that we have changed our position. See *id.* at 514–15. Specifically, we have gone from previously treating fixed, mass-based budgets as sufficient to eliminate significant contribution, to an approach for purposes of the 2015 ozone NAAQS reflecting a more nuanced

understanding of how an emissions trading program that does not properly anticipate future fleet conditions at Step 4 may fail to achieve the elimination of emissions that should be prohibited based on our findings at Step 3. Further, we find there to be no “serious reliance interests” that have been or even could have been “engendered” by any prior policy on these issues, see *id.* at 515–16. The EPA is implementing these enhancements for the first time with respect to a new obligation—good neighbor requirements for the 2015 ozone NAAQS. No party reasonably could have invested substantial resources to-date to comply with an obligation that was heretofore undefined; and no commenter has supplied any information to the contrary.

2. FIP Authority for Each State Covered by the Rule

On October 26, 2015, the EPA promulgated a revision to the 2015 8-hour ozone NAAQS, lowering the level of both the primary and secondary standards to 0.070 parts per million (ppm).⁹⁸ These revisions of the NAAQS, in turn, established a 3-year deadline for states to provide SIP submissions addressing infrastructure requirements under CAA sections 110(a)(1) and CAA 110(a)(2), including the good neighbor provision, by October 1, 2018. If the EPA makes a determination that a state failed to submit a SIP, or if EPA disapproves a SIP submission, then the EPA is obligated under CAA section 110(c) to promulgate a FIP for that state within 2 years. For a more detailed discussion of CAA section 110 authority and timelines, refer to section III.C of this document.

The EPA is finalizing this FIP action now to address 23 states' good neighbor obligations for the 2015 ozone NAAQS.⁹⁹ For each state for which the EPA is finalizing this FIP, the EPA either issued final findings of failure to submit or has issued a final disapproval of that state's SIP submission.

Several commenters asserted that the sequence of the EPA's actions, and in particular, the timing of its proposed FIP (which was signed on February 28,

⁹⁸ *National Ambient Air Quality Standards for Ozone*, Final Rule, 80 FR 65292 (Oct. 26, 2015). Although the level of the standard is specified in the units of ppm, ozone concentrations are also described in parts per billion (ppb). For example, 0.070 ppm is equivalent to 70 ppb.

⁹⁹ The EPA notes that it is subject to, and has met through this action, a consent decree deadline to promulgate FIPs addressing 2015 ozone NAAQS good neighbor obligations for the states of Pennsylvania, Utah, and Virginia. See *Sierra Club et al. v. Regan*, No. 3:22-cv-01992-JD (N.D. Cal. entered January 24, 2023).

2022, and published on April 6, 2022) in relation to the timing of its proposed SIP disapprovals (most of which were published on February 22, 2022, four of which were published on May 24, 2022, and one of which was published on October 25, 2022), was either unlawful or unreasonable in light of the sequence of steps required under CAA section 110(k) and (c).

These commenters are incorrect. As an initial matter, concerns about the timing or substance of the EPA's actions on the SIP submittals are beyond the scope of this action. Nor are the timing or contents of merely proposed actions to be considered final agency actions or subject to judicial review. *See In re Murray Energy*, 788 F.3d 330 (D.C. Cir. 2015). With these principles in mind, the timing of this final action is lawful under the Act. First, the EPA is not required to wait to propose a FIP until after the Agency proposes or finalizes a SIP disapproval or makes a finding of failure to submit.¹⁰⁰ CAA section 110(c) authorizes the EPA to promulgate a FIP "at any time within 2 years" of a SIP

¹⁰⁰ The EPA notes there are three consent decrees to resolve three deadline suits related to EPA's duty to act on good neighbor SIP submissions for the 2015 ozone NAAQS. In *New York et al. v. Regan, et al.* (No. 1:21-cv-00252, S.D.N.Y.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submissions from Indiana, Kentucky, Michigan, Ohio, Texas, and West Virginia by April 30, 2022; however, if the EPA proposes to disapprove any SIP submissions and proposes a replacement FIP by February 28, 2022, then EPA's deadline to take final action on that SIP submission is extended to December 30, 2022. In *Downwinders at Risk et al. v. Regan* (No. 21-cv-03551, N.D. Cal.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submissions from Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, New Jersey, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wisconsin by April 30, 2022; however, if the EPA proposes to disapprove any of these SIP submissions and proposes a replacement FIP by February 28, 2022, then the EPA's deadline to take final action on that SIP submission is December 30, 2022. In this CD, the EPA also agreed to take final action on Hawaii's SIP submission by April 30, 2022, and to take final action on the SIP submissions of Arizona, California, Montana, Nevada, and Wyoming by December 15, 2022. In *Our Children's Earth Foundation v. EPA* (No. 20-8232, S.D.N.Y.), the EPA agreed to take final action on the 2015 ozone NAAQS good neighbor SIP submission from New York by April 30, 2022; however, if the EPA proposes to disapprove New York's SIP submission and proposes a replacement FIP by February 28, 2022, then the EPA's deadline to take final action on New York's SIP submission is extended to December 30, 2022. By stipulation of the parties, the December 15, 2022, date in all three of these consent decrees was extended to January 31, 2023. By further stipulation of the parties in the *Downwinders at Risk* case, the January 31, 2023, date was further extended to December 15, 2023 for the EPA to act on the SIP submissions from the states of Arizona, Tennessee, and Wyoming.

disapproval or making a finding of failure to submit. The Supreme Court recognized in *EME Homer City* that the EPA is not obligated to first define a state's good neighbor obligations or give the state an additional opportunity to submit an approvable SIP before promulgating a FIP: "EPA is not obliged to wait two years or postpone its action even a single day: The Act empowers the Agency to promulgate a FIP 'at any time' within the two-year limit."¹⁰¹ Thus, the EPA may promulgate a FIP contemporaneously with or immediately following predicate final SIP disapproval (or finding no SIP was submitted). To accomplish this, the EPA must necessarily be able to propose a FIP prior to taking final action to disapprove a SIP or make a finding of failure to submit.

Second, and more importantly, the EPA has established predicate authority to promulgate FIPs for all of the covered states through its action with respect to the relevant SIP submittals. A brief history of these actions follows:

On February 22, 2022, the EPA proposed to disapprove 19 good neighbor SIP submissions (Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, West Virginia, Wisconsin).¹⁰² Alabama subsequently withdrew its SIP submission and re-submitted a SIP submission on June 22, 2022. The EPA proposed to disapprove that SIP submittal on October 25, 2022.¹⁰³ The EPA proposed to disapprove good neighbor SIP submissions for four additional states, California, Nevada, Utah, and Wyoming, on May 24, 2022.¹⁰⁴

Subsequently, on January 31, 2023, the EPA Administrator signed a single disapproval action for all of the above states, with the exception of Tennessee and Wyoming.¹⁰⁵ This action established the EPA's authority to promulgate FIPs for the disapproved states. (As explained in section IV.F of this document, the Agency is deferring action at this time for Tennessee and Wyoming with respect to its proposed

¹⁰¹ *See EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 509 (2014) (citations omitted).

¹⁰² *See* 87 FR 9463 (Maryland); 87 FR 9484 (New Jersey, New York); 87 FR 9498 (Kentucky); 87 FR 9516 (West Virginia); 87 FR 9533 (Missouri); 87 FR 9545 (Alabama, Mississippi, Tennessee); 87 FR 9798 (Arkansas, Louisiana, Oklahoma, Texas); 87 FR 9838 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin).

¹⁰³ *See* 87 FR 64412.

¹⁰⁴ *See* 87 FR 31443 (California); 87 FR 31485 (Nevada); 87 FR 31470 (Utah); 87 FR 31495 (Wyoming).

¹⁰⁵ *See* 88 FR 9336.

FIP actions for those states. As discussed in section IV.F of this document, the EPA's most recent modeling and air quality analysis indicates that several states may be linked to downwind receptors for which we had not previously proposed disapproval or FIP action. The EPA anticipates addressing remaining interstate transport obligations for the 2015 ozone NAAQS for these in a subsequent rulemaking.)

Additionally, the EPA has taken action that has triggered the EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several downwind states. On December 5, 2019, the EPA published a rule finding that seven states (Maine, New Mexico, Pennsylvania, Rhode Island, South Dakota, Utah, and Virginia) failed to submit or otherwise make complete submissions that address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.¹⁰⁶ This finding triggered a 2-year deadline for the EPA to issue FIPs to address the good neighbor provision for these states by January 6, 2022. As the EPA has subsequently received and taken final action to approve good neighbor SIPs from Maine, Rhode Island, and South Dakota,¹⁰⁷ the EPA currently has authority under the December 5, 2019, findings of failure to submit to issue FIPs for New Mexico, Pennsylvania, Utah, and Virginia. In this final rule, the EPA is issuing FIP requirements for Pennsylvania, Utah, and Virginia.¹⁰⁸

Further information on the procedural history establishing the EPA's authority for this final rule is provided in a document in the docket.¹⁰⁹

¹⁰⁶ *Findings of Failure To Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)*, 84 FR 66612 (December 5, 2019, effective January 6, 2020).

¹⁰⁷ *Air Plan Approval; Maine and New Hampshire; 2015 Ozone NAAQS Interstate Transport Requirements*, 86 FR 45870 (August 17, 2021); *Air Plan Approval; Rhode Island; 2015 Ozone NAAQS Interstate Transport Requirements*, 86 FR 70409 (December 10, 2021); *Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; South Dakota; Revisions to the Administrative Rules of South Dakota*, 85 FR 29882 (May 19, 2020).

¹⁰⁸ *WildEarth Guardians v. Regan*, No. 1:22-cv-00174 (D.N.M. entered Aug. 16, 2022); *Sierra Club et al. v. EPA*, No. 3:22-cv-01992 (N.D. Cal. entered Jan. 24, 2023).

¹⁰⁹ *See* "Final Rule: Status of CAA Section 110(a)(2)(D)(i)(I) SIP Submissions for the 2015 Ozone NAAQS for States Covered by the Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards." This document updates a prior document of the same title provided

While the EPA's previous actions are sufficient to establish that the EPA's promulgation of this FIP action at this time is lawful, the timing of this action is all the more reasonable in light of the need for the EPA to address good neighbor obligations consistent with the rest of title I of the CAA. In particular, the D.C. Circuit in *Wisconsin* held that states and the EPA are obligated to fully address good neighbor obligations for ozone "as expeditiously as practical" and in no event later than the next relevant downwind attainment dates found in CAA section 181(a).¹¹⁰ In *Maryland v. EPA*, the D.C. Circuit made clear that *Wisconsin's* and *North Carolina's* holdings are fully applicable to the Marginal area attainment date for the 2015 ozone NAAQS,¹¹¹ which fell on August 3, 2021.¹¹² As discussed in section VI.A of this document, by finalizing this action now, the EPA is able to implement initial required emissions reductions to eliminate significant contribution by the 2023 ozone season, which is the last full ozone season before the next attainment date, the Moderate area attainment date of August 3, 2024. The *Wisconsin* court emphasized that the EPA has the authority under CAA section 110 to structure and time its actions in a manner such that the Agency can ensure necessary reductions are achieved in alignment with the downwind attainment schedule, and that is precisely what the EPA is doing here.¹¹³ The EPA provides further response to the comments on this issue in section 1 of the *RTC* document.

C. Other CAA Authorities for This Action

1. Withdrawal of Proposed Error Correction for Delaware

The EPA proposed at 87 FR 20036 to make an error correction under CAA section 110(k)(6) of its May 1, 2020, approval at 85 FR 25307 of the interstate transport elements for Delaware's October 11, 2018, and December 26,

at proposal (Document no. EPA-HQ-OAR-2021-0668-0131).

¹¹⁰ *Wisconsin v. EPA*, 938 F.3d 303, 313–14 (D.C. Cir. 2019) (citing *North Carolina v. EPA*, 531 F.3d 896, 911–13 (D.C. Cir. 2008)).

¹¹¹ *Maryland v. EPA*, 958 F.3d 1185, 1203–04 (D.C. Cir. 2020).

¹¹² See CAA section 181(a); 40 CFR 51.1303; *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards*, 83 FR 25776 (June 4, 2018, effective August 3, 2018).

¹¹³ 938 F.3d at 318 ("When EPA determines a State's SIP is inadequate, EPA presumably must issue a FIP that will bring that State into compliance before upcoming attainment deadlines, even if the outer limit of the statutory timeframe gives EPA more time to formulate the FIP.") (citing *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002)).

2019, ozone infrastructure SIP submissions as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. The EPA proposed to determine that the basis for the prior SIP approval was invalidated by the Agency's more recent technical evaluation of air quality modeling performed in support of the proposed rule,¹¹⁴ and that Delaware had unresolved interstate transport obligations for the 2015 ozone NAAQS. The EPA also proposed to issue a FIP for Delaware given these unresolved interstate transport obligations. However, based on the updated air quality modeling described in section IV.F. of this document and the technical assessment that informs this final rule, the EPA finds that Delaware is not projected to be linked to any downwind receptor above the 1 percent of the NAAQS threshold in 2023. Thus, based on the record before the Agency now, the original approval of Delaware's SIP submission was not in error, and the EPA is withdrawing its proposed error correction and proposed FIP for Delaware.

2. Application of Rule in Indian Country and Necessary or Appropriate Finding

The EPA is finalizing its determination that this rule will be applicable in all areas of Indian country (as defined at 18 U.S.C. 1151) within the covered geography of the final rule, as defined in this section. Certain areas of Indian country within the geography of the rule are or may be subject to state implementation planning authority. Other areas of Indian country within that geography are subject to tribal planning authority, although none of the relevant tribes have as yet sought eligibility to administer a tribal plan to implement the good neighbor provision.¹¹⁵ As described later, the

¹¹⁴ See the Air Quality Modeling Proposed Rule TSD in the docket for this rule.

¹¹⁵ We note that, consistent with the EPA's prior good neighbor actions in California, the regulatory ozone monitor located on the Morongo Band of Mission Indians ("Morongo") reservation is a projected downwind receptor in 2023. See monitoring site 060651016 in Table IV.D-1. We also note that the Temecula, California, regulatory ozone monitor is a projected downwind receptor in 2023 and in past regulatory actions has been deemed representative of air quality on the Pechanga Band of Luiseño Indians ("Pechanga") reservation. See, e.g., *Approval of Tribal Implementation Plan and Designation of Air Quality Planning Area; Pechanga Band of Luiseño Mission Indians*, 80 FR 18120, at 18121–18123 (April 3, 2015); see also monitoring site 060650016 in Table IV.D-1. The presence of receptors on, or representative of, the Morongo and Pechanga reservations does not trigger obligations for the Morongo and Pechanga Tribes. Nevertheless, these receptors are relevant to the EPA's assessment of

EPA is including all areas of Indian country within the covered geography, notwithstanding whether those areas are currently subject to a state's implementation planning authority or the potential planning authority of a tribe.

a. Indian Country Subject to Tribal Jurisdiction

With respect to areas of Indian country not currently subject to a state's implementation planning authority—*i.e.*, Indian reservation lands (with the partial exception of reservation lands located in the State of Oklahoma, as described further in this section) and other areas of Indian country over which the EPA or a tribe has demonstrated that a tribe has jurisdiction—the EPA here makes a "necessary or appropriate" finding that direct Federal implementation of the rule's requirements is warranted under CAA section 301(d)(4) and 40 CFR 49.11(a) (the areas of Indian country subject to this finding will be referred to as the CAA section 301(d) FIP areas). Indian Tribes may, but are not required to, submit tribal plans to implement CAA requirements, including the good neighbor provision. Section 301(d) of the CAA and 40 CFR part 49 authorize the Administrator to treat an Indian Tribe in the same manner as a state (*i.e.*, TAS) for purposes of developing and implementing a tribal plan implementing good neighbor obligations. See 40 CFR 49.3; see also "Indian Tribes: Air Quality Planning and Management," hereafter "Tribal Authority Rule" (63 FR 7254, February 12, 1998). The EPA is authorized to directly implement the good neighbor provision in the 301(d) FIP areas when it finds, consistent with the authority of CAA section 301—which the EPA has exercised in 40 CFR 49.11—that it is necessary or appropriate to do so.¹¹⁶

any linked upwind states' good neighbor obligations. See, e.g., *Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide*, 83 FR 65093 (December 19, 2018). Under 40 CFR 49.4(a), tribes are not subject to the specific plan submittal and implementation deadlines for NAAQS-related requirements, including deadlines for submittal of plans addressing transport impacts.

¹¹⁶ See *Arizona Pub. Serv. Co. v. U.S. E.P.A.*, 562 F.3d 1116, 1125 (10th Cir. 2009) (stating that 40 CFR 49.11(a) "provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate such rulemaking"); *Safe Air For Everyone v. U.S. Env't Prot. Agency*, No. 05–73383, 2006 WL 3697684, at *1 (9th Cir., Dec. 15, 2006) ("The statutes and regulations that enable EPA to regulate air quality on Indian reservations provide EPA with broad discretion in setting the content of such regulations.").

The EPA hereby finds that it is both necessary and appropriate to regulate all new and existing EGU and industrial sources meeting the applicability criteria set forth in this rule in all of the 301(d) FIP areas that are located within the geographic scope of coverage of the rule. For purposes of this finding, the geographic scope of coverage of the rule means the areas of the United States encompassed within the borders of the states the EPA has determined to be linked at Steps 1 and 2 of the 4-step interstate transport framework.¹¹⁷ For EGU applicability criteria, see section VI.B of this document; for industrial-source applicability criteria, see section VI.C of this document. To EPA's knowledge, only one existing EGU or industrial source is located within the CAA section 301(d) FIP areas: the Bonanza Power Plant, an EGU source, located on the Uintah and Ouray Reservation, geographically located within the borders of Utah.

This finding is consistent with the EPA's prior good neighbor rules. In prior rulemakings under the good neighbor provision, the EPA has included all areas of Indian country within the geographic scope of those FIPs, such that any new or existing sources meeting the rules' applicability criteria would be subject to the rule irrespective of whether subject to state or tribal underlying CAA planning authority. In CSAPR, the CSAPR Update, and the Revised CSAPR Update, the scope of the emissions trading programs established for EGUs extended to cover all areas of Indian country located within the geographic boundaries of the covered states. In these rules, at the time of their promulgation, no existing units were located in the covered areas of Indian country; under the general applicability criteria of the trading programs, however, any new sources locating in such areas would become subject to the programs. Thus, the EPA established a separate allowance allocation that would be available for any new units locating in any of the relevant areas of Indian country. See, e.g., 76 FR 48293 (describing the CSAPR methodology of allowance allocation under the "Indian country new unit set-aside" provisions); see also *id.* at 48217 (explaining the EPA's source of authority for directly regulating in relevant areas of Indian

country as necessary or appropriate). Further, in any action in which the EPA subsequently approved a state's SIP submittal to partially or wholly replace the provisions of a CSAPR FIP, the EPA has clearly delineated that it will continue to administer the Indian country new unit set aside for sources in any areas of Indian country geographically located within a state's borders and not subject to that state's CAA planning authority, and the state may not exercise jurisdiction over any such sources. See, e.g., 82 FR 46674, 46677 (October 6, 2017) (approving Alabama's SIP submission establishing a state CSAPR trading program for ozone season NO_x, but providing, "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 this rule, the EPA is taking an approach similar to the prior CSAPR rulemakings with respect to regulating sources in the CAA section 301(d) FIP areas.¹¹⁸ The EPA believes this approach is necessary and appropriate for several reasons. First, the purpose of this rule is to address the interstate transport of ozone on a national scale, and the technical record establishes that the nonattainment and maintenance receptors located throughout the country are impacted by sources of ozone pollution on a broad geographic scale. The upwind regions associated with each receptor typically span at least two, and often far more, states. Within the broad upwind region covered by this rule, the EPA is applying—consistent with the methodology of allocating upwind responsibility in prior transport rules going back to the NO_x SIP Call—a uniform level of control stringency (as determined separately for linkages existing in 2023, and linkages persisting in 2026). (See section V of this document for a discussion of EPA's determination of control stringency for this rule.) Within this approach, consistency in rule requirements across all jurisdictions is vital in ensuring the remedy for ozone transport is, in the words of the Supreme Court, "efficient and equitable," 572 U.S. 489, 519. In particular, as the Supreme Court found in *EME Homer City Generation*, allocating responsibility through uniform levels of control across the

entire upwind geography is "equitable" because, by imposing uniform cost thresholds on regulated States, the EPA's rule subjects to stricter regulation those States that have done relatively less in the past to control their pollution. Upwind States that have not yet implemented pollution controls of the same stringency as their neighbors will be stopped from free riding on their neighbors' efforts to reduce pollution. They will have to reduce their emissions by installing devices of the kind in which neighboring States have already invested. *Id.*

In the context of addressing regional-scale ozone transport in this rule, the importance of a uniform level of stringency that extends to and includes the CAA section 301(d) FIP areas geographically located within the boundaries of the linked upwind states carries significant force. Failure to include all such areas within the scope of the rule creates a significant risk that these areas may be targeted for the siting of facilities emitting ozone-precursor pollutants, to avoid the regulatory costs that would be imposed under this rule in the surrounding areas of state jurisdiction. Electricity generation or the production of other goods and commodities may become more cost-competitive at any EGU or industrial sources not subject to the rule but located in a geography where the same types of sources are subject to the rule. For instance, the affected EGU source located on the Uintah and Ouray Reservation of the Ute Tribe is in an area that is interconnected with the western electricity grid and is owned and operated by an entity that generates and provides electricity to customers in several states. It is both necessary and appropriate, in the EPA's view, to avoid creating, via this rule, a structure of incentives that may cause generation or production—and the associated NO_x emissions—to shift into the CAA section 301(d) FIP areas to escape regulation needed to eliminate interstate transport under the good neighbor provision.

The EPA finds it is appropriate to directly implement the rule's requirements in the CAA section 301(d) FIP areas in this action rather than at a later date. Tribes have the opportunity to seek treatment as a state (TAS) and to undertake tribal implementation plans under the CAA. To date, the one tribe which could develop and seek approval of a tribal implementation plan to address good neighbor obligations with respect to an existing EGU in the CAA section 301(d) FIP areas for the 2015 ozone NAAQS (or for any other NAAQS), the Ute Indian Tribe of the Uintah and Ouray Reservation, has not

¹¹⁷ With respect to any industrial sources located in the CAA section 301(d) FIP areas, the geographic scope of coverage of this rule does not include those states for which the EPA finds, based on air quality modeling, that no further linkage exists by the 2026 analytic year at Steps 1 and 2. The states in this rule not linked in 2026 are Alabama, Minnesota, and Wisconsin.

¹¹⁸ See section VI.B.9 of this document for a discussion of revisions that are being made in this rulemaking regarding the point in the allowance allocation process at which the EPA would establish set-asides of allowances for units in Indian country not subject to a state's CAA implementation planning authority.

expressed an intent to do so. Nor has the EPA heard such intentions from any other tribe, and it would not be reasonable to expect tribes to undertake that planning effort, particularly when no existing sources are currently located on their lands. Further, the EPA is mindful that under court precedent, the EPA and states bear an obligation to fully implement any required emissions reductions to eliminate significant contribution under the good neighbor provision as expeditiously as practicable and in alignment with downwind areas' attainment schedule under the Act. As discussed in section VI.A of this document, the EPA is implementing certain required emissions reductions by the 2023 ozone season, the last full ozone season before the 2024 Moderate area attainment date, and other key additional required emissions reductions by the 2026 ozone season, the last full ozone season before the 2027 Serious area attainment date. Absent the application of this FIP in the CAA section 301(d) FIP areas, NO_x emissions from any existing or new EGU or non-EGU sources located in, or locating in, the CAA section 301(d) FIP areas within the covered geography of the rule would remain unregulated for purposes of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS and could continue or potentially increase. This would be inconsistent with the EPA's overall goal of aligning good neighbor obligations with the downwind areas' attainment schedule and to achieve emissions reductions as expeditiously as practicable.

Further, the EPA recognizes that Indian country, including the CAA section 301(d) FIP areas, is often home to communities with environmental justice concerns, and these communities may bear a disproportionate level of pollution burden as compared with other areas of the United States. The EPA's Fiscal Year 2022–2026 Strategic Plan¹¹⁹ includes an objective to promote environmental justice at the Federal, Tribal, state, and local levels and states: "Integration of environmental justice principles into all EPA activities with Tribal governments and in Indian country is designed to be flexible enough to accommodate EPA's Tribal program activities and goals, while at the same time meeting the Agency's environmental justice goals." As described in section X.F of this document, the EPA offered Tribal consultation to 574 Tribes in April of 2022 and received no requests for Tribal

consultation after publication of the proposed rulemaking. By including all areas of Indian country within the covered geography of the rule, the EPA is advancing environmental justice, lowering pollution burdens in such areas, and preventing the potential for "pollution havens" to form in such areas as a result of facilities seeking to locate there to avoid the requirements that would otherwise apply outside of such areas under this rule.

Therefore, to ensure timely alignment of all needed emissions reductions within the timetables of this rule, to ensure equitable distribution of the upwind pollution reduction obligation across all upwind jurisdictions, to avoid perverse economic incentives to locate sources of ozone-precursor pollution in the CAA section 301(d) FIP areas, and to deliver greater environmental justice to tribal communities in line with Executive Order 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,¹²⁰ the EPA finds it both necessary and appropriate that all existing and new EGU and industrial sources that are located in the CAA section 301(d) FIP areas within the geographic boundaries of the covered states, and which would be subject to this rule if located within areas subject to state CAA planning authority, should be included in this rule. The EPA issues this finding under CAA section 301(d)(4) of the Act and 40 CFR 49.11. Further, to avoid "unreasonable delay" in promulgating this FIP, as required under section 49.11, the EPA makes this finding now, to align emissions reduction obligations for any covered new or existing sources in the CAA section 301(d) FIP areas with the larger schedule of reductions under this rule. Because all other covered EGU and non-EGU sources within the geography of this rule would be subject to emissions reductions of uniform stringency beginning in the 2023 ozone season, and as necessary to fully and expeditiously address good neighbor obligations for the 2015 ozone NAAQS, there is little benefit to be had by not including the CAA section 301(d) FIP areas in this rule now and a potentially significant downside to not doing so.

The Agency recognizes that Tribal governments may still choose to seek TAS to develop a Tribal plan with respect to the obligations under this rule, and this determination does not preclude the tribes from taking such

actions. Although the formal tribal consultation process associated with this action has concluded, the EPA is willing and available to engage with any tribe as this rule is implemented.

b. Indian Country Subject to State Implementation Planning Authority

Following the U.S. Supreme Court decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Governor of the State of Oklahoma requested approval under section 10211(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act of 2005: A Legacy for Users, Public Law 109–59, 119 Stat. 1144, 1937 (August 10, 2005) ("SAFETEA"), to administer in certain areas of Indian country (as defined at 18 U.S.C. 1151) the State's environmental regulatory programs that were previously approved by the EPA for areas outside of Indian country. The State's request excluded certain areas of Indian country further described later. In addition, the State only sought approval to the extent that such approval is necessary for the State to administer a program in light of *Oklahoma Dept. of Environmental Quality v. EPA*, 740 F.3d 185 (D.C. Cir. 2014).¹²¹

On October 1, 2020, the EPA approved Oklahoma's SAFETEA request to administer all the State's EPA-approved environmental regulatory programs, including the Oklahoma SIP, in the requested areas of Indian country.¹²² As requested by Oklahoma, the EPA's approval under SAFETEA does not include Indian country lands, including rights-of-way running through the same, that: (1) qualify as Indian allotments, the Indian titles to which have not been extinguished, under 18 U.S.C. 1151(c); (2) are held in trust by the United States on behalf of an individual Indian or Tribe; or (3) are owned in fee by a Tribe, if the Tribe (a) acquired that fee title to such land, or an area that included such land, in accordance with a treaty with the United States to which such Tribe was a party, and (b) never allotted the land to a member or citizen of the Tribe

¹²¹ In *ODEQ v. EPA*, the D.C. Circuit held that under the CAA, a state has the authority to implement a SIP in non-reservation areas of Indian country in the state, where there has been no demonstration of tribal jurisdiction. Under the D.C. Circuit's decision, the CAA does not provide authority to states to implement SIPs in Indian reservations. *ODEQ* did not, however, substantively address the separate authority in Indian country provided specifically to Oklahoma under SAFETEA. That separate authority was not invoked until the State submitted its request under SAFETEA, and was not approved until the EPA's decision, described in this section, on October 1, 2020.

¹²² Available in the docket for this rulemaking.

¹¹⁹ <https://www.epa.gov/system/files/documents/2022-03/fy-2022-2026-epa-strategic-plan.pdf>.

¹²⁰ Executive Order 13985 (January 20, 2021) (86 FR 7009 (January 25, 2021)); <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

(collectively “excluded Indian country lands”).

The EPA’s approval under SAFETEA expressly provided that to the extent EPA’s prior approvals of Oklahoma’s environmental programs excluded Indian country, any such exclusions are superseded for the geographic areas of Indian country covered by the EPA’s approval of Oklahoma’s SAFETEA request.¹²³ The approval also provided that future revisions or amendments to Oklahoma’s approved environmental regulatory programs would extend to the covered areas of Indian country (without any further need for additional requests under SAFETEA).

In a **Federal Register** document published on February 13, 2023 (88 FR 9336), the EPA disapproved the portion of an Oklahoma SIP submittal pertaining to the state’s interstate transport obligations under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Consistent with the D.C. Circuit’s decision in *ODEQ v. EPA* and with the EPA’s October 1, 2020 SAFETEA approval, the EPA has authority under CAA section 110(c) to promulgate a FIP as needed to address the disapproved aspects of Oklahoma’s good neighbor SIP submittal.¹²⁴ In accordance with the previous discussion, the EPA’s FIP authority in this circumstance extends to all Indian country in Oklahoma, other than the excluded Indian country lands, as described previously.¹²⁵ Because—per the State’s request under SAFETEA—EPA’s October 1, 2020 approval does not displace any SIP authority previously exercised by the State under the CAA as interpreted in *ODEQ v. EPA*, the EPA’s FIP authority under CAA section 110(c) also applies to any Indian

allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority. The EPA’s FIP authority under CAA section 110(c) similarly applies to Indian allotments or dependent Indian communities located outside of an Indian reservation over which there has been no demonstration of tribal authority located in any other state within the geographic scope of this rule.

In light of the relevant legal authorities discussed above regarding the scope of the State of Oklahoma’s regulatory jurisdiction under the CAA, the EPA has FIP authority under CAA section 110(c) with respect to all Indian country in Oklahoma other than excluded Indian country lands. To the extent any change occurs in the scope of Oklahoma’s SIP authority in Indian country following finalization of this rule, and such change affects the exercise of FIP authority provided under section 110(c) of the Act,¹²⁶ then, to the extent any such areas would fall more appropriately within the CAA section 301(d) FIP areas as described in section III.C.2.a of this document, the EPA’s necessary or appropriate finding as set forth above with respect to all other CAA section 301(d) FIP areas within the geographic scope of coverage of the rule would apply.

D. Severability

The EPA regards this action as a complete remedy, which will as expeditiously as practicable implement good neighbor obligations for the 2015 ozone NAAQS for the covered states, consistent with the requirements of the Act. *See North Carolina v. EPA*, 531 F.3d 896, 911–12 (D.C. Cir. 2008); *Wisconsin v. EPA*, 938 F.3d 303, 313–20 (D.C. Cir. 2019); *Maryland v. EPA*, 958 F.3d 1185, 1204 (D.C. Cir. 2020); *New York v. EPA*, 964 F.3d 1214, 1226 (D.C. Cir. 2020); *New York v. EPA*, 781 Fed. App’x 4, 7–8 (D.C. Cir. 2019) (all holding that the EPA must address good neighbor obligations as expeditiously as practicable and by no later than the next applicable attainment date). Yet should a court find any discrete aspect of this document to be invalid, the Agency

believes that the remaining aspects of this rule can and should continue to be implemented to the extent possible. In particular, this action promulgates a FIP for each covered state (and, pursuant to CAA section 301(d), for each area of tribal jurisdiction within the geographic boundaries of those states). Should any jurisdiction-specific aspect of the final rule be found invalid, the EPA views this rule as severable along those state and/or tribal jurisdictional lines, such that the rule can continue to be implemented as to any remaining jurisdictions. This action promulgates discrete emissions control requirements for the power sector and for each of seven other industries. Should any industry-specific aspect of the final rule be found invalid, the EPA views this rule as severable as between the different industries and different types of emissions control requirements. This is not intended to be an exhaustive list of the ways in which the rule may be severable. In the event any part of it is found invalid, our intention is that the remaining portions should continue to be implemented consistent with any judicial ruling.

The EPA’s conclusion that this rule is severable also reflects the important public health and environmental benefits of this rulemaking in eliminating significant contribution and to ensure to the greatest extent possible the ability of both upwind states and downwind states and other relevant stakeholders to be able to rely on this final rule in their planning. *Cf. Wisconsin*, 938 F.3d at 336–37 (“As a general rule, we do not vacate regulations when doing so would risk significant harm to the public health or the environment.”); *North Carolina v. EPA*, 550 F.3d 1176, 1178 (D.C. Cir. 2008) (noting the need to preserve public health benefits); *EME Homer City v. EPA*, 795 F.3d 118, 132 (D.C. Cir. 2015) (noting the need to avoid disruption to emissions trading market that had developed).

IV. Analyzing Downwind Air Quality Problems and Contributions From Upwind States

A. Selection of Analytic Years for Evaluating Ozone Transport Contributions to Downwind Air Quality Problems

In this section, the EPA describes its process for selecting analytic years for air quality modeling and analyses performed to identify nonattainment and maintenance receptors and identify upwind state linkages. For this final rule, the EPA evaluated air quality to identify receptors at Step 1 for two

¹²³ The EPA’s prior approvals relating to Oklahoma’s SIP frequently noted that the SIP was not approved to apply in areas of Indian country (consistent with the D.C. Circuit’s decision in *ODEQ v. EPA*) located in the state. *See, e.g.*, 85 FR 20178, 20180 (April 10, 2020). Such prior expressed limitations are superseded by the EPA’s approval of Oklahoma’s SAFETEA request.

¹²⁴ The antecedent fact that the state had the authority and jurisdiction to implement requirements under the good neighbor provision, in the EPA’s view, supplies the condition necessary for the Agency to exercise its FIP authority to the extent the EPA has disapproved the state’s SIP submission with respect to those requirements. Under CAA section 110(c), the EPA “stands in the shoes of the defaulting state, and all of the rights and duties that would otherwise fall to the state accrue instead to the EPA.” *Central Ariz. Water Conservation Dist. v. EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993).

¹²⁵ With respect to those areas of Indian country constituting “excluded Indian country lands” in the State of Oklahoma, as defined supra, the EPA applies the same necessary or appropriate finding as set forth above with respect to all other 301(d) FIP areas within the geographic scope of coverage of the rule.

¹²⁶ On December 22, 2021, the EPA proposed to withdraw and reconsider the October 1, 2020, SAFETEA approval. *See* <https://www.epa.gov/ok/proposed-withdrawal-and-reconsideration-and-supporting-information>. The EPA is engaging in further consultation with tribal governments and expects to have discussions with the State of Oklahoma as part of this reconsideration. The EPA also notes that the October 1, 2020, approval is the subject of a pending challenge in Federal court. *Pawnee Nation of Oklahoma v. Regan*, No. 20–9635 (10th Cir.).

analytic years: 2023 and 2026. The EPA evaluated interstate contributions to these receptors from individual upwind states at Step 2 for these two analytic years. In selecting these years, the EPA views 2023 and 2026 to constitute years by which key emissions reductions from EGUs and non-EGUs can be implemented “as expeditiously as practicable.” In addition, these years are the last full ozone seasons before the Moderate and Serious area attainment dates for the 2015 ozone NAAQS (ozone seasons run each year from May 1–September 30). To demonstrate attainment by these deadlines, downwind states would be required to rely on design values calculated using ozone data from 2021 through 2023 and 2024 through 2026, respectively. By focusing its analysis, and, potentially, achieving emissions reductions by, the last full ozone seasons before the attainment dates (*i.e.*, in 2023 or 2026), this final rule can assist the downwind areas with demonstrating attainment or receiving extensions of attainment dates under CAA section 181(a)(5). (The EPA explains in detail in sections V and VI of this document its determinations regarding which emissions reduction strategies can be implemented by 2023, and which emissions reduction strategies require additional time beyond that ozone season, or the 2026 ozone season.)

It would not be logical for the EPA to analyze any earlier year than 2023. The EPA continues to interpret the good neighbor provision as forward-looking, based on Congress’s use of the future-tense “will” in CAA section 110(a)(2)(D)(i), an interpretation upheld in *Wisconsin*, 938 F.3d at 322. It would be “anomalous,” *id.*, for the EPA to impose good neighbor obligations in 2023 and future years based solely on finding that “significant contribution” had existed at some time in the past. *Id.*

Applying this framework in the proposal, the EPA recognized that the 2021 Marginal area attainment date had already passed. Further, based on the timing of the proposal, it was not possible to finalize this rulemaking before the 2022 ozone season had also passed. Thus, the EPA has selected 2023 as the first appropriate future analytic year for this final rule because it reflects implementation of good neighbor obligations as expeditiously as practicable and coincides with the August 3, 2024, Moderate area attainment date established for the 2015 ozone NAAQS.

The EPA conducted additional analysis for 2026 to ensure a complete Step 3 analysis for future ozone transport contributions to downwind

areas. As noted above, 2023 and 2026 coincide with the last full ozone seasons before future attainment dates for the 2015 ozone NAAQS. In addition, 2026 coincides with the ozone season by which key additional emissions reductions from EGUs and non-EGUs become available. Thus, the EPA analyzed additional years beyond 2023 to determine whether any additional emissions reductions that are impossible to obtain by the 2024 attainment date could still be necessary to fully address significant contribution. In all cases, implementation of necessary emissions reductions is as expeditiously as practicable, with all possible emissions reductions implemented by the next applicable attainment date.

The timing framework and selection of analytic years set forth above comports with the D.C. Circuit’s direction in *Wisconsin* that implementing good neighbor obligations beyond the dates established for attainment may be justified on a proper showing of impossibility or necessity. *See* 938 F.3d at 320.

Comment: A commenter claims that the EPA has not followed the holdings of *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019), *North Carolina v. EPA*, 550 F.3d 1176 (D.C. Cir. 2008), and *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020) in the selection of analytic years, in that commenter interprets those decisions as holding that the EPA must “harmonize” the exact timing of upwind emissions reductions with when downwind states implement their required reductions. Commenter also points to the EPA’s proposed action on New York’s Good Neighbor SIP submission specifically to argue that the EPA is treating upwind and downwind states dissimilarly. Commenter also cites CAA sections 172, 177, and 179 to argue the EPA did not properly align upwind and downwind obligations. Several commenters believe the EPA should defer implementing good neighbor requirements until downwind receptor areas have first implemented their own emissions control strategies.

Response: The EPA maintains that 2023 is an appropriate analytic year and comports with the relevant caselaw. Section VI.A further discusses the compliance schedule for emissions reductions under this rule. Commenter misreads the *North Carolina*, *Wisconsin*, and *Maryland* decisions as calling for good neighbor analysis and emissions controls to be aligned with the timing of the implementation of nonattainment controls by downwind states. However, the D.C. Circuit has held that the *statutory attainment dates* are the

relevant downwind deadlines the EPA must align with in implementing the good neighbor provision. In *Wisconsin*, the court held, “In sum, under our decision in *North Carolina*, the Good Neighbor Provision calls for elimination of upwind States’ significant contributions *on par with the relevant downwind attainment deadlines.*” *Wisconsin*, 938 F.3d. at 321 (emphasis added).

After that decision, the EPA interpreted *Wisconsin* as limited to the attainment dates for Moderate or higher classifications under CAA section 181 on the basis that Marginal nonattainment areas have reduced planning requirements and other considerations. *See, e.g.*, 85 FR 29882, 29888–89 (May 19, 2020) (proposed approval of South Dakota’s 2015 ozone NAAQS good neighbor SIP). However, on May 19, 2020, the D.C. Circuit in *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020), applying the *Wisconsin* decision, rejected that argument and held that the EPA must assess air quality at the next downwind attainment date, including Marginal area attainment dates under CAA section 181, in evaluating the basis for the EPA’s denial of a petition under CAA section 126(b). 958 F.3d at 1203–04. After *Maryland*, the EPA acknowledged that the Marginal attainment date is the first attainment date to consider in evaluating good neighbor obligations. *See, e.g.*, 85 FR 67653, 67654 (Oct. 26, 2020) (final approval of South Dakota’s 2015 ozone NAAQS good neighbor SIP).

The D.C. Circuit again had occasion to revisit the Agency’s interpretation of *North Carolina*, *Wisconsin*, and *Maryland*, in a challenge to the Revised CSAPR Update brought by the Midwest Ozone Group (MOG). The court declined to entertain similar arguments to those presented by commenters here and instead in a footnote explained that it had “exhaustively summarized the regulatory framework governing EPA’s conduct” and that it “[drew] on those decisions and incorporate them herein by reference,” citing, among other cases, *Maryland*, 958 F.3d 1185, and *New York*, 781 F. App’x 4. *MOG v. EPA*, No. 21–1146 (D.C. Cir. March 3, 2023), Slip Op. at 3 n.1.

The relevance of CAA sections 172, 177, and 179 to the selection of the analytic year in this action is not clear. Commenter cites these provisions to conclude that the EPA did not appropriately consider downwind attainment deadlines and the timing of upwind good neighbor obligations. These provisions are found in subpart I, and while they may have continuing

relevance or applicability to aspects of ozone nonattainment planning requirements, the nonattainment dates for the 2015 ozone NAAQS flow from subpart 2 of title I of the CAA, and specifically CAA section 181(a). Applying that statutory schedule to the designations for the 2015 ozone NAAQS, the EPA has promulgated the applicable attainment dates in its regulations at 40 CFR 51.1303. The effective date of the initial designations for the 2015 ozone NAAQS was August 3, 2018 (83 FR 25776, June 4, 2018, effective August 3, 2018).¹²⁷ Thus, the first deadline for attainment planning under the 2015 ozone NAAQS was the Marginal attainment date of August 3, 2021, and the second deadline for attainment planning is the Moderate attainment date of August 3, 2024. If a Marginal area fails to attain by the attainment date it is reclassified, or “bumped up,” to Moderate. Indeed, the EPA has just completed a rulemaking action reclassifying many areas of the country from Marginal to Moderate nonattainment, including all of the areas where downwind receptors have been identified in our 2023 modeling as well as many other areas of the country. 87 FR 60897, 60899 (Oct. 7, 2022).

Other than under the narrow circumstances of CAA section 181(a)(5) (discussed further in this section), the EPA is not permitted under the CAA to extend the attainment dates for areas under a given classification. That is, no matter when or if the EPA finalizes a determination that an area failed to attain by its attainment date and reclassifies that area, the attainment date remains fixed, based on the number of years from the area’s initial designation. See, e.g., CAA section 182(i) (authorizing the EPA to adjust any applicable deadlines for newly reclassified areas “other than attainment dates”). As the D.C. Circuit has repeatedly made clear, the statutory attainment schedule of the downwind nonattainment areas under subpart 2 is rigorously enforced and is not subject to change based on policy considerations of the EPA or the states.

[T]he attainment deadlines, the Supreme Court has said, are “the heart” of the Act. *Train v. Nat. Res. Def. Council*, 421 U.S. 60, 66, 95 S.Ct. 1470, 43 L.Ed.2d 731 (1975); see *Sierra Club v. EPA*, 294 F.3d 155, 161 (D.C. Cir. 2002) (“the attainment deadlines are central to the regulatory scheme”) (alteration and internal quotation marks omitted). The Act’s central object is the “attain[ment] [of] air quality of specified standards [within] a specified period of time.” *Train*, 421 U.S. at 64–65, 95 S.Ct. 1470.

Wisconsin, 938 F.3d at 316. See also *Natural Resources Defense Council v. EPA*, 777 F.3d 456, 466–68 (D.C. Cir. 2014) (holding the EPA cannot adjust the section 181 attainment schedule to run from any other date than from the date of designation); *id.* at 468 (“EPA identifies no statutory provision giving it free-form discretion to set Subpart 2 compliance deadlines based on its own policy assessment concerning the number of ozone seasons within which a nonattainment area should be expected to achieve compliance.”) (citing and quoting *Whitman v. American Trucking Ass’n*, 531 U.S. 457, 484, (2001) (“The principal distinction between Subpart 1 and Subpart 2 is that the latter eliminates regulatory discretion that the former allowed.”). Furthermore, as the court in *NRDC* noted, “[T]he ‘attainment deadlines . . . leave no room for claims of technological or economic infeasibility.’” 777 F.3d at 488 (quoting *Sierra Club*, 294 F.3d at 161) (internal quotation marks and brackets omitted).

With the exception of the Uinta Basin, which is not an identified receptor in this action, no Marginal nonattainment area met the conditions of CAA section 181(a)(5) to obtain a one-year extension of the Moderate area attainment date. 87 FR 60899. Thus, all Marginal areas (other than Uinta) that failed to attain have been reclassified to Moderate. *Id.* (And the New York City Metropolitan nonattainment area was initially classified as Moderate (see following text for further details).) Even if the EPA had extended the attainment date for any of the downwind areas, it is not clear that it would necessarily follow that the EPA must correspondingly extend or delay the implementation of good neighbor obligations. While the *Wisconsin* court recognized extensions under CAA section 181(a)(5) as a possible source of timing flexibility in implementing the good neighbor provision, 938 F.3d at 320, the EPA and the states are still obligated to implement good neighbor reductions as expeditiously as practicable and are also obligated under the good neighbor provision to address “interference with maintenance.” Areas that have obtained an extension under CAA section 181(a)(5) or which are not designated as in nonattainment could still be identified as struggling to maintain the NAAQS, and the EPA is obligated under the good neighbor provision to eliminate upwind emissions interfering with the ability to maintain the NAAQS, as well. *North Carolina*, 531 F.3d at 908–11. Thus, while an extension under CAA section 181(a)(5) may be a source

of flexibility for the EPA to consider in the timing of implementation of good neighbor obligations, as *Wisconsin* recognized, it is not the case that the EPA *must* delay or defer good neighbor obligations for that reason, and neither the D.C. Circuit nor any other court has so held.

Commenter is therefore incorrect to the extent that they argue the selection of 2023 as an analytic year for upwind obligations results in the misalignment of downwind and upwind state obligations. To the contrary, both downwind and upwind state obligations are driven by the statutory attainment date of August 3, 2024 for Moderate areas, and the last year that air quality data may impact whether nonattainment areas are found to have attained by the attainment date is 2023. That is why, in the recent final rulemaking determinations that certain Marginal areas failed to attain by the attainment date, bumping those areas up to Moderate, and giving them SIP submission deadlines, reasonably available control measures (RACM), and reasonably RACT implementation deadlines, the EPA set the attainment SIP submission deadlines for the bumped up Moderate areas to be January 1, 2023. See 87 FR 60897, 60900 (Oct. 7, 2022). The implementation deadline for RACM and RACT is also January 1, 2023. *Id.* This was in large part driven by the EPA’s ozone implementation regulations, 40 CFR 51.1312(a)(3)(i), which previously established a RACT implementation deadline for initially classified Moderate as no later than January 1, 2023, and the modeling and attainment demonstration requirements in 40 CFR 51.1308(d), which require a state to provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season (*i.e.*, 2023). Given this regulatory history, the EPA can hardly be accused of letting states with nonattainment areas for the 2015 ozone NAAQS avoid or delay their mandatory CAA obligations.

Commenter’s proposal that the EPA align good neighbor obligations with the actual implementation of measures in downwind areas is untethered from the statute, as discussed above. It is also unworkable in practice. It would necessitate coordinating the activities of multiple states and EPA regional and headquarters offices to an impossible degree and effectively could preclude the implementation of good neighbor obligations altogether. Commenter does not explain how the EPA or upwind states should coordinate upwind emissions control obligations for states

¹²⁷ September 24, 2018, for the San Antonio area. 83 FR 35136 (July 25, 2018).

linked to multiple downwind receptors whose states may be implementing their requirements on different timetables. Less drastic mechanisms than subjecting people living in downwind receptor areas to continuing high levels of air pollution caused in part by upwind-state pollution are available if the actual implementation of mandatory CAA requirements in the downwind areas is delayed: CAA section 304(a)(2) provides for judicial recourse where there is an alleged failure by the Agency to perform a nondiscretionary duty; that recourse is for the Agency to be placed on a court-ordered deadline to address the relevant obligations. *See Oklahoma v. U.S. EPA*, 723 F.3d 1201, 1223–24 (10th Cir. 2013); *Montana Sulphur and Chemical Co. v. U.S. EPA*, 666 F.3d 1174, 1190–91 (9th Cir. 2012). Commenter focuses on the EPA's evaluation of New York's Good Neighbor SIP submission to argue the EPA is treating upwind and downwind states dissimilarly. The argument conflates New York's role as both a downwind and an upwind state. In evaluating the Good Neighbor SIP submission that New York submitted, the EPA identified as a basis for disapproval that none of the state emissions control programs New York cited included implementation timeframes to achieve the reductions, let alone ensure they were achieved by 2023. 87 FR 9484, 9494 (Feb. 22, 2022). The EPA conducted the same inquiry into other states' claims regarding their existing or proposed state laws or other emissions reductions claimed in their SIP submissions. *See, e.g.*, 87 FR 9472–73 (evaluating claims regarding emissions reductions anticipated under Maryland's state law); 87 FR 9854 (evaluating claims regarding emissions reductions anticipated under Illinois' state law). Consistent with its treatment of the other upwind states included in this action, the EPA in a separate action disapproved New York's good neighbor SIP submission for the 2015 ozone NAAQS because its arguments did not demonstrate that it had fully prohibited emissions significantly contributing to out of state nonattainment or maintenance problems.

Commenter attempts to contrast this evaluation with what it believes is the EPA's permissive attitude toward delays by downwind states, specifically claiming that “certain nonattainment areas have delayed implementation of nonattainment controls until 2025 and beyond.” This apparently references New York's simple cycle and regenerative combustion turbines (SCCT) controls, which commenter cited elsewhere in its comments. New

York's SCCT controls were not included by New York in its good neighbor SIP submission, nor was the prior approval of the SCCT controls reexamined by the EPA or reopened for consideration by the Agency in this action. Although not part of this rulemaking, the EPA notes that the SCCT controls were approved by the EPA as a SIP strengthening measure and not to satisfy any specific planning requirements for the 2015 ozone NAAQS under CAA section 182. 86 FR 43956, 43958 (Aug. 11, 2021). The SCCT controls submitted to the EPA were already a state rule, and the only effect under the CAA of the EPA approving them into New York's SIP was to make them federally enforceable. 86 FR 43956, 43959 (Aug. 11, 2021). In other words, approval of the SCCT controls did not relieve New York of its nonattainment planning obligations for the 2015 ozone NAAQS.

The EPA notes that the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area was initially designated as Moderate nonattainment. 83 FR 25776 (June 4, 2018). Pursuant to this designation, New York was required to submit a RACT SIP submission and an attainment demonstration no later than 24 months and 36 months, respectively, after the effective date of the Moderate designation. CAA section 182; 40 CFR 51.1308(a), 51.1312(a)(2). New York submitted a RACT SIP for the 2015 ozone standards on January 29, 2021,¹²⁸ and the EPA is currently evaluating that submission. New York has not yet submitted its attainment demonstration, which was due August 3, 2021. Further, the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area remains subject to the Moderate nonattainment area date of August 3, 2024. If it fails to attain the 2015 ozone NAAQS by August 3, 2024, it will be reclassified to Serious nonattainment, resulting in additional requirements on the New York nonattainment area.

In any case, regardless of the status of New York's and the EPA's efforts in relation to the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (which are outside the scope of this action), the EPA's evaluation of 2023 as the relevant analytic year in assessing New York's and other states' good neighbor obligations is consistent with the statutory framework and court decisions calling on the agency to align these obligations with the downwind areas' statutory attainment schedule. The EPA

further responds to these comments in the *RTC* document in the docket.

The remainder of this section includes information on (1) the air quality modeling platform used in support of the final rule with a focus on the base year and future year base case emissions inventories, (2) the method for projecting design values in 2023 and 2026, and (3) the approach for calculating ozone contributions from upwind states. The Agency also provides the design values for nonattainment and maintenance receptors and the largest predicted downwind contributions in 2023 and 2026 from each state. The 2016 base period and 2023 and 2026 projected design values and contributions for all ozone monitoring sites are provided in the docket for this rule. The “Air Quality Modeling Technical Support Document for the Federal Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standards Final Rulemaking” (Mar. 2023), hereinafter referred to as the Air Quality Modeling Final Rule TSD, in the docket for this final rule contains more detailed information on the air quality modeling aspects of this rule.

B. Overview of Air Quality Modeling Platform

The EPA used version 3 of the 2016-based modeling platform (*i.e.*, 2016v3) for the air quality modeling for this final rule. This modeling platform includes 2016 base year emissions from anthropogenic and natural sources and anthropogenic emissions projections for 2023 and 2026. The emissions data contained in this platform represent an update to the 2016 version 2 inventories used for the proposal modeling.

The air quality modeling for this final rule was performed for a modeling region (*i.e.*, modeling domain) that covers the contiguous 48 states using a horizontal resolution of 12 x 12 km. The EPA used the CAMx version 7.10 for air quality modeling which is the same model that EPA used for the proposed rule air quality modeling.¹²⁹ Additional information on the 2016-based air quality modeling platform can be found in the Air Quality Modeling Final Rule TSD.

Comment: Commenters noted that the 2016 base year summer maximum daily average 8-hour (MDA8) ozone predictions from the proposal modeling were biased low compared to the corresponding measured concentrations in certain locations. In this regard, commenters said that model

¹²⁸ https://edap.epa.gov/public/extensions/S4S_Public_Dashboard_2/S4S_Public_Dashboard_2.html.

¹²⁹ Ramboll Environment and Health, January 2021, <https://www.camx.com>.

performance statistics for a number of monitoring sites, particularly those in portions of the West and in the area around Lake Michigan, were outside the range of published performance criteria for normalized mean bias (NMB) and normalized mean error (NME) of less than ± 15 percent and less than 25 percent, respectively (Emory, et al., 2017).¹³⁰ The commenters said EPA must investigate the factors contributing to low bias and make necessary corrections to improve model performance in the final rule modeling. Some commenters said that EPA should include NO_x emissions from lightning strikes and assess the treatment of other background sources of ozone to improve model performance for the final rule. Additional information on the comments on model performance can be found in the *RTC* document for this final rule.

Response: In response to these comments EPA examined the temporal and spatial characteristics of model under prediction to investigate the possible causes of under prediction of MDA8 ozone concentrations in different regions of the U.S. in the proposal modeling. EPA's analysis indicates that the under prediction was most extensive during May and June with less bias during July and August in most regions of the U.S. For example, in the Upper Midwest region model under prediction was larger in May and June compared to July through September. Specifically, in the proposal modeling, the normalized mean bias for days with measured concentrations ≥ 60 ppb improved from a 21.4 percent under prediction for May and June to a 12.6 percent under prediction in the period July through September. As described in the Air Quality Modeling Final Rule TSD, the seasonal pattern in bias in the Upper Midwest region improves somewhat gradually with time from the middle of May to the latter part of June. In view of the seasonal pattern in bias in the Upper Midwest and in other regions of the U.S., EPA focused its investigation of model performance on model inputs that, by their nature, have the largest temporal variation within the ozone season. These inputs include emissions from biogenic sources and lightning NO_x, and contributions from transport of international anthropogenic emissions and natural sources into the U.S. Both biogenic and lightning NO_x

emissions in the U.S. dramatically increase from spring to summer.^{131 132} In contrast, ozone transported into the U.S. from international anthropogenic and natural sources peaks during the period March through June, with lower contributions during July through September.^{133 134} To investigate the impacts of these sources, EPA conducted sensitivity model runs which focused on the effects on model performance of adding NO_x emissions from lightning strikes, updating biogenic emissions, and using an alternative approach for quantifying transport of ozone and precursor pollutants into the U.S. from international anthropogenic and natural sources. The development of lightning NO_x emissions and the updates to biogenic emissions, are described in section IV.C of this document. In the proposal modeling the amount of transport from international anthropogenic and natural sources was based on a simulation of the hemispheric version of the Community Multi-scale Air Quality Model (H-CMAQ) for 2016.¹³⁵ The outputs from this hemispheric modeling were then used to provide boundary conditions for national scale air quality modeling at proposal.¹³⁶ Overall, H-CMAQ tends to

¹³¹ Guenther, A.B., 1997. Seasonal and spatial variations in natural volatile organic compound emissions. *Ecol. Appl.* 7, 34–45. [https://doi.org/10.1890/1051-0761\(1997\)007\[0034:SASVIN\]2.0.CO;2](https://doi.org/10.1890/1051-0761(1997)007[0034:SASVIN]2.0.CO;2). Guenther, A., Hewitt, C.N., Erickson, D., Fall, R.

¹³² Kang D, Mathur R, Pouliot GA, Gilliam RC, Wong DC. Significant ground-level ozone attributed to lightning-induced nitrogen oxides during summertime over the Mountain West States. *NPJ Clim Atmos Sci.* 2020 Jan 30;3:6. doi: 10.1038/s41612-020-0108-2. PMID: 32181370; PMCID: PMC7075249.

¹³³ Jaffe DA, Cooper OR, Fiore AM, Henderson BH, Tonnesen GS, Russell AG, Henze DK, Langford AO, Lin M, Moore T. Scientific assessment of background ozone over the U.S.: Implications for air quality management. *Elementa* (Wash DC). 2018;6(1):56. doi: 10.1525/elementa.309. PMID: 30364819; PMCID: PMC6198683.

¹³⁴ Henderson, B.H., P. Dolwick, C. Jang, A., Eyth, J. Vukovich, R. Mathur, C. Hogrefe, N. Possiel, G. Pouliot, B. Timin, K.W. Appel, 2019. Global Sources of North American Ozone. Presented at the 18th Annual Conference of the UNC Institute for the Environment Community Modeling and Analysis System (CMAS) Center, October 21–23, 2019.

¹³⁵ Mathur, R., Gilliam, R., Bullock, O.R., Roselle, S., Pleim, J., Wong, D., Binkowski, F., and 1 Streets, D.: Extending the applicability of the community multiscale air quality model to 2 hemispheric scales: motivation, challenges, and progress. In: Steyn DG, Trini S (eds) *Air 3 pollution modeling and its applications*, XXI. Springer, Dordrecht, pp 175–179, 2012.

¹³⁶ Boundary conditions are the concentrations of pollutants along the north, east, south, and west boundaries of the air quality modeling domain. Boundary conditions vary in space and time and are typically obtained from predictions of global or hemispheric models. Information on how boundary conditions were developed for the final rule

under-predict daytime ozone concentrations at rural and remote monitoring sites across the U.S. during the spring of 2016 whereas the predictions from the GEOS-Chem global model¹³⁷ were generally less biased.¹³⁸ During the summer of 2016 both models showed varying degrees of over prediction with GEOS-Chem showing somewhat greater over-prediction, compared to H-CMAQ. In view of those results, EPA examined the impacts of using GEOS-Chem as an alternative to H-CMAQ for providing boundary conditions for the final rule modeling.

For the lightning NO_x, biogenics, and GEOS-Chem sensitivity runs, EPA reran the proposal modeling using each of these inputs, individually. Results from these sensitivity runs indicate that each of the three updates provides an improvement in model performance. However, by far the greatest improvement in model performance is attributable to the use of GEOS-Chem. In view of these results EPA has included lightning NO_x emissions, updated biogenic emissions, and international transport from GEOS-Chem in the final rule air quality modeling. Details on the results of the individual sensitivity runs can be found in the Air Quality Modeling Final Rule TSD. For the air quality modeling supporting this final action, model performance based on days in 2016 with measured MDA8 ozone ≥ 60 ppb is considerably improved (*i.e.*, less bias and error) compared to the proposal modeling in nearly all regions of the U.S. For example, in the Upper Midwest, which includes monitoring sites along Lake Michigan, the normalized mean bias improved from a 19 percent under prediction to a 6.9 percent under prediction and in the Southwest region, which includes monitoring sites in Denver and Salt Lake City, normalized mean bias improved from a 13.6 percent under prediction to a 4.8 percent under prediction.¹³⁹ In all regions, the

modeling can be found in the Air Quality Modeling Final Rule TSD.

¹³⁷ I. Bey, D.J. Jacob, R.M. Yantosca, J.A. Logan, B.D. Field, A.M. Fiore, Q. Li, H.Y. Liu, L.J. Mickley, M.G. Schultz. Global modeling of tropospheric chemistry with assimilated meteorology: model description and evaluation. *J. Geophys. Res. Atmos.*, 106 (2001), pp. 23073–23095, 10.1029/2001jd000807.

¹³⁸ Henderson, B.H., P. Dolwick, C. Jang, A., Eyth, J. Vukovich, R. Mathur, C. Hogrefe, G., N. Possiel, B. Timin, K.W. Appel, 2022. Meteorological and Emission Sensitivity of Hemispheric Ozone and PM_{2.5}. Presented at the 21st Annual Conference of the UNC Institute for the Environment Community Modeling and Analysis System (CMAS) Center, October 17–19, 2022.

¹³⁹ A comparison of model performance from the proposal modeling to the final modeling for

¹³⁰ Christopher Emery, Zhen Liu, Armistead G. Russell, M. Talat Odman, Greg Yarwood & Naresh Kumar (2017) Recommendations on statistics and benchmarks to assess photochemical model performance, *Journal of the Air & Waste Management Association*, 67:5, 582–598, DOI: 10.1080/10962247.1265027.

normalized mean bias and normalized mean error statistics for high ozone days based on the final rule modeling are within the range of performance criteria benchmarks (*i.e.*, $< \pm 15$ percent for normalized mean bias and < 25 percent for normalized mean error).¹⁴⁰

Additional information on model performance is provided in the Air Quality Modeling Final Rule TSD. In summary, EPA included emissions of lightning NO_x, as requested by commenters, and investigated and addressed concerns about model performance for the final rule modeling.

C. Emissions Inventories

The EPA developed emissions inventories to support air quality modeling for this final rule, including emissions estimates for EGUs, non-EGU point sources (*i.e.*, stationary point sources), stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, other mobile sources, wildfires, prescribed fires, and biogenic emissions that are not the direct result of human activities. The EPA's air quality modeling relies on this comprehensive set of emissions inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

Prior to air quality modeling, the emissions inventories were processed into a format that is appropriate for the air quality model to use. To prepare the emissions inventories for air quality modeling, the EPA processed the emissions inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 4.9 to produce the gridded, hourly, speciated, model-ready emissions for input to the air quality model. Additional information on the development of the emissions inventories and on data sets used during the emissions modeling process are provided in the document titled, "Technical Support Document (TSD): Preparation of Emissions Inventories for the 2016v3 North American Emissions Modeling Platform" (Jan. 2023), hereafter known as the 2016v3

individual monitoring sites can be found in the docket for this final rule.

¹⁴⁰ Christopher Emery, Zhen Liu, Armistead G. Russell, M. Talat Odman, Greg Yarwood & Naresh Kumar (2017) Recommendations on statistics and benchmarks to assess photochemical model performance, *Journal of the Air & Waste Management Association*, 67:5, 582–598, DOI: 10.1080/10962247.1265027.

Emissions Modeling TSD. This TSD is available in the docket for this rule.¹⁴¹

1. Foundation Emissions Inventory Data Sets

The 2016v3 emissions platform is comprised of data from various sources including data developed using models, methods, and source datasets that became available in calendar years 2020 through 2022, in addition to data retained from the Inventory Collaborative 2016 version 1 (2016v1) Emissions Modeling Platform, released in October 2019. The 2016v1 platform was developed through a national collaborative effort between the EPA and state and local agencies along with MJOs. The 2016v2 platform used to support the proposed action included updated data from the 2017 NEI along with updates to models and methods as compared to 2016v1. The 2016v3 platform includes updates to the 2016v2 platform implemented in response to comments along with other updates to the 2016v2 platform such as corrections and the incorporation of updated data sources that became available prior to the 2016v3 inventories being developed. Several commenters noted that the 2016v2 platform did not include NO_x emissions that resulted from lightning strikes. To address this, lightning NO_x emissions were computed and included in the 2016v3 platform.

For this final rule, the EPA developed emissions inventories for the base year of 2016 and the projected years of 2023 and 2026. The 2023 and 2026 inventories represent changes in activity data and of predicted emissions reductions from on-the-books actions, planned emissions control installations, and promulgated Federal measures that affect anthropogenic emissions.¹⁴² The 2016 emissions inventories for the U.S. primarily include data derived from the 2017 National Emissions Inventory (2017 NEI)¹⁴³ and data specific to the year of 2016. The following sections provide an overview of the construct of the 2016v3 emissions and projections. The fire emissions were unchanged between the 2016v2 and 2016v3 emissions platforms. For the 2016v3 platform, the biogenic emissions were

¹⁴¹ See 2016v3 Emissions Modeling TSD, also available at <https://www.epa.gov/air-emissions-modeling/2016v3-platform>.

¹⁴² Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2016 and the future years because (1) these emissions are tied to the 2016 meteorological conditions and (2) the focus of this rule is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

¹⁴³ <https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-technical-support-document-tds>.

updated to use the latest available versions of the Biogenic Emissions Inventory System and associated land use data to help address comments related to a degradation in model performance in the 2016v2 platform as compared to the 2016v1 platform. Details on the construction of the inventories are available in the 2016v3 Emissions Modeling TSD. Details on how the EPA responded to comments related to emissions inventories are available in the *RTC* document for this rule.

2. Development of Emissions Inventories for EGUs

a. EGU Emissions Inventories Supporting This Final Rule

Development of emissions inventories for annual NO_x and SO₂ emissions for EGUs in the 2016 base year inventory are based primarily on data from continuous emissions monitoring systems (CEMS) and other monitoring systems allowed for use by qualifying units under 40 CFR part 75, with other EGU pollutants estimated using emissions factors and annual heat input data reported to the EPA. For EGUs not reporting under Part 75, the EPA used data submitted to the NEI by the state, local, and tribal agencies. The Air Emissions Reporting Rule (80 FR 8787; February 19, 2015), requires that Type A point sources large enough to meet or exceed specific thresholds for emissions be reported to the EPA every year, while the smaller Type B point sources must only be reported to EPA every 3 years. Emissions data for EGUs that did not have data submitted to the NEI specific to the year 2016 were filled in with data from the 2017 NEI. For more information on the details of how the 2016 EGU emissions were developed and prepared for air quality modeling, see the 2016v3 Emissions Modeling TSD.

The EPA projected 2023 and 2026 baseline EGU emissions using the version 6—Updated Summer 2021 Reference Case of the Integrated Planning Model (IPM). IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion, electricity dispatch, and emissions control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The EPA has used IPM for over two decades, including all prior implemented CSAPR rulemakings, to better understand power sector behavior under future business-

as-usual conditions and to evaluate the economic and emissions impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. The EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs.¹⁴⁴ The EPA relied on the same model platform at final as it did at proposal, but made substantial updates to reflect public comments on near-term fossil fuel market price volatility and updated fleet information reflecting Summer 2022 U.S. Energy Information Agency (EIA) 860 data, unit-level comments, and additional updates to the National Electric Energy Data System (NEEDS) inventory.

The IPM version 6—Updated Summer 2021 Reference Case incorporated recent updates through the Summer of 2022 to account for updated Federal and state environmental regulations (including Renewable Portfolio Standards (RPS), Clean Energy Standards (CES) and other state mandates), fleet changes (committed EGU retirements and new builds), electricity demand, technology cost and performance assumptions from recent data (for renewables adopting from National Renewable Energy Lab (NREL's) Annual Technology Baseline 2020 and for fossil sources from EIA's Annual Energy Outlook (AEO) 2020. Natural gas and coal price projections reflect data developed in Fall 2020 but updated in summer of 2022 to capture near-term price volatility and current market conditions. The inventory of EGUs provided as an input to the model was the NEEDS fall 2022 version and is available on EPA's website.¹⁴⁵ This version of NEEDS reflects announced retirements and under-construction new builds known as of early summer 2022. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, CSAPR, the CSAPR Update, the Revised CSAPR Update, NSR enforcement settlements, the final ELG Rule, CCR Rule, and other on-the-books Federal and state rules

(including renewable energy tax credit extensions from the Consolidated Appropriations Act of 2021) through early 2021 impacting SO₂, NO_x, directly emitted particulate matter, CO₂, and power plant operations. It also includes final actions the EPA has taken to implement the Regional Haze Rule and best available retrofit technology (BART) requirements. Documentation of IPM version 6 and NEEDS, along with updates, is in Docket ID No. EPA-HQ-OAR-2021-0668 and available online at <https://www.epa.gov/airmarkets/power-sector-modeling>. IPM has projected output years for 2023 and 2025. IPM year 2025 outputs were adjusted for known retirements to be reflective of year 2026, and IPM year 2030 outputs were used for the year 2032 as is specified by the mapping of IPM output years to specific years.

Additional 2023 through 2026 EGU emissions baseline levels were developed through engineering analytics as an alternative approach that did not involve IPM. The EPA developed this inventory for use in Step 3 of this final rule, where it determines emissions reduction potential and corresponding state-level emissions budgets. IPM includes optimization and perfect foresight in solving for least cost dispatch. Given that this final rule will likely become effective immediately prior to the start of the 2023 ozone season, the EPA adopted a similar approach to the CSAPR Update and the Revised CSAPR Update where it utilized historical data and an engineering analytics approach in Step 3 to avoid overstating optimization and dispatch decisions in state-emissions budget quantification that may not be possible in a short time frame. The EPA does this by starting with unit-level reported data and only making adjustments to reflect known baseline changes such as planned retirements and new builds (for the base case scenarios) and also identified mitigation strategies for determining state emissions budgets. In both the CSAPR Update and in this rule at Step 3, the EPA complemented that projected IPM EGU outlook with an historical (*e.g.*, engineering analytics) perspective based on historical data that only factors in known changes to the fleet. This 2023 engineering analytics data set is described in more detail in the Ozone Transport Policy Analysis Final Rule TSD and corresponding Appendix A: State Emissions Budgets Calculations and Underlying Data. The Engineering Analysis used in Step 3 is also discussed further in section VII.B of this document.

Both IPM and the Engineering Analytics tools are valuable for estimating future EGU emissions and examining the cone of uncertainty around any future sector-level inventory estimate. A key difference between the two tools is that IPM reflects both announced and projected changes in fleet operation, whereas the Engineering Analytics tool only reflects announced changes. By not including projected regional changes that are anticipated in response to market forces and fleet trends, the Engineering Analysis deliberately creates future estimates of the power sector where state estimates are limited to known changes. Throughout all of the CSAPR rules to date, and prior interstate transport actions, the EPA has used IPM at Steps 1 and 2 as it is best suited for projecting emissions in an airshed, at projecting emissions for time horizons more than a few years out (for which changes would not yet be announced and thus projecting changes is critical), and for scenarios where the assumed change in emissions is not being codified into a state emissions reduction requirement. Using IPM at Steps 1 and 2 helps the EPA avoid overstating the current analytic year receptor values (Step 1) and future year linkages (Step 2) by reflecting reductions anticipated to occur within the airshed in the relevant timeframe.

Engineering analytics has been a useful tool for Step 3 state-level emissions reduction estimates in CSAPR rulemaking, because at that step the EPA is dealing with more geographic granularity (state-level as opposed to regional air shed), more near-term (as opposed to medium-term) assessments, and scenarios where reduction estimates are codified into regulatory requirements. Using the Engineering Analytics tool at this step ensures that the EPA is not codifying into the base case, and consequently into state emissions budgets, changes in the power sector that are merely modeled to occur rather than announced by real-world actors.

Finally, both in the Revised CSAPR Update and in this rule, the EPA was able to use the Air Quality Assessment Tool to determine that regardless of which EGU inventory is used, the 2023 geography of the program is not impacted. In other words, regardless of whether a stakeholder takes a more comprehensive view of the EGU future (IPM) or one limited to current data and known changes (Engineering Analysis), the states that are linked to receptors at Steps 1 and 2 would be the same. This finding is consistent with the observation that EGUs are now less than

¹⁴⁴ Detailed information and documentation of EPA's Base Case, including all the underlying assumptions, data sources, and architecture parameters can be found on EPA's website at: <https://www.epa.gov/airmarkets/epas-power-sector-modeling-platform-v6-using-ipm-summer-2021-reference-case>.

¹⁴⁵ Available at <https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6>.

10 percent of the total ozone-season NO_x inventory and the degree of near-term difference between the IPM and Engineering Analytic regional projections is relatively small on the regional level. The EPA continues to believe that IPM is best suited for Step 1 and Step 2, and engineering analytics is best suited for Step 3 efforts in this rulemaking. The Ozone Transport Policy Analysis Final Rule TSD contains data on 2023 and 2026 AQ impacts of each dataset.

Comment: Some commenters express concern that using IPM for Step 1 and Step 2 captures generation shifting across state lines, which exceeds the EPA's authority. Moreover, the commenters suggest that the resulting proposed baseline EGU inventory may understate emissions levels as it projects economic retirements that are not yet announced or firm. Other commenters more generally allege that the EPA is using different modeling tools at different steps in its analysis, and this introduces confusion or uncertainty into the basis for the EPA's regulatory conclusions.

Response: The EPA believes the first aspect of this comment, in regards to its focus on generation shifting, is misguided in several ways. For Step 1 and Step 2, the EPA models no incremental generation shifting attributable to the implementation of an emissions control policy at Step 3. Rather, any generation patterns are merely a reflection of the model's projection of how regional load requirements will be met with the generation sources serving that region in the baseline. The EPA is not modeling any additional generation shifting, but merely capturing the expected generation dispatch under anticipated baseline market conditions. Electricity generated in one state regularly is transmitted across state boundaries and is used to serve load in other states; IPM is not incentivizing or requiring any additional generation transfer across state lines in this scenario but is merely projecting the pattern of this behavior in the future. Moreover, as noted previously, the EPA affirms its geographic findings at Step 2 (states contributing over 1 percent of the NAAQS to a downwind receptor) using historical data (engineering analysis) in a sensitivity analysis. These historical data reflect the actual generation patterns observed to meet regional load. Therefore, any suggestion by the commenter that the EPA's projected view of baseline grid dispatch is unreasonable, is mooted by the fact that the use of historical reported generation patterns produces the same result.

Additionally, at the time of the proposal's analysis, the 2023 ozone season was still nearly two years away. Therefore, it was appropriate for EPA's modeling to project economic retirements as those retirements—which are regularly occurring—are often not firm or announced two years in advance. However, for this final rule, the 2023 analytic year was close enough to the period in which EPA was conducting its analysis that such retirements would likely be announced. Therefore, the EPA was able to incorporate those announced and firm retirements to occur in the 2023 year. Further, in recognition of this very near timeframe, we deactivated IPM's ability to project additional economic retirements for the 2023 year (reflecting the notion that any retirements occurring by 2023 would be known at this point). This adjustment further accommodates the commenters' concern that the baseline overstates generation shifting (driven by retirements) in the near term, and consequently understates emissions levels. Finally, with respect to comments that the EPA is using different modeling tools at different steps in the framework, we previously explained why these techniques are appropriate for the purposes at each step of the analysis, and they are not incompatible nor do they produce results so different as to call into question their reliability or the bases for our regulatory determinations (EPA notes that the nationwide projected ozone season total NO_x emissions vary by less than 1 percent in the 2023 analytic year). Nonetheless, we also observe that the effect of using engineering analytics to inform analysis at Steps 1 and 2 would tend to produce higher assumed emissions from EGUs in the baseline than IPM would project in 2026 and beyond and therefore only strengthen and further affirm the Step 1 and Step 2 geographic findings. EPA's use of different tools to project EGU scenarios is not inconsistent, but rather it is carefully explained as a deliberate measure taken to preserve—not introduce—consistency across each of the Steps in the 4-step framework. By using IPM at Step 1 and 2, EPA is selecting the more conservative approach for identifying the degree of nonattainment and geography of states contributing above 1 percent. By using Engineering Analytics at Step 3, EPA is selecting the more conservative value to codify into state-level budgets.

b. Impact of the Inflation Reduction Act on EGU Emissions

The EGU modeling used to construct the EGU emissions inventories used to

inform the modeling projections for 2023 and 2026 was conducted prior to the passage of the Inflation Reduction Act (IRA), Public Law 117–169. The EPA did not have time to incorporate updated EGU projections reflecting the passage of the IRA into the primary air quality modeling for this final rule. However, the EPA was able to perform a sensitivity analysis reflecting the IRA in its EGU NO_x emissions inventories. The results from this scenario were run through AQAT and demonstrated that the status of states identified as linked at the 1 percent of NAAQS contribution threshold (based on the modeling and air quality analysis described in this section) would not change regardless of which inventory (with or without IRA) is used. This sensitivity analysis is presented in the Regulatory Impact Analysis accompanying this rule, and that discussion provides additional detail on the emissions consequences of including the IRA in a baseline EGU inventory. The air quality impact of including the IRA in EPA's emissions inventories and in its Step 3 scenarios is discussed in Appendix K of the Ozone Transport Policy Analysis Final Rule TSD.

The results of this analysis are not surprising and accord with what is generally understood to be the overall effect of the IRA over the short to long term. While the IRA is anticipated to have a potentially dramatic effect on reducing both GHG and conventional pollutant emissions from the power sector, it is likely to have a more substantial impact later in the forecast period (*i.e.*, beyond the attainment deadlines by which the emissions reductions under this final rule must occur). This timing reflects a realistic assessment of utilities', regulators', and transmission authorities' planning requirements associated with the addition of substantial new renewable and storage capacity to the grid, as well as the time needed to integrate that capacity and retire existing capacity. Additionally, the IRA incentives span a longer time period (for example, certain tax incentives for clean energy sources are available until the later of 2032 or the year in which power sector emissions are 75 percent below 2022 levels) and therefore there is no IRA-related deadline to build cleaner generation by 2026. Recent analysis by the Congressional Budget Office supports the finding that the majority of power sector EGU emissions reductions expected from the IRA occur well after the 2023 and 2026 analytic years relevant to the attainment dates and this

rulemaking.¹⁴⁶ While the report focuses on CO₂ rather than NO_x, the drivers of the emissions reductions (primarily increased zero-emitting generation) would generally have a downward impact on both pollutants.

We note that important uncertainties remain at this time in the implementation of the IRA that further counsel against over-assuming short-term emissions reductions for purposes of this rule. The legislation provides economic incentives for shifting to cleaner forms of power generation but does not mandate emissions reductions through an enforceable regulatory program. The strength of those incentives will vary to some extent depending on other key market factors (such as the cost of natural gas or renewable energy technologies). Further, some incentives, such as tax credits for carbon capture and storage, could lead EGUs to remain in operation longer, which could in turn result in greater NO_x emissions, if those emissions are not also well controlled.

Nonetheless, while we find that the passage of the IRA does not affect the geography of the rule in terms of which states we identify as linked, the Agency is confident that the incentives toward clean technology provided in the IRA will, in the longer run beyond the 2015 ozone NAAQS attainment deadlines, facilitate ongoing EGU compliance with the emissions reduction requirements of this rule and will reduce costs borne by EGUs and their customers as the U.S. power sector transitions. As discussed in greater detail in section VI.B of this document, we have made several adjustments in the final rule to provide greater flexibility to EGU owners and operators to integrate this rule's requirements with and facilitate the accelerating transition to an overall cleaner electricity-generating sector, which the IRA represents. Despite the uncertainties inherent in the implementation of the IRA at this time, the EPA also has performed a sensitivity analysis on the final rule to confirm that our finding of no overcontrol is robust to a future with the IRA in effect.

3. Development of Emissions Inventories for Stationary Industrial Point Sources

Non-EGU point source emissions are mostly consistent with those in the proposal modeling except where they were updated in response to comments. Several commenters mentioned that

point source emissions carried forward from 2014 NEI were not the best estimates of 2017 emissions. Thus, emissions sources in 2016v2 that had been projected from the 2014 NEI in the proposal were replaced with emissions based on the 2017 NEI. Point source emissions submitted to the 2016 NEI or to the 2016v1 platform development process specifically for the year 2016 were retained in 2016v3. Other 2016 non-EGU updates in 2016v3 include a few sources being moved to the EGU inventory, the addition of some control efficiency information for the year 2016, the replacement of most emissions projected from 2014 NEI with data from 2017 NEI, and the inclusion of point source data for solvent processes that had not been included in the 2016v2 non-EGU inventory.

The 2023 and 2026 non-EGU point source emissions were grown from 2016 to those years using factors based on the AEO 2022 and reflect emissions reductions due to known national and local rules, control programs, plant closures, consent decrees, and settlements that could be computed as reductions to specific units by July 2022.

Aircraft emissions and ground support equipment at airports are represented as point sources and are based on adjustments to emissions in the January 2021 version of the 2017 NEI. The EPA developed and applied factors to adjust the 2017 airport emissions to 2016, 2023 and 2026 based on activity growth projected by the Federal Aviation Administration Terminal Area Forecast 2021¹⁴⁷ data, the latest available version at the time the factors were developed. By basing the factors on the latest available Terminal Area Forecast that was released following the most significant pandemic impacts on the aviation sector, the reduction and rebound impacts of the pandemic on aircraft and ground support equipment were reflected in the 2023 and 2026 airport emissions.

Emissions at rail yards were represented as point sources. The 2016 rail yard emissions are largely consistent with the 2017 NEI rail yard emissions. The 2016 and 2023 rail yard emissions were developed through the 2016v1 Inventory Collaborative process, with the 2026 emissions interpolated between the 2023 and 2028 emissions from 2016v1 rail yard emissions were interpolated from the 2016 and 2023 emissions. Class I rail yard emissions were projected based on the AEO freight

rail energy use growth rate projections for 2023, and 2026 with the fleet mix assumed to be constant throughout the period.

The EPA made multiple updates to point source oil and gas emissions in response to comments. For the final rule, the point source oil and gas emissions for 2016 were based on the 2016v2 point inventory except that most 2014 NEI-based emissions were replaced with 2017 NEI emissions. Additionally, in response to comments, state-provided emissions equivalent to those in the 2016v1 platform were used for Colorado, and some New Mexico emissions were replaced with data backcast from 2020 to 2016. To develop inventories for 2023 and 2026 for the final rule, the year 2016 oil and gas point source inventories were first projected to 2021 values based on actual historical production data, then those 2021 emissions were projected to 2023 and 2026 using regional projection factors based on AEO 2022 projections. This was an update from the proposal approach that used actual data only through the year 2019, because 2021 data were not yet available. NO_x and VOC reductions resulting from co-benefits of NSPS for Stationary Reciprocating Internal Combustion Engines (RICE) are reflected, along with Natural Gas Turbine and Process Heater NSPS NO_x controls and Oil and Gas NSPS VOC controls. In some cases, year 2019 point source inventory data were used instead of the projected future year emissions except for the Western Regional Air Partnership (WRAP) states of Colorado, New Mexico, Montana, Wyoming, Utah, North Dakota, and South Dakota. The WRAP future year inventory¹⁴⁸ was used in these WRAP states in all future years except in New Mexico where the WRAP base year emissions were projected using the EIA historical and AEO forecasted production data. Estimated impacts from the New Mexico Administrative code 20.2.50¹⁴⁹ were also included.

4. Development of Emissions Inventories for Onroad Mobile Sources

Onroad mobile sources include exhaust, evaporative, and brake and tire wear emissions from vehicles that drive on roads, parked vehicles, and vehicle refueling. Emissions from vehicles using regular gasoline, high ethanol gasoline, diesel fuel, and electric vehicles were represented, along with buses that used compressed natural gas. The EPA

¹⁴⁶ "Emissions of Carbon Dioxide In the Electric Power Sector," Congressional Budget Office, December 2022. Available at <https://www.cbo.gov/publication/58860>.

¹⁴⁷ https://www.faa.gov/data_research/aviation/taf/.

¹⁴⁸ http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.

¹⁴⁹ <https://www.srca.nm.gov/parts/title20/20.002.0050.html>.

developed the onroad mobile source emissions for states other than California using the EPA's Motor Vehicle Emissions Simulator (MOVES). MOVES3 was released in November 2020 and has been followed by some minor releases that improved the usage of the model but that do not have substantive impacts on the emissions estimates. For the proposal, MOVES3 was run using inputs provided by state and local agencies through the 2017 NEI where available, in combination with nationally available data sets to develop a complete inventory. Onroad emissions were developed based on emissions factors output from MOVES3 runs for the year 2016, coupled with activity data (e.g., vehicle miles traveled and vehicle populations) representing the year 2016. The 2016 activity data were provided by some state and local agencies through the 2016v1 process, and the remaining activity data were derived from those used to develop the 2017 NEI. The onroad emissions were computed within SMOKE by multiplying emissions factors developed using MOVES with the appropriate activity data. Prior to computing the final rule emissions, updates to some onroad inputs were made in response to comments and to implement corrections. Onroad mobile source emissions for California were consistent with the updated emissions data provided by the state for the final rule.

The 2023 and 2026 onroad emissions reflect projected changes to fuel properties and usage, along with the impact of the rules included in MOVES3 for each of those years. MOVES emissions factors for the years 2023 and 2026 were used. A comprehensive list of control programs included for onroad mobile sources is available in the 2016v3 Emissions Modeling TSD. Year 2023 and 2026 activity data for onroad mobile sources were provided by some state and local agencies, and otherwise were projected to 2023 and 2026 by first projecting the 2016 activity to year 2019 based on county level vehicle miles traveled (VMT) from the Federal Highway Administration. Because VMT for onroad mobile sources were substantially impacted by the pandemic and took about two years to rebound to pre-pandemic levels, in the 2016v3 platform no growth in VMT was implemented from 2019 to. The estimated 2021 VMT were then grown from 2021 to 2023 and 2026 using AEO 2022-based factors. Recent updates to inspection and maintenance programs in North Carolina and Tennessee were reflected in the MOVES inputs for the

final rule modeling. The 2023 and 2026 onroad mobile emissions were computed within SMOKE by multiplying the respective emissions factors developed using MOVES with the year-specific activity data. Prior to computing the final rule emissions for 2023, the EPA made updates to some onroad inputs in response to comments and to implement corrections.

5. Development of Emissions Inventories for Commercial Marine Vessels

The commercial marine vessel (CMV) emissions in the 2016 base case emissions inventory for this rule were based on those in the 2017 NEI. Factors were applied to adjust the 2017 NEI emissions backward to represent emissions for the year 2016. The CMV emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA-420-F-10-041, August 2010); reductions of NO_x, VOC, and CO emissions for new category 3 (C3) engines that went into effect in 2011; and fuel sulfur limits that went into effect prior to 2016. The cumulative impacts of these rules through 2023 and 2026 were incorporated into the projected emissions for CMV sources. The CMV emissions were split into emissions inventories from the larger C3 engines, and those from the smaller category 1 and 2 (C1C2) engines. CMV emissions in California are based on emissions provided by the state. The CMV emissions are consistent with the emissions for the 2016v1 platform updated CMV emissions released by February 2020 although they include projected emissions for the years of 2023 and 2026 instead of 2023 and 2028. In addition, in response to comments, the EPA implemented an improved process for spatial allocating CMV emissions along state and county boundaries.

6. Development of Emissions Inventories for Other Nonroad Mobile Sources

The EPA developed nonroad mobile source emissions inventories (other than CMV, locomotive, and aircraft emissions) for 2016, 2023, and 2026 from monthly, county, and process level emissions output from MOVES3. Types of nonroad equipment include recreational vehicles, pleasure craft, and construction, agricultural, mining, and lawn and garden equipment. State-submitted emissions data for nonroad sources were used for California. The nonroad emissions for the final rule were unchanged from those at the

proposal. The nonroad mobile emissions control programs include reductions to locomotives, diesel engines, and recreational marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the 2016v3 Emissions Modeling TSD.

Line haul locomotives are also considered a type of nonroad mobile source but the emissions inventories for locomotives were not developed using MOVES3. Year 2016 locomotive emissions were developed through the 2016v1 collaborative process and the year 2016 emissions are mostly consistent with those in the 2017 NEI. More information on the development of the Class I, Class II and III, and commuter rail line haul locomotive emissions is available in the 2016v3 Emissions Modeling TSD. The projected locomotive emissions for 2023 and 2026 were developed by applying factors to the 2016 emissions using activity data based on AEO freight rail energy use growth rate projections along with emissions rates adjusted to account for recent historical trends. The emission factors used for NO_x, PM10 and VOC for line haul locomotives in the analytic years were derived from trend lines based on historic line-haul emission factors from the period of 2007 through 2017 and extrapolated to 2023 and 2026.

7. Development of Emissions Inventories for Nonpoint Sources

For stationary nonpoint sources, some emissions in the 2016 base case emissions inventory come directly from the 2017 NEI, others were adjusted from the 2017 NEI to represent 2016 levels, and the remaining emissions including those from oil and gas, fertilizer, and solvents were computed specifically to represent 2016. Stationary nonpoint sources include evaporative sources, consumer products, fuel combustion that is not captured by point sources, agricultural livestock, agricultural fertilizer, residential wood combustion, fugitive dust, and oil and gas sources. The emissions sources derived from the 2017 NEI include agricultural livestock, fugitive dust, residential wood combustion, waste disposal (including composting), bulk gasoline terminals, and miscellaneous non-industrial sources such as cremation, hospitals, lamp breakage, and automotive repair shops. A recent method to compute solvent VOC emissions was used.¹⁵⁰

Where comments were provided about projected control measures or

¹⁵⁰ <https://doi.org/10.5194/acp-21-5079-2021>.

changes in nonpoint source emissions, those inputs were first reviewed by the EPA. Those found to be based on reasonable data for affected emissions sources were incorporated into the projected inventories for 2023 and 2026 to the extent possible. Where possible, projection factors based on the AEO used data from AEO 2022, the most recent AEO at the time available at the time the inventories were developed. Federal regulations that impact the nonpoint sources were reflected in the inventories. Adjustments for state fuel sulfur content rules for fuel oil in the Northeast were included along with solvent controls applicable within the ozone transport region. Details are available in the 2016v3 Emissions Modeling TSD.

Nonpoint oil and gas emissions inventories for many states were developed based on outputs from the 2017 NEI version of the EPA Oil and Gas Tool using activity data for year 2016. Production-related emissions data from the 2017 NEI were used for Oklahoma, 2016v1 emissions were used for Colorado and for Texas production-related sources to response to comments. Data for production-related nonpoint oil and gas emissions in the states of Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming were obtained from the WRAP baseline inventory.¹⁵¹ A California Air Resources Board-provided inventory was used for 2016 oil and gas emissions in California. Nonpoint oil and gas inventories for 2023 and 2026 were developed by first projecting the 2016 oil and gas inventories to 2021 values based on actual production data. Next, those 2021 emissions were projected to 2023 and 2026 using regional projection factors by product type based on AEO 2022 projections. A 2017–2019 average inventory was used for oil and natural gas exploration emissions in 2023 and 2026 except for California and in the WRAP states in which data from the WRAP future year inventory¹⁵² were used. NO_x and VOC reductions that are co-benefits to the NSPS for RICE are reflected, along with Natural Gas Turbines and Process Heaters NSPS NO_x controls and NSPS Oil and Gas VOC controls. The WRAP future year inventory was used for oil and natural gas production sources in 2023 and 2026 except in New Mexico where the WRAP Base year emissions were projected using the EIA historical and

AEO forecasted production data. Estimated impacts from the New Mexico Administrative Code 20.2.50 were included.

D. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

In this section, the Agency describes the air quality modeling and analyses performed in Step 1 to identify locations where the Agency expects there to be nonattainment or maintenance receptors for the 2015 ozone NAAQS in the 2023 and 2026 analytic years. Where the EPA's analysis shows that an area or site does not fall under the definition of a nonattainment or maintenance receptor in these analytic years, that site is excluded from further analysis under this rule.

In the proposed rule, the EPA applied the same approach used in the CSAPR Update and the Revised CSAPR Update to identify nonattainment and maintenance receptors for the 2008 ozone NAAQS.¹⁵³ See 86 FR 23078–79. The EPA's approach gives independent effect to both the “contribute significantly to nonattainment” and the “interfere with maintenance” prongs of section 110(a)(2)(D)(i)(I), consistent with the D.C. Circuit's direction in *North Carolina*.¹⁵⁴ Further, in its decision on the remand of the CSAPR from the Supreme Court in the *EME Homer City* case, the D.C. Circuit confirmed that EPA's approach to identifying maintenance receptors in the CSAPR comported with the court's prior instruction to give independent meaning to the “interfere with maintenance” prong in the good neighbor provision. *EME Homer City II*, 795 F.3d at 136.

In the CSAPR Update and the Revised CSAPR Update, the EPA identified nonattainment receptors as those monitoring sites that are projected to have average design values that exceed the NAAQS and that are also measuring nonattainment based on the most recent monitored design values. This approach is consistent with prior transport rulemakings, such as the NO_x SIP Call and CAIR, where the EPA defined nonattainment receptors as those areas that both currently monitor nonattainment and that the EPA projects will be in nonattainment in the future compliance year.¹⁵⁵

The Agency explained in the NO_x SIP Call and CAIR and then reaffirmed in the CSAPR Update that the EPA has the most confidence in our projections of nonattainment for those monitoring sites that also measure nonattainment for the most recent period of available ambient data. The EPA separately identified maintenance receptors as those monitoring sites that would have difficulty maintaining the relevant NAAQS in a scenario that accounts for historical variability in air quality at that site. The variability in air quality was determined by evaluating the “maximum” future design value at each monitoring site based on a projection of the maximum measured design value over the relevant period. The EPA interprets the projected maximum future design value to be a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor (*i.e.*, ozone conducive meteorology). The EPA also recognizes that previously experienced meteorological conditions (*e.g.*, dominant wind direction, temperatures, and air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. The maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur.¹⁵⁶ The projected maximum design value is used to identify upwind emissions that, under those circumstances, could interfere with the downwind area's ability to maintain the NAAQS.

Therefore, applying this methodology in this rule, the EPA assessed the magnitude of the projected maximum design values for 2023 and 2026 at each monitoring site in relation to the 2015 ozone NAAQS and, where such a value exceeds the NAAQS, the EPA determined that receptor to be a “maintenance” receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II*.¹⁵⁷ That is,

reasonable EPA's approach to defining nonattainment in CAIR).

¹⁵⁶ The EPA's air quality modeling guidance identifies the use of the highest of the relevant base period design values as a means to evaluate future year attainment under meteorological conditions that are especially conducive to ozone formation. See U.S. Environmental Protection Agency, 2018. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, PM_{2.5}, and Regional Haze, Research Triangle Park, NC.

¹⁵⁷ See 795 F.3d at 136.

¹⁵¹ http://www.wrapair2.org/pdf/WRAP_OGWG_Report_Baseline_17Sep2019.pdf.

¹⁵² http://www.wrapair2.org/pdf/WRAP_OGWG_2028_OTB_RevFinalReport_05March2020.pdf.

¹⁵³ See 86 FR 23078–79.

¹⁵⁴ 531 F.3d at 910–911 (holding that the EPA must give “independent significance” to each prong of CAA section 110(a)(2)(D)(i)(I)).

¹⁵⁵ See 63 FR 57375, 57377 (October 27, 1998); 70 FR 25241 (January 14, 2005). See also *North Carolina*, 531 F.3d at 913–914 (affirming as

monitoring sites with a maximum design value that exceeds the NAAQS are projected to have maintenance problems in the future analytic years.¹⁵⁸

Recognizing that nonattainment receptors are also, by definition, maintenance receptors, the EPA often uses the term “maintenance-only” to refer to receptors that are not also nonattainment receptors. Consistent with the concepts for maintenance receptors, as described previously, the EPA identifies “maintenance-only” receptors as those monitoring sites that have projected average design values above the level of the applicable NAAQS, but that are not currently measuring nonattainment based on the most recent official design values. In addition, those monitoring sites with projected average design values below the NAAQS, but with projected maximum design values above the NAAQS are also identified as “maintenance only” receptors, even if they are currently measuring nonattainment based on the most recent official design values.¹⁵⁹

Comment: The EPA received comments claiming that the projected design values for 2023 were biased low compared to recent measured data.

¹⁵⁸ The EPA issued a memorandum in October 2018, providing additional information to states developing interstate transport SIP submissions for the 2015 8-hour ozone NAAQS concerning considerations for identifying downwind areas that may have problems maintaining the standard at Step 1 of the 4-step interstate transport framework. See Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards, October 19, 2018 (“October 2018 memorandum”), available in Docket No. EPA–HQ–OAR–2021–0668 or at <https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs>. EPA is not applying the suggested analytical approaches in that memorandum in this rule, nor would those approaches be appropriate in light of currently available data. Potential alternative approaches would introduce unnecessary and substantial additional analytical burdens that could frustrate timely and efficient implementation of good neighbor obligations. In addition, the information supplied in that memorandum is now outdated due to several additional years of air quality monitoring data and updated modeling results. EPA’s current approach to defining “maintenance” receptors has been upheld and continues to provide an appropriate approach to addressing the “interference with maintenance” prong of the Good Neighbor provision. See *EME Homer City*, 795 F.3d 118, 136–37; *Wisconsin*, 938 F.3d at 325–26.

¹⁵⁹ See <https://www.epa.gov/air-trends/air-quality-design-values> for design value reports. At the time of this action, the most recent reports available are for the calendar year 2021.

Commenters noted that a number of monitoring sites that are projected to be below the NAAQS in 2023 based on the EPA’s modeling for the proposed action are currently measuring nonattainment based on data from 2020 and 2021. One commenter requested that the EPA determine whether its past modeling tends to overestimate or underestimated actual observed design values. If EPA finds that the agency’s model tends to underestimate future year design values, the commenter requests that EPA re-run its ozone modeling, incorporating parameters that account for this tendency.

Response: In response to comments, the EPA compared the projected 2023 design values based on the proposal modeling to recent trends in measured data. As a result of this analysis, the EPA agrees that current data indicate that there are monitoring sites at risk of continued nonattainment in 2023 even though the model projected average and maximum design values at these sites are below the NAAQS (*i.e.*, sites that are not modeling-based receptors). It would not be reasonable to ignore recent measured ozone levels in many areas that are clearly not fully consistent with certain concentrations in the Step 1 analysis for 2023. Therefore, the EPA has also developed an additional maintenance-only receptor category, which includes what we refer to as “violating monitor” receptors, based on current ozone concentrations measured by regulatory ambient air quality monitoring sites.

Specifically, the EPA has identified monitoring sites with measured 2021 and preliminary 2022 design values and 4th high maximum daily 8-hour average (MDA8) ozone in both 2021 and 2022 (preliminary data) that exceed the NAAQS, although projected to be in attainment in 2023, as having the greatest risk of continuing to have a problem attaining the standard in 2023. These criteria sufficiently consider measured air quality data so as to avoid including monitoring sites that have measured nonattainment data in recent years but could reasonably be anticipated to not have a nonattainment or maintenance problem in 2023, in line with our modeling results. Our methodology is intended only to identify those sites that have sufficiently poor ozone levels that there is clearly a reasonable expectation that an ozone nonattainment or maintenance problem will persist in the 2023 ozone season.

Moreover, 2023 is so near in time that recent measured ozone levels can be used to reasonably project whether an air quality problem is likely to persist. We view this approach to identifying additional receptors in 2023 as the best means of responding to the comments on this issue in this action, while also identifying all transport receptors.

For purposes of this action, we treat these violating monitors as an additional type of maintenance-only receptor. Because our modeling did not identify these sites as receptors, we do not believe it is sufficiently certain that these sites will be in nonattainment such that they should be considered nonattainment receptors. Rather, our authority for treating these sites as receptors in 2023 flows from the responsibility in CAA section 110(a)(2)(i)(I) to prohibit emissions that interfere with maintenance of the NAAQS. See, e.g., *North Carolina*, 531 F.3d at 910–11 (failing to give effect to the interfere with maintenance clause “provides no protection for downwind areas that, despite EPA’s predictions, still find themselves struggling to meet NAAQS due to upwind interference”) (emphasis added). Recognizing that no modeling can perfectly forecast the future, and “a degree of imprecision is inevitable in tackling the problem of interstate air pollution,” this approach in the Agency’s judgement best balances the need to avoid both “under-control” and “overcontrol,” *EME Homer City*, 572 U.S. at 523.

We acknowledge that the traditional modeling plus monitoring methodology we used at proposal and in prior ozone transport rules would otherwise have identified such sites as being in attainment in 2023. Despite the implications of the current measured data suggesting there will be a nonattainment problem at these sites in 2023, we cannot definitively establish that such sites will be in nonattainment in 2023 in light of our modeling projections. In the face of this uncertainty, we regard our ability to consider such sites as receptors for purposes of good neighbor analysis under CAA section 110(a)(2)(D)(i)(I) to be a function of the requirement to prohibit emissions that interfere with maintenance of the NAAQS; even if an area may be technically in attainment, we have reliable information indicating that there is an identified risk that attainment will not in fact be achieved.

However, because we did not identify this basis for receptor-identification at proposal, in this final action we are only using this receptor category on a confirmatory basis. That is, for states that we find linked based on our traditional modeling-based methodology in 2023, we find in this final analysis that the linkage at Step 2 is strengthened and confirmed if that state is also linked to one or more “violating monitor” receptors. If a state is only linked to a violating-monitor receptor in this final analysis, we are deferring taking final action on that state’s SIP submittal. This is the case for the State of Tennessee. Among the states that previously had their transport SIPs fully approved for the 2015 ozone NAAQS, the EPA has also identified a linkage to violating-monitor receptors for the State of Kansas. The EPA intends to further review its air quality modeling results and recent measured ozone levels, and we intend to address these states’ good neighbor obligations as expeditiously as practicable in a future action.

E. Methodology for Projecting Future Year Ozone Design Values

Consistent with the EPA’s modeling guidance, the 2016 base year and future year air quality modeling results were used in a relative sense to project design values for 2023 and 2026. That is, the ratios of future year model predictions to base year model predictions are used to adjust ambient ozone design values¹⁶⁰ up or down depending on the relative (percent) change in model predictions for each location. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under average conditions. In addition, the Agency calculated maximum design values from within the 5-year base period to represent conditions when meteorology is more favorable than average for ozone formation. Because the base year for the air quality modeling used in this final rule is 2016, measured data for 2014–2018 (*i.e.*, design values for 2016, 2017, and 2018) were used to project average and maximum design values in 2023 and 2026.

¹⁶⁰ The ozone design value at a particular monitoring site is the 3-year average of the annual 4th highest daily maximum 8-hour ozone concentration at that site.

The ozone predictions from the 2016 and future year air quality model simulations were used to project 2016–2018 average and maximum ozone design values to 2023 and 2026 using an approach similar to the approach in EPA’s guidance for attainment demonstration modeling. This guidance recommends using model predictions from the 3 × 3 array of grid cells¹⁶¹ surrounding the location of the monitoring site to calculate a Relative Response Factor (RRF) for that site.¹⁶² However, the guidance also notes that an alternative array of grid cells may be used in certain situations where local topographic or geographical feature (*e.g.*, a large water body or a significant elevation change) may influence model response.

The 2016–2018 base period average and maximum design values were multiplied by the RRF to project each of these design values to each of the three future years. In this manner, the projected design values are grounded in monitored data, and not the absolute model-predicted future year concentrations. Following the approach in the CSAPR Update and the Revised CSAPR Update, the EPA also projected future year design values based on a modified version of the “3 × 3” approach for those monitoring sites located in coastal areas. In this alternative approach, the EPA eliminated from the RRF calculations the modeling data in those grid cells that are dominated by water (*i.e.*, more than 50 percent of the area in the grid cell is water) and that do not contain a monitoring site (*i.e.*, if a grid cell is more than 50 percent water but contains an air quality monitor, that cell would remain in the calculation). The choice of more than 50 percent of the grid cell area as water as the criteria for identifying overwater grid cells is based on the treatment of land use in the Weather Research and Forecasting model (WRF).¹⁶³ Specifically, in the

¹⁶¹ As noted in this section, each model grid cell is 12 × 12 km.

¹⁶² The relative response factor represents the change in ozone at a given site. To calculate the RRF, the EPA’s modeling guidance recommends selecting the 10 highest ozone days in an ozone season at a given monitor in the base year, noting which of the grid cells surrounding the monitor experienced the highest ozone concentrations in the base year, and averaging those ten highest concentrations. The model is then run using the projected year emissions, in this case 2023, with all other model variables held constant. Ozone concentrations from the same ten days, in the same grid cells, are then averaged. The fractional change between the base year (2016 model run) average ozone concentration and the future year (*e.g.*, 2023 model run) average ozone concentration represents the relative response factor.

¹⁶³ <https://www.mnm.ucar.edu/weather-research-and-forecasting-model>.

WRF meteorological model those grid cells that are greater than 50 percent overwater are treated as being 100 percent overwater. In such cases the meteorological conditions in the entire grid cell reflect the vertical mixing and winds over water, even if part of the grid cell also happens to be over land with land-based emissions, as can often be the case for coastal areas. Overlaying land-based emissions with overwater meteorology may be representative of conditions at coastal monitors during times of on-shore flow associated with synoptic conditions or sea-breeze or lake-breeze wind flows. But there may be other times, particularly with off-shore wind flow, when vertical mixing of land-based emissions may be too limited due to the presence of overwater meteorology. Thus, for our modeling the EPA projected average and maximum design values at individual monitoring sites based on both the “3 × 3” approach as well as the alternative approach that eliminates overwater cells in the RRF calculation for near-coastal areas (*i.e.*, “no water” approach). The projected 2023 and 2026 design values using both the “3 × 3” and “no-water” approaches are provided in the docket for this final rule. For this final rule, the EPA is relying upon design values based on the “no water” approach for identifying nonattainment and maintenance receptors.¹⁶⁴

Consistent with the truncation and rounding procedures for the 8-hour ozone NAAQS, the projected design values are truncated to integers in units of ppb.¹⁶⁵ Therefore, projected design values that are greater than or equal to 71 ppb are considered to be violating the 2015 ozone NAAQS. For those sites that are projected to be violating the NAAQS based on the average design values in the future analytic years, the Agency examined the measured design values for 2021, which are the most recent official measured design values at the time of this final rule. As noted earlier, the Agency is identifying nonattainment receptors in this rulemaking as those sites that are violating the NAAQS based on current

¹⁶⁴ Using design values from the “3 × 3” approach, the maintenance-only receptor at site 550590019 in Kenosha County, WI would become a nonattainment receptor because the average design value with the “3 × 3” approach is 72.0 ppb versus 70.8 ppb with the “no water” approach. In addition, the maintenance-only receptor at site 090099002 in New Haven County, CT would become a nonattainment receptor using the “3 × 3” approach because the average design value with the “3 × 3” approach is 71.2 ppb versus 70.5 ppb with the “no water” approach.

¹⁶⁵ 40 CFR part 50, appendix P—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

measured air quality and also have projected average design values of 71 ppb or greater. Maintenance-only receptors include both (1) those sites with projected average design values above the NAAQS that are currently measuring clean data (*i.e.*, ozone design values below the level of the 2015 ozone NAAQS) and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 71 ppb or greater. In addition to the maintenance-only receptors, ozone nonattainment receptors are also

maintenance receptors because the maximum design values for each of these sites is always greater than or equal to the average design value. The monitoring sites that the Agency projects to be nonattainment and maintenance receptors for the ozone NAAQS in the 2023 and 2026 base case are used for assessing the contribution of emissions in upwind states to downwind nonattainment and maintenance of the 2015 ozone NAAQS as part of this final rule.¹⁶⁶

Table IV.D–1 contains the 2016-centered¹⁶⁷ base period average and maximum 8-hour ozone design values,

the 2023 base case average and maximum design values and the measured 2021 design values for the sites that are projected to be nonattainment receptors in 2023. Table IV.D–2 contains this same information for monitoring sites that are projected to be maintenance-only receptors in 2023. The design values for all monitoring sites in the U.S. are provided in the docket for this rule. Additional details on the approach for projecting average and maximum design values are provided in the Air Quality Modeling Final Rule TSD.

TABLE IV.D–1—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2021 DESIGN VALUES (ppb) AT PROJECTED NONATTAINMENT RECEPTORS

Monitor ID	State	County	2016 Centered average	2016 Centered maximum	2023 Average	2023 Maximum	2021
060650016	CA	Riverside	79.0	80.0	72.2	73.1	78
060651016	CA	Riverside	99.7	101.0	91.0	92.2	95
080350004	CO	Douglas	77.3	78	71.3	71.9	83
080590006	CO	Jefferson	77.3	78	72.8	73.5	81
080590011	CO	Jefferson	79.3	80	73.5	74.1	83
090010017	CT	Fairfield	79.3	80	71.6	72.2	79
090013007	CT	Fairfield	82.0	83	72.9	73.8	81
090019003	CT	Fairfield	82.7	83	73.3	73.6	80
481671034	TX	Galveston	75.7	77	71.5	72.8	72
482010024	TX	Harris	79.3	81	75.1	76.7	74
490110004	UT	Davis	75.7	78	72.0	74.2	78
490353006	UT	Salt Lake	76.3	78	72.6	74.2	76
490353013	UT	Salt Lake	76.5	77	73.3	73.8	76
551170006	WI	Sheboygan	80.0	81	72.7	73.6	72

TABLE IV.D–2—AVERAGE AND MAXIMUM 2016-CENTERED AND 2023 BASE CASE 8-HOUR OZONE DESIGN VALUES AND 2021 DESIGN VALUES (ppb) AT PROJECTED MAINTENANCE-ONLY RECEPTORS

Monitor ID	State	County	2016 Centered average	2016 Centered maximum	2023 Average	2023 Maximum	2021
040278011	AZ	Yuma	72.3	74	70.4	72.1	67
080690011	CO	Larimer	75.7	77	70.9	72.1	77
090099002	CT	New Haven	79.7	82	70.5	72.6	82
170310001	IL	Cook	73.0	77	68.2	71.9	71
170314201	IL	Cook	73.3	77	68.0	71.5	74
170317002	IL	Cook	74.0	77	68.5	71.3	73
350130021	NM	Dona Ana	72.7	74	70.8	72.1	80
350130022	NM	Dona Ana	71.3	74	69.7	72.4	75
350151005	NM	Eddy	69.7	74	69.7	74.1	77
350250008	NM	Lea	67.7	70	69.8	72.2	66
480391004	TX	Brazoria	74.7	77	70.4	72.5	75
481210034	TX	Denton	78.0	80	69.8	71.6	74
481410037	TX	El Paso	71.3	73	69.8	71.4	75
482010055	TX	Harris	76.0	77	70.9	71.9	77
482011034	TX	Harris	73.7	75	70.1	71.3	71
482011035	TX	Harris	71.3	75	67.8	71.3	71
530330023	WA	King	73.3	77	67.6	71.0	64
550590019	WI	Kenosha	78.0	79	70.8	71.7	74
551010020	WI	Racine	76.0	78	69.7	71.5	73

¹⁶⁶In addition, there are 71 monitoring sites in California with projected 2023 maximum design values above the NAAQS. With two exceptions, as described in section IV.F of this document, the Agency is not making a determination in this action that these monitors are ozone transport receptors.

The two exceptions are the two monitoring sites that represent air quality impacts to lands of the Morongo and Pechanga tribes. As explained in footnote 110 *supra*, we treat these as transport receptors that are impacted by emissions from California.

¹⁶⁷2016-centered averaged design values represent the average of the design values for 2016, 2017, and 2018. Similarly, the maximum 2016-centered design value is the highest measured design value from these three design value periods.

In total, in the 2023 base case there are a total of 33 projected modeling-based receptors nationwide including 14 nonattainment receptors in 9 different counties and 19 maintenance-only receptors in 13 additional counties (Harris County, TX, has both nonattainment and maintenance-only receptors).¹⁶⁸ Of the 14 nonattainment receptors in 2023, 7 remain nonattainment receptors, 5 are projected to become maintenance-only receptors and 2 are projected to be in attainment in 2026. Of the 19 maintenance-only receptors in 2023, 7 are projected to remain maintenance-only receptors and 12 are projected to be in attainment in 2026. The projected average and maximum design values in 2026 for all receptors are included in the Air Quality Modeling Final Rule TSD.

Comment: EPA received comments saying that the projected design values for 2023 were biased low compared to recent measured data. Commenters noted that a number of monitoring sites that are projected to be below the NAAQS in 2023 based on EPA’s modeling for the proposed rule are currently measuring nonattainment. Because 2023 is only a year later than the most recent measured data some commenters said that EPA should give greater weight to measured data when identifying downwind receptors.

Response: Based on an analysis of model projections for 2023 and recent trends in measured data, the EPA agrees that current data indicate that there are monitoring sites at risk of continued nonattainment in 2023 even though the model projected average and maximum design values at these sites are below the NAAQS (*i.e.*, sites that are not modeling-based receptors).¹⁶⁹ Specifically, the EPA believes that monitoring sites with measured design values and 4th high maximum daily 8-hour average (MDA8) ozone based on 2021 and preliminary 2022 data have

the greatest risk of continuing to have a problem attaining the standard in 2023, even when the modeling projects these sites will attain. These criteria are sufficiently conservative that we avoid including monitoring sites that have measured nonattainment data in recent years but could reasonably be anticipated to not have a nonattainment or maintenance problem in 2023, in line with our modeling results. Our methodology is intended only to identify those sites that have sufficiently poor ozone levels that there is clearly a reasonable expectation that an ozone nonattainment or maintenance problem will persist in the 2023 ozone season. We do not apply this methodology for the 2026 analytic year, because that year is sufficiently farther in the future that we do not believe there would be a reasonable basis to supplement our modeling analysis with this “violating monitor” methodology. By comparison, 2023 is so near in time that recent measured ozone levels can be used reasonably to project whether an air quality problem is likely to persist. We view this approach to identifying additional receptors in 2023 as the best means of responding to the comments on this issue in this action. The monitoring sites that meet these criteria, along with the corresponding measured and modeled data, are provided in Table IV.D–3.

For purposes of this action, we will treat these sites as an additional type of maintenance-only receptor. Because our modeling did not identify these sites as receptors, we do not believe it is sufficiently certain that these sites will be in nonattainment that they should be considered nonattainment receptors for purposes of this final rule. Rather, our authority for treating these sites as receptors in 2023 flows from the responsibility in CAA section 110(a)(2)(i)(I) to prohibit emissions that interfere with maintenance of the

NAAQS. *See, e.g., North Carolina*, 531 F.3d at 910–11 (failing to give effect to the interfere with maintenance clause “provides no protection for downwind areas that, *despite EPA’s predictions*, still find themselves struggling to meet NAAQS due to upwind interference”) (emphasis added). Recognizing that no modeling can perfectly forecast the future, and “a degree of imprecision is inevitable in tackling the problem of interstate air pollution,” this approach in the Agency’s judgement best balances the need to avoid both “under-control” and “overcontrol,” *EME Homer City*, 572 U.S. at 523.

In this action, we identify “violating monitor” maintenance-only receptors for purposes of more firmly establishing that the states we have otherwise identified as linked at Step 2 in our modeling-based methodology can indeed be reasonably anticipated to be linked to air quality problems in downwind states in 2023 for reasons that extend beyond that methodology. In this sense, this approach is “confirmatory” and does not alter the geography of the final rule compared to the application of the modeling-based receptor definitions used at proposal. Rather, it strengthens the analytical basis for our Step 2 findings by establishing that many upwind states covered in this action are also projected to contribute above 1 percent of the NAAQS to these types of receptors. For purposes of this final rule, we will not finalize FIPs for any states that this analysis indicates contribute greater than 1 percent of the NAAQS only to a “violating monitor” receptor. Our analysis suggests this would be the case for two states, Kansas and Tennessee (see section IV.F of this document).¹⁷⁰ We are making no final decisions with respect to these states in this action and intend to address these states in a subsequent action.

TABLE IV.D–3—AVERAGE AND MAXIMUM 2023 BASE CASE 8-HOUR OZONE, AND 2021 AND PRELIMINARY 2022 DESIGN VALUES (ppb) AND 4TH HIGH CONCENTRATIONS AT VIOLATING MONITORS

Monitor ID	State	County	2023 Average	2023 Maximum	2021	2022 P*	2021 4th high	2022 P 4th high
40070010	AZ	Gila	67.9	69.5	77	76	75	74

¹⁶⁸ The EPA’s modeling also projects that three monitoring sites in the Uintah Basin (*i.e.*, monitor 490472003 in Uintah County, Utah, and monitors 490130002 and 490137011 in Duchesne County, Utah) will have average design values above the NAAQS in 2023. However, as noted in the proposed rule, the Uintah Basin nonattainment area was designated as nonattainment for the 2015 ozone NAAQS not because of an ongoing problem with summertime ozone (as is usually the case in other parts of the country), but instead because it violates the ozone NAAQS in winter. The main causes of

the Uintah Basin’s wintertime ozone are sources located at low elevations within the Basin, the Basin’s unique topography, and the influence of the wintertime meteorologic inversions that keep ozone and ozone precursors near the Basin floor and restrict air flow in the Basin. Because of the localized nature of the ozone problem at these sites the EPA has not identified these three monitors as receptors in Step 1 of this final rule.

¹⁶⁹ In addition, we note that comparing the projected 2023 maximum design values at

modeling-based receptors listed in Table IV.D–1 and Table IV.D–2 to the 2021 design values measured at these sites indicates that the projected maximum values are lower than the measured data at most receptors. These differences are particularly evident at receptors in coastal Connecticut and in Denver. (See Air Quality Modeling Final Rule TSD for details).

¹⁷⁰ We have not conducted an analysis in this action to determine whether violating-monitor receptors may exist in California.

TABLE IV.D-3—AVERAGE AND MAXIMUM 2023 BASE CASE 8-HOUR OZONE, AND 2021 AND PRELIMINARY 2022 DESIGN VALUES (ppb) AND 4TH HIGH CONCENTRATIONS AT VIOLATING MONITORS—Continued

Monitor ID	State	County	2023 Average	2023 Maximum	2021	2022 P*	2021 4th high	2022 P 4th high
40130019	AZ	Maricopa	69.8	70.0	75	77	78	76
40131003	AZ	Maricopa	70.1	70.7	80	80	83	78
40131004	AZ	Maricopa	70.2	70.8	80	81	81	77
40131010	AZ	Maricopa	68.3	69.2	79	80	80	78
40132001	AZ	Maricopa	63.8	64.1	74	78	79	81
40132005	AZ	Maricopa	69.6	70.5	78	79	79	77
40133002	AZ	Maricopa	65.8	65.8	75	75	81	72
40134004	AZ	Maricopa	65.7	66.6	73	73	73	71
40134005	AZ	Maricopa	62.3	62.3	73	75	79	73
40134008	AZ	Maricopa	65.6	66.5	74	74	74	71
40134010	AZ	Maricopa	63.8	66.9	74	76	77	75
40137020	AZ	Maricopa	67.0	67.0	76	77	77	75
40137021	AZ	Maricopa	69.8	70.1	77	77	78	75
40137022	AZ	Maricopa	68.2	69.1	76	78	76	79
40137024	AZ	Maricopa	67.0	67.9	74	76	74	77
40139702	AZ	Maricopa	66.9	68.1	75	77	72	77
40139704	AZ	Maricopa	65.3	66.2	74	77	76	76
40139997	AZ	Maricopa	70.5	70.5	76	79	82	76
40218001	AZ	Pinal	67.8	69.0	75	76	73	77
80013001	CO	Adams	63.0	63.0	72	77	79	75
80050002	CO	Arapahoe	68.0	68.0	80	80	84	73
80310002	CO	Denver	63.6	64.8	72	74	77	71
80310026	CO	Denver	64.5	64.8	75	77	83	72
90079007	CT	Middlesex	68.7	69.0	74	73	78	73
90110124	CT	New London	65.5	67.0	73	72	75	71
170310032	IL	Cook	67.3	69.8	75	75	77	72
170311601	IL	Cook	63.8	64.5	72	73	72	71
181270024	IN	Porter	63.4	64.6	72	73	72	73
260050003	MI	Allegan	66.2	67.4	75	75	78	73
261210039	MI	Muskegon	67.5	68.4	74	79	75	82
320030043	NV	Clark	68.4	69.4	73	75	74	74
350011012	NM	Bernalillo	63.8	66.0	72	73	76	74
350130008	NM	Dona Ana	65.6	66.3	72	76	79	78
361030002	NY	Suffolk	66.2	68.0	73	74	79	74
390850003	OH	Lake	64.3	64.6	72	74	72	76
480290052	TX	Bexar	67.1	67.8	73	74	78	72
480850005	TX	Collin	65.4	66.0	75	74	81	73
481130075	TX	Dallas	65.3	66.5	71	71	73	72
481211032	TX	Denton	65.9	67.7	76	77	85	77
482010051	TX	Harris	65.3	66.3	74	73	83	72
482010416	TX	Harris	68.8	70.4	73	73	78	71
484390075	TX	Tarrant	63.8	64.7	75	76	76	77
484391002	TX	Tarrant	64.1	65.7	72	77	76	80
484392003	TX	Tarrant	65.2	65.9	72	72	74	72
484393009	TX	Tarrant	67.5	68.1	74	75	75	75
490571003	UT	Weber	69.3	70.3	71	74	77	71
550590025	WI	Kenosha	67.6	70.7	72	73	72	71
550890008	WI	Ozaukee	65.2	65.8	71	72	72	72

* 2022 preliminary design values are based on 2022 measured MDA8 concentrations provided by state air agencies to the EPA's Air Quality System (AQS), as of January 3, 2023.

F. Pollutant Transport From Upwind States

1. Air Quality Modeling To Quantify Upwind State Contributions

This section documents the procedures the EPA used to quantify the impact of emissions from specific upwind states on ozone design values in 2023 and 2026 for the identified downwind nonattainment and maintenance receptors. The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind

states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The benefit of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of

emissions and boundary conditions to fully characterize culpable sources.

The EPA performed nationwide, state-level ozone source apportionment modeling using the CAMx Ozone Source Apportionment Technology/ Anthropogenic Precursor Culpability Analysis (OSAT/APCA) technique¹⁷¹ to quantify the contribution of 2023 and 2026 base case NO_x and VOC emissions from all sources in each state to the

¹⁷¹ As part of this technique, ozone formed from reactions between biogenic VOC and NO_x with anthropogenic NO_x and VOC are assigned to the anthropogenic emissions.

corresponding projected ozone design values in 2023 and 2026 at air quality monitoring sites. The CAMx OSAT/APCA model run was performed for the period May 1 through September 30 using the projected future base case emissions and 2016 meteorology for this time period. In the source apportionment modeling the Agency tracked (*i.e.*, tagged) the amount of ozone formed from anthropogenic emissions in each state individually as well as the contributions from other sources (*e.g.*, natural emissions).

In the state-by-state source apportionment model runs, the EPA tracked the ozone formed from each of the following tags:

- States—anthropogenic NO_x and VOC emissions from each state tracked individually (emissions from all anthropogenic sectors in a given state were combined);
- Biogenics—biogenic NO_x and VOC emissions domain-wide (*i.e.*, not by state);
- Boundary Concentrations—concentrations transported into the air quality modeling domain;
- Tribes—the emissions from those tribal lands for which the Agency has point source inventory data in the 2016v3 emissions modeling platform (EPA did not model the contributions from individual tribes);
- Canada and Mexico—anthropogenic emissions from sources in the portions of Canada and Mexico included in the modeling domain (the EPA did not model the contributions from Canada and Mexico separately);

- Fires—combined emissions from wild and prescribed fires domain-wide (*i.e.*, not by state); and

- Offshore—combined emissions from offshore marine vessels and offshore drilling platforms.

The contribution modeling provided contributions to ozone from anthropogenic NO_x and VOC emissions in each state, individually. The contributions to ozone from chemical reactions between biogenic NO_x and VOC emissions were modeled and assigned to the “biogenic” category. The contributions from wildfire and prescribed fire NO_x and VOC emissions were modeled and assigned to the “fires” category. That is, the contributions from the “biogenic” and “fires” categories are not assigned to individual states nor are they included in the state contributions.

For the Step 2 analysis, the EPA calculated a contribution metric that considers the average contribution on the 10 highest ozone concentration days (*i.e.*, top 10 days) in 2023. This average contribution metric is intended to provide a reasonable representation of the contribution from individual states to projected future year design values, based on modeled transport patterns and other meteorological conditions generally associated with modeled high ozone concentrations at the receptor. An average contribution metric constructed in this manner is beneficial since the magnitude of the contributions is directly related to the magnitude of the design value at each site.

The analytic steps for calculating the contribution metric for the 2023 analytic year are as follows:

(1) Calculate the 8-hour average contribution from each source tag to each monitoring site for the time period of the 8-hour daily maximum modeled concentrations in 2023;

(2) Average the contributions and average the concentrations for the top 10 modeled ozone concentration days in 2023;

(3) Divide the average contribution by the corresponding average concentration to obtain a Relative Contribution Factor (RCF) for each monitoring site;

(4) Multiply the 2023 average design values by the 2023 RCF at each site to produce the average contribution metric values in 2023.¹⁷²

This same approach was applied to calculate contribution metric values at individual monitoring sites for 2026.¹⁷³

The resulting contributions from each tag to each monitoring site in the U.S. for 2023 and 2026 can be found in the docket for this final rule. Additional details on the source apportionment modeling and the procedures for calculating contributions can be found in the Air Quality Modeling Final Rule TSD. The EPA’s response to comments on the method for calculating the contribution metric can be found in the *RTC* document for this final rule.

The largest contribution from each state that is the subject of this rule to modeled 8-hour ozone nonattainment and maintenance receptors in downwind states in 2023 and 2026 are provided in Table IV.F–1 and Table IV.F–2, respectively. The largest contribution from each state to a “violating monitor” maintenance-only receptor is provided in Table IV.F–3.

TABLE IV.F–1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS IN 2023 [ppb]

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Alabama	0.75	0.65
Arizona	0.54	1.69
Arkansas	0.94	1.21
California	35.27	6.31
Colorado	0.14	0.18
Connecticut	0.01	0.01
Delaware	0.44	0.56
District of Columbia	0.03	0.04
Florida	0.50	0.54
Georgia	0.18	0.17
Idaho	0.42	0.41
Illinois	13.89	19.09

¹⁷²Note that a contribution metric value was not calculated for any receptor at which there were fewer than 5 days with model-predicted MDA8 ozone concentrations greater than or equal to 60 ppb in 2023. The monitoring site in Seattle, King

County, Washington (530330023), was the only receptor which did not meet this criterion.

¹⁷³To provide consistency in the contributions for 2023 and 2026, the contribution metric values

for 2026 are based on the 2026 daily contributions for the same days that were used to calculate the contribution metric values for 2023.

TABLE IV.F-1—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS
IN 2023—Continued
[ppb]

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Indiana	8.90	10.03
Iowa	0.67	0.90
Kansas	0.46	0.52
Kentucky	0.84	0.79
Louisiana	9.51	5.62
Maine	0.02	0.01
Maryland	1.13	1.28
Massachusetts	0.33	0.15
Michigan	1.59	1.56
Minnesota	0.36	0.85
Mississippi	1.32	0.91
Missouri	1.87	1.39
Montana	0.08	0.10
Nebraska	0.20	0.36
Nevada	1.11	1.13
New Hampshire	0.10	0.02
New Jersey	8.38	5.79
New Mexico	0.36	1.59
New York	16.10	11.29
North Carolina	0.45	0.66
North Dakota	0.18	0.45
Ohio	2.05	1.98
Oklahoma	0.79	1.01
Oregon *	0.46	0.31
Pennsylvania	6.00	4.36
Rhode Island	0.04	0.01
South Carolina	0.16	0.18
South Dakota	0.05	0.08
Tennessee	0.60	0.68
Texas	1.03	4.74
Utah	1.29	0.98
Vermont	0.02	0.01
Virginia	1.16	1.76
Washington	0.16	0.09
West Virginia	1.37	1.49
Wisconsin	0.21	2.86
Wyoming	0.68	0.67

TABLE IV.F-2—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS
IN 2026
[ppb]

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Alabama	0.20	0.69
Arizona	0.44	1.34
Arkansas	0.53	1.16
California	34.03	6.16
Colorado	0.04	0.17
Connecticut	0.00	0.01
Delaware	0.43	0.41
District of Columbia	0.03	0.02
Florida	0.46	0.17
Georgia	0.13	0.16
Idaho	0.27	0.36
Illinois	0.63	13.57
Indiana	1.06	8.53
Iowa	0.14	0.62
Kansas	0.14	0.42
Kentucky	0.79	0.76
Louisiana	4.57	9.37

TABLE IV.F-2—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE NONATTAINMENT AND MAINTENANCE RECEPTORS
IN 2026—Continued
[ppb]

Upwind state	Largest contribution to downwind nonattainment receptors	Largest contribution to downwind maintenance-only receptors
Maine	0.00	0.01
Maryland	1.06	0.92
Massachusetts	0.06	0.31
Michigan	1.39	1.47
Minnesota	0.15	0.32
Mississippi	0.29	1.15
Missouri	0.29	1.68
Montana	0.06	0.07
Nebraska	0.09	0.19
Nevada	0.67	0.90
New Hampshire	0.01	0.09
New Jersey	8.10	7.04
New Mexico	0.35	0.46
New York	12.65	12.34
North Carolina	0.40	0.42
North Dakota	0.09	0.17
Ohio	1.95	1.93
Oklahoma	0.19	0.74
Oregon *	0.26	0.41
Pennsylvania	5.47	4.94
Rhode Island	0.00	0.03
South Carolina	0.14	0.15
South Dakota	0.03	0.04
Tennessee	0.24	0.54
Texas	0.48	4.34
Utah	1.05	0.81
Vermont	0.01	0.02
Virginia	1.09	1.10
Washington	0.10	0.14
West Virginia	1.36	1.34
Wisconsin	0.17	0.18
Wyoming	0.40	0.59

TABLE IV.F-3—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE “VIOLATING MONITOR” MAINTENANCE-ONLY
RECEPTORS
[ppb]

Upwind state	Largest contribution to downwind violating monitor maintenance-only receptors
Alabama	0.79
Arizona	1.62
Arkansas	1.16
California	6.97
Colorado	0.39
Connecticut	0.17
Delaware	0.42
District of Columbia	0.03
Florida	0.50
Georgia	0.31
Idaho	0.46
Illinois	16.53
Indiana	9.39
Iowa	1.13
Kansas	0.82
Kentucky	1.57
Louisiana	5.06
Maine	0.02
Maryland	1.14
Massachusetts	0.39
Michigan	3.47

TABLE IV.F-3—LARGEST CONTRIBUTION TO DOWNWIND 8-HOUR OZONE “VIOLATING MONITOR” MAINTENANCE-ONLY RECEPTORS—Continued
[ppb]

Upwind state	Largest contribution to downwind violating monitor maintenance-only receptors
Minnesota	0.64
Mississippi	1.02
Missouri	2.95
Montana	0.12
Nebraska	0.43
Nevada	1.11
New Hampshire	0.10
New Jersey	8.00
New Mexico	0.34
New York	12.08
North Carolina	0.65
North Dakota	0.35
Ohio	2.25
Oklahoma	1.57
Oregon *	0.36
Pennsylvania	5.20
Rhode Island	0.08
South Carolina	0.23
South Dakota	0.12
Tennessee	0.86
Texas	3.83
Utah	1.46
Vermont	0.03
Virginia	1.39
Washington	0.11
West Virginia	1.79
Wisconsin	5.10
Wyoming	0.42

* Does not include California monitoring sites.

2. Application of Contribution Screening Threshold

In Step 2 of the interstate transport framework, the EPA uses an air quality screening threshold to identify upwind states that contribute to downwind ozone concentrations in amounts sufficient to “link” them to these to downwind nonattainment and maintenance receptors. The contributions from each state to each downwind nonattainment or maintenance receptor that were used for the Step 2 evaluation can be found in the Air Quality Modeling Final Rule TSD.

The EPA applies an air quality screening threshold of 1 percent of the NAAQS, which has been used since the CSAPR rulemaking, including in the CSAPR Update, the Revised CSAPR Update, and numerous actions evaluating states’ transport SIP submittals. The explanation for how this value was originally derived is available in the CSAPR rulemaking from 2011. See 76 FR 48208, 48237–38. As originally explained there, the application of a relatively low threshold

is intended to capture a relatively large percentage of the contribution from upwind states to downwind receptors in light of the regional-scale, collective contribution problem associated with both ozone and PM_{2.5} NAAQS. *Id.* The Agency also explained that the use of a higher threshold in transport rules prior to CSAPR was based on single-day maximum contribution, whereas in CSAPR (and continuing in subsequent rules including this one), the Agency uses a more robust, average contribution metric over multiple days. Thus, it was not the case that 1 percent of NAAQS was substantially more stringent than that prior approach. *Id.* at 48238. In the 2016 CSAPR Update, the EPA reviewed the 1 percent threshold (as coupled with multi-day averaging) and determined it was appropriate to continue to apply this threshold. The EPA compared the 1 percent threshold to a 0.5 percent of NAAQS threshold and a 5 percent of NAAQS threshold. The EPA found that the lower threshold did not capture appreciably more upwind state contribution compared to the 1 percent threshold, while the 5 percent threshold

allowed too much upwind state contribution to drop out from further analysis.¹⁷⁴ The EPA continues to observe that nonattainment and maintenance receptors identified at Step 1 are impacted collectively by emissions from numerous upwind contributors. Therefore, application of a low, uniform screening threshold allows the EPA to identify upwind states that share a responsibility under the interstate transport provision to eliminate their significant contribution.

As we explained at proposal, the EPA recognizes that in 2018 it issued a memorandum indicating the potential for states to use a higher threshold at Step 2 in the development of their good neighbor SIP submissions where it could be technically justified. The August 2018 memorandum stated that “it may be reasonable and appropriate” for states to rely on an alternative 1 ppb threshold at Step 2.¹⁷⁵ (The memorandum also indicated that any

¹⁷⁴ See Final CSAPR Update Air Quality Modeling TSD, at 27–30 (EPA–HQ–OAR–2015–0596–0144). See also 86 FR 23054, 23085.

¹⁷⁵ August 2018 memo at 4.

higher alternative threshold, such as 2 ppb, would likely not be appropriate.) The EPA nonetheless proposed to fulfill its role under CAA section 110(c) in promulgating FIPs to directly implement good neighbor requirements, and in this role, proposed retaining use of the 1 percent threshold for all states. We noted that in several documents proposing transport SIP disapprovals, *see, e.g.*, 87 FR 9498 and 87 FR 9510 (Feb. 22, 2022), we explained that our experience since the issuance of the August 2018 memorandum regarding use of alternative thresholds led the Agency to believe it may not be appropriate to continue to attempt to recognize alternative contribution thresholds at Step 2, either in the context of SIPs or FIPs.

We went on to explain that the EPA's experience since 2018 is that allowing for alternative Step 2 thresholds may be impractical or otherwise inadvisable for a number of additional policy reasons. For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Using multiple different thresholds at Step 2 with respect to the 2015 ozone NAAQS raises substantial policy consistency and practical implementation concerns.¹⁷⁶ The application of different thresholds at Step 2 has the potential to result in inconsistent determination of good neighbor obligations. From the perspective of ensuring effective regional implementation of good neighbor obligations, the more important analysis is the evaluation of the emissions reductions needed, if any, to address a state's significant contribution after consideration of a multifactor analysis at Step 3, including a detailed evaluation that considers air quality factors and cost. We explained that while alternative thresholds for purposes of Step 2 may be "similar" in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of alternative thresholds would allow certain states to avoid further evaluation of potential emissions controls while other states must proceed to a Step 3 analysis. This could create significant equity and consistency problems among states.

The EPA further proposed that, in promulgating FIPs to address these obligations on a nationwide scale,

national ozone transport policy would not be well-served by applying a single, less stringent threshold at Step 2. The EPA recognized in the August 2018 memo that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, the EPA noted at proposal that while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3. Considering the core statutory objective of ensuring elimination of *all* significant contribution to nonattainment or interference of the NAAQS in downwind states and the broad, regional nature of the collective contribution problem with respect to ozone, EPA could not identify a compelling policy imperative to move to a 1 ppb threshold.

In the proposal, we also found consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which used a Step 2 threshold of 1 percent of the NAAQS for two less protective ozone NAAQS) to be an important consideration. Continuing to use a 1 percent of NAAQS approach ensures that as the NAAQS are revised and made more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport for the more protective NAAQS.

The Agency also questioned whether it would be a good use of limited resources to attempt to further justify the use of alternative thresholds for certain states at Step 2 for purposes of the 2015 ozone NAAQS. Therefore, while EPA articulated the possibility of an alternative threshold in the August 2018 memorandum, the EPA concluded in the proposal that our experience and further evaluation since the issuance of that memo has revealed substantial programmatic and policy difficulties in attempting to implement this approach, and therefore we proposed to apply the 1 percent of NAAQS threshold.

Comment: Many commenters disagreed with our proposal to continue using a 1 percent of NAAQS threshold. They argued that the EPA was reversing course from its policy as articulated in the August 2018 memorandum and that the EPA was now bound to use a 1 ppb threshold rather than 1 percent of NAAQS, even in promulgating a FIP rather than evaluating SIPs.

Commenters further argued that a 1 ppb threshold would be more consistent with the EPA's "significant impact level" (SIL) guidance related to implementing prevention of significant deterioration (PSD) permitting requirements. They argued that the 1 percent threshold was below precision limits of regulatory ozone monitors, and they argued it was within the "margin of error" of the EPA's modeling.

Response: The EPA is finalizing its proposed approach of consistently using a 1 percent of the NAAQS threshold at Step 2 in this action to determine which states contribute to identified nonattainment and maintenance receptors. This approach ensures both national consistency across all states and consistency and continuity with our prior interstate transport actions for other NAAQS. We do not agree that this approach is inconsistent with or a reversal in policy from the August 2018 memorandum, which only suggested that states in the development of their SIPs "may" be able to establish that 1 ppb could be an appropriate alternative threshold. The EPA has been consistent in that memorandum, and since that time, that final determinations on alternative thresholds would be made through rulemaking action, as the EPA is taking here.

The August 2018 memorandum made clear that the Agency had substantial doubts that any threshold greater than 1 ppb (such as 2 ppb) would be acceptable, and the Agency is affirming that a threshold higher than 1 ppb would not be justified under any circumstance for purposes of this action. No commenter credibly provided a basis for using a threshold even higher than 1 ppb, and so this issue is primarily limited to the difference between a 0.7 ppb threshold (the 1 percent of the NAAQS threshold discussed previously in this section) and a 1.0 ppb threshold. Therefore, before proceeding in responding to these comments, we note that this issue is only relevant to a small number of states whose contributions to any receptor are above 1 percent of the NAAQS but lower than 1 ppb. Under the 2016v3 modeling of 2023 being used in this final rule, the states in this rule with contributions that fall between 0.70 ppb and 1 ppb are Alabama, Kentucky, and Minnesota. Similarly, the EPA applies the 1 percent threshold in its 2026 modeling projections to determine if any states will not be linked to an ozone receptor by that year, and therefore should not be subject to the more stringent requirements that take effect in 2026. The states in this rule in that year with contribution between 0.70 ppb and 1 ppb are

¹⁷⁶ We note that Congress has placed on the EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. *See* CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

Kentucky, Nevada, and Oklahoma. For all other states covered in this action, at least one linkage exists in 2023 (and, as relevant, in 2026) that is greater than 1 ppb, and therefore the question of whether the EPA must recognize a 1 ppb threshold would not have a dispositive effect on the regulatory determination being made at Step 2.

The 1 percent of the NAAQS threshold is consistent with the Step 2 approach that the EPA applied in CSAPR for the 1997 ozone NAAQS and has subsequently been applied in the CSAPR Update and Revised CSAPR Update when evaluating determining interstate transport obligations for the 2008 ozone NAAQS. The EPA continues to find 1 percent of the ozone NAAQS to be an appropriate threshold. For ozone, as the EPA found in CAIR, CSAPR, and the CSAPR Update, a portion of the nonattainment and maintenance problems in the U.S. results from the combined impact of relatively small contributions from many upwind states, along with contributions from in-state sources and other sources. The EPA's analysis shows that the ozone transport problem being analyzed in this rule is still the result of the collective impacts of emissions from multiple upwind contributors. Therefore, application of a consistent contribution threshold is necessary to identify those upwind states that should have responsibility for addressing their contribution (to the extent found "significant" at Step 3) to the downwind nonattainment and maintenance problems to which they collectively contribute. Where a great number of geographically dispersed emissions sources contribute to a downwind air quality problem, which is the case for ozone, EPA believes that, in the context of CAA section 110(a)(2)(D)(i)(I), a state-level threshold of 1 percent of the NAAQS is a reasonably small enough value to identify only the greater-than-de minimis contributors yet is not so large that it unfairly focuses attention for further action only on the largest single or few upwind contributors. Continuing to use 1 percent of the NAAQS as the screening metric to evaluate collective contribution from many upwind states also allows the EPA (and states) to apply a consistent framework to evaluate interstate emissions transport under the interstate transport provision from one NAAQS to the next. See 86 FR 23054, 23085; 81 FR 74504, 74518; 76 FR 48208, 48237–38.

Further, the EPA notes that the role of the Step 2 threshold is limited and just one step in the larger 4-Step Framework. It serves to screen in states for further

evaluation of emissions control opportunities applying a multifactor analysis at Step 3. Thus, as the Supreme Court has recognized, the contribution threshold essentially functions to exclude states with "*de minimis*" impacts. *EME Homer City*, 572 U.S. 489, 500.

Comments related to the August 2018 memorandum argued that the EPA legally committed itself to approving SIP submissions from states with contributions below 1 ppb and so now the EPA must apply that threshold in this FIP action. (Comments regarding this issue as related to the EPA's action on SIPs is addressed in that rulemaking and is beyond the scope of this action.) This is not what the memorandum said. The memorandum merely provided an analysis regarding "the degree to which certain air quality threshold amounts capture the collective amount of upwind contribution from upwind states."¹⁷⁷ It interpreted "that information to make recommendations about what thresholds *may* be appropriate for use in" SIP submissions (emphasis added).¹⁷⁸ Specifically, the August 2018 memorandum said, "Because the amount of upwind collective contribution capture with the 1 percent and the 1 ppb thresholds is *generally comparable, overall, we believe it may be* reasonable and appropriate for states to use a 1 ppb contribution threshold, as an alternative to a 1 percent threshold, at Step 2 of the 4-step framework in developing their SIP revisions addressing the good neighbor provision for the 2015 ozone NAAQS" (emphasis added).¹⁷⁹ Thus, the text of the August 2018 memorandum in no way committed that the EPA would be using a 1 ppb threshold going forward either in its evaluation of SIPs or in promulgating a FIP. The August 2018 memorandum indicated that "[f]ollowing these recommendations does not ensure that EPA will approve a SIP revision in all instances where the recommendations are followed, as the guidance may not apply to the facts and circumstances underlying a particular SIP. Final decisions by the EPA to approve a particular SIP revision will only be made based on the requirements of the statute and will only be made following an air agency's final submission of the SIP revision to the EPA, and after appropriate notice and opportunity for public review and comment."¹⁸⁰ Further, the August 2018 memorandum

said that "EPA and air agencies should consider whether the recommendations in this guidance are appropriate for each situation."¹⁸¹ The memorandum said nothing regarding what threshold the EPA would apply if promulgating a FIP.

As explained in the SIP disapproval action and again here, the EPA finds it would not be sound policy to apply an alternative contribution threshold or thresholds to one or more states within the 4-step interstate transport framework for the 2015 ozone NAAQS. However, the EPA disagrees with commenters' claims that the agency has reversed course on applying the August 2018 memorandum, because the memorandum never adopted a view that the use of 1 ppb or other alternative thresholds would in fact be acceptable. Although the EPA said at proposal that the EPA may rescind the guidance in the future, we took comment on the subject and also stated, "EPA is not at this time rescinding the August 2018 memorandum."¹⁸² The EPA is not formally rescinding the August 2018 memorandum in this action or at this time. However, it is not required that agencies must "rescind" a memorandum or guidance the moment it becomes outdated or called into question. The August 2018 memorandum was not issued through notice-and-comment rulemaking and is not binding on the Agency or other parties. While the *willingness* of the Agency as expressed in that memorandum to entertain the possibility of an alternative threshold of 1 ppb may be considered a kind of policy position, agencies may change their non-binding policies without going through notice and comment rulemaking. *Catawba County v. EPA*, 571 F.3d 20, 34 (D.C. Cir. 2009). In this case, we went through notice and comment rulemaking on this topic in the SIP-disapproval action (88 FR 9336) and here, even though the August 2018 memorandum was issued without such opportunity for public input. We further address the basis for the consistent use of a 1 percent of NAAQS threshold and summarize our conclusions under the *FCC v. Fox* factors below.

We continue to believe, as set forth in our proposed action, that national ozone transport policy is not well served by

¹⁸¹ *Id.*

¹⁸² 87 FR 9545, 9551 (Feb. 22, 2022) (Alabama, Mississippi, Tennessee); 87 FR 9498, 9510 (Feb. 22, 2022) (Kentucky); 87 FR 9838, 9844 (Feb. 22, 2022) (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin); 87 FR 9798, 9807, 9813, 9820 (Feb. 22, 2022) (Arkansas, Louisiana, Oklahoma, Texas); 87 FR 9533, 9542 (Feb. 22, 2022) (Missouri); 87 FR 31470, 31479 (May 24, 2022) (Utah); 87 FR 31495, 31504 (May 24, 2022) (Wyoming); 87 FR 31485, 31490 (May 24, 2022) (Nevada).

¹⁷⁷ August 2018 memorandum, at 1.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 4.

¹⁸⁰ *Id.* at 1.

allowing for less protective thresholds than 1 percent of the NAAQS at Step 2. Furthermore, the EPA disagrees with commenters who suggest that national consistency is an inappropriate consideration in the context of interstate ozone transport. The Good Neighbor provision, CAA section 110(a)(2)(D)(i)(I), requires to a unique degree of concern for consistency, parity, and equity across state lines.¹⁸³ For a regional air pollutant such as ozone, consistency in requirements and expectations across all states is essential. Based on the EPA's review of good neighbor SIP submissions to-date and after further consideration of the policy implications of attempting to recognize an alternative Step 2 threshold for certain states, the Agency concludes that the attempted use of different thresholds at Step 2 with respect to the 2015 8-hour ozone NAAQS raises substantial policy consistency and practical implementation concerns. The availability of different thresholds at Step 2 has the potential to result in inconsistent application of good neighbor obligations based solely on the strength of a state's SIP submission at Step 2 of the 4-step interstate transport framework. The steps of the analysis that lead up to evaluating emissions reductions opportunities to address states' significant contribution at Step 3 should be applied on a consistent basis. Where alternative thresholds for purposes of Step 2 may be "similar" in terms of capturing the relative amount of upwind contribution (as described in the August 2018 memorandum), nonetheless, use of an alternative threshold would allow certain states to avoid further evaluation of potential emissions controls while other states must proceed to a Step 3 analysis. This can create significant equity and consistency problems among states and could lead to ineffective or inefficient approaches to eliminating significant contribution.

One commenter suggested the EPA could address this potentially inequitable outcome by simply adopting a 1 ppb contribution threshold for all states. However, the August 2018 memorandum did not conclude that 1 ppb would be appropriate for all states and the EPA does not view that conclusion to be supported at present. The EPA recognized in the August 2018

memorandum that there was some similarity in the amount of total upwind contribution captured (on a nationwide basis) between 1 percent and 1 ppb. However, while this may be true in some sense, that is hardly a compelling basis to move to a 1 ppb threshold for every state. Indeed, the 1 ppb threshold has the disadvantage of losing a certain amount of total upwind contribution for further evaluation at Step 3 (e.g., roughly 7 percent of total upwind state contribution was lost according to the modeling underlying the August 2018 memorandum; in the EPA's 2016v2 modeling, the amount lost is 5 percent; in the EPA's 2016v3 modeling used for final, the amount lost is also 5 percent). Further, this logic has no end point. A similar observation could be made with respect to any incremental change. For example, should the EPA next recognize a 1.2 ppb threshold because that would only cause some small additional loss in capture of upwind state contribution as compared to 1 ppb? If the only basis for moving to a 1 ppb threshold is that it captures a "similar" (but actually smaller) amount of upwind contribution, then there is no basis for moving to that threshold at all. Considering the core statutory objective of ensuring elimination of all significant contribution to nonattainment or interference with maintenance of the NAAQS in other states and the broad, regional nature of the collective contribution problem with respect to ozone, we continue to find no compelling policy reason to adopt a new threshold for all states of 1 ppb.

Nor have commenters explained why use of a 1 ppb threshold would be appropriate under the more protective 2015 ozone NAAQS when a 1 percent of the NAAQS contribution threshold has been used for less protective ozone NAAQS. To illustrate, a state contributing greater than 0.75 ppb but less than 1 ppb to a receptor under the 2008 ozone NAAQS was "linked" at Step 2,¹⁸⁴ but if a 1 ppb threshold were used for the 2015 ozone NAAQS then that same state would *not* be "linked" to a receptor at Step 2 under a NAAQS that is set to be *more* protective of human health and the environment. Consistency with past interstate transport actions such as CSAPR, and the CSAPR Update and Revised CSAPR Update rulemakings (which all used the 1 percent of the NAAQS for less protective ozone NAAQS), is an important consideration. We affirm our view in CSAPR that continuing to use a 1 percent of NAAQS approach ensures that if the NAAQS are revised and made

more stringent, an appropriate increase in stringency at Step 2 occurs, so as to ensure an appropriately larger amount of total upwind-state contribution is captured for purposes of fully addressing interstate transport. See 76 FR 48208, 48237–38.

We note further that application of a 1 percent of NAAQS threshold has been the EPA's consistent approach in each of our notice-and-comment rulemakings beginning with CSAPR and continuing with the CSAPR Update, the Revised CSAPR Update, and numerous actions on ozone transport SIP submissions. In each case, the 1 percent of the NAAQS threshold was subject to rigorous vetting through public comment and the Agency's response to those comments, including through the use of analytical evaluations of alternative thresholds. See, e.g., 81 FR 74518–19. By contrast, the August 2018 memorandum was not issued through notice-and-comment rulemaking procedures, and the EPA was careful to caveat its utility and ultimate reliability for that reason.

The EPA disagrees with claims that the EPA is applying the August 2018 memorandum inconsistently based on the EPA's actions with regard to Arizona, Iowa, and Oregon. The EPA withdrew a previously proposed approval of Iowa's SIP submission that was premised on a 1 ppb contribution threshold, and re-proposed and finalized approval of that SIP based on a different rationale using a 1 percent of the NAAQS contribution threshold. 87 FR 9477 (Feb. 22, 2022); 87 FR 22463 (April 15, 2022). The EPA also disagrees with any claim that Oregon and Arizona were "allowed" to use a 1 ppb or higher threshold. The EPA approved Oregon's SIP submission for the 2015 ozone NAAQS on May 17, 2019, and both Oregon and the EPA relied on a 1 percent of the NAAQS contribution threshold. 84 FR 7854, 7856 (March 5, 2019) (proposal); 84 FR 22376 (May 17, 2019) (final). In the proposal for this action, the EPA explained it was not proposing to conduct an error correction for Oregon even though updated modeling indicated Oregon contributed above 1 percent of the NAAQS to monitors in California.

The EPA is deferring finalizing a finding at this time for Oregon (see section IV.G of this document for additional information). In 2016, the EPA approved Arizona's SIP for the earlier 2008 ozone NAAQS based on a similar rationale with regard to certain monitors in California. 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule). We are deferring finalizing a finding at this time that such a rationale is appropriate

¹⁸³ EPA notes that Congress has placed on EPA a general obligation to ensure the requirements of the CAA are implemented consistently across states and regions. See CAA section 301(a)(2). Where the management and regulation of interstate pollution levels spanning many states is at stake, consistency in application of CAA requirements is paramount.

¹⁸⁴ See 86 FR 23054, 23058 (April 30, 2021).

with respect to the more protective 2015 ozone NAAQS. While Arizona and Oregon's interstate transport obligations for the 2015 ozone NAAQS remain pending (along with several other states), there is no inconsistency in the treatment of these states or any other state at Step 2.

Some commenters claim the EPA must use a 1 ppb threshold based on the identification of 1 ppb as a significance threshold in one step of the PSD permitting process. The EPA's SIL guidances, however, relate to a different provision of the Clean Air Act regarding implementation of the prevention of significant deterioration (PSD) permitting program. This program applies in areas that have been designated attainment of the NAAQS and is intended to ensure that such areas remain in attainment even if emissions were to increase as a result of new sources or major modifications to existing sources located in those areas. This purpose is different than the purpose of the good neighbor provision, which is to assist downwind areas (in some cases hundreds or thousands of miles away) in resolving ongoing nonattainment of the NAAQS or difficulty maintaining the NAAQS through eliminating the emissions from other states that are significantly contributing to those problems. In addition, as discussed in preceding paragraphs, the purpose of the Step 2 threshold within the EPA's interstate transport framework for ozone is to broadly sweep in all states contributing to identified receptors above a de minimis level in recognition of the collective-contribution problem associated with regional-scale ozone transport. The threshold used in the context of PSD SIL serves a different purpose, and so it does not follow that they should be made equivalent. Further, commenters incorrectly associate the EPA's Step 2 contribution threshold with the identification of "significant" emissions (which does not occur until Step 3), and so it is not the case that the EPA is interpreting the same term differently.

The EPA has previously explained this distinction between the good neighbor framework and PSD SILs. See 70 FR 25162, 25190–25191 (May 12, 2005); 76 FR 48208, 48237 (Aug. 8, 2011). Importantly, the implication of the PSD SIL threshold is not that single-source contribution below this level indicates the absence of a contribution or that no emissions control requirements are warranted. Rather, the PSD SIL threshold addresses whether further, more comprehensive, multi-source review or analysis of air quality

impacts are required of the source to support a demonstration that it meets the criteria for a permit. A source with estimated impacts below the PSD SIL may use this to demonstrate that it will not cause or contribute (as those terms are used within the PSD program) to a violation of an ambient air quality standard, but is still subject to meeting applicable control requirements, including best available control technology, designed to moderate the source's impact on air quality.

Moreover, other aspects of the technical methodology in the SILs guidance compared to the good neighbor framework make a direct comparison between these two values misleading. For instance, in PSD permit modeling using a single year of meteorology the maximum single-day 8-hour contribution is evaluated with respect to the SIL. The purpose of the contribution threshold at Step 2 of the 4-step good neighbor framework is to determine whether the average contribution from a collection of sources in a state is small enough not to warrant any additional control for the purpose of mitigating interstate transport, even if that control were highly cost effective. Using a 1 percent of the NAAQS threshold is more appropriate for evaluating multi-day average contributions from upwind states than a 1 ppb threshold applied for a single day, since that lower value of 1 percent of the NAAQS will capture variations in contribution. If EPA were to use a single day reflecting the maximum amount of contribution from an upwind state to determine whether a linkage exists at Step 2, commenters' arguments for use of the PSD SIL might have more force. This would in effect be a return to the pre-CSAPR contribution calculation methodology of using a single day, see 76 FR 48238. However, that would likely cause more states to become linked, not less. And in any case, consistent with the method in our modeling guidance for projecting future attainment/nonattainment and as the EPA concluded in 2011 in CSAPR, the present good neighbor methodology of using multiple days provides a more robust approach to establishing that a linkage exists at the state level than relying on a single day of data.

A commenter also claimed the 1 percent of NAAQS threshold is inconsistent with the standards of precision for Federal reference monitors for ozone and the rounding requirements found in 40 CFR part 50, appendix U, Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone. Commenter claimed that the 1

percent contribution threshold of 0.7 ppb is lower than the manufacturer's reported precision of these reference monitors and that the requirements found in Appendix U truncates monitor values of 0.7 ppb to 0 ppb. However, the commenter is mistaken in applying criteria related to the precision of monitoring technology to the modeling methodology by which we project contributions when quantifying and evaluating interstate transport at Step 2. Indeed, contributions by source or state cannot be derived from the total ambient concentration of ozone at a monitor at all but must be apportioned through modeling. Under our longstanding methodology for doing so, the contribution values identified from upwind states are based on a robust assessment of the average impact of each upwind state's ozone-precursor emissions over a range of scenarios, as explained in the 2016v3 modeling's Air Quality Modeling Final Rule TSD, in the docket for this rule, Docket ID No. EPA–HQ–OAR–2021–0668. This analysis is in no way connected with or dependent on monitoring instruments' precision of measurement. See *EME Homer City*, 795 F.3d 118, 135–36 (“[A] model is meant to simplify reality in order to make it tractable.”) (quoting *Chemical Manufacturers Association v. EPA*, 28 F.3d 1259, 1264 (D.C. Cir. 1994)).

To the extent that commenters argue that the EPA consider a less stringent threshold as a result of modeling uncertainty, the EPA disagrees with this notion. The EPA has successfully applied a 1 percent of NAAQS threshold to identify linked upwind states using modeling in three prior FIP rulemakings and numerous state-specific actions on good neighbor obligations. This continues to be a reasonable approach, and indeed courts have repeatedly declined to establish bright line criteria for model performance. In upholding the EPA's approach to evaluating interstate transport in CSAPR, the D.C. Circuit held that it would not “invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world. That possibility is inherent in the enterprise of prediction.” *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 135 (2015). “[T]he fact that a ‘model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable.’” *Id.* at 135–36 (quoting *Chemical Manufacturers Association v. EPA*, 28 F.3d 1259, 1264 (D.C. Cir. 1994)). See also *Sierra Club v. EPA*, 939 F.3d 649, 686–87 (5th Cir. 2019) (upholding EPA's modeling in the

face of complaints regarding an alleged “margin of error,” noting challengers face a “considerable burden” in overcoming a “presumption of regularity” afforded “the EPA’s choice of analytical methodology” (citing *BCCA Appeal Grp. v. EPA*, 355 F.3d 817, 832 (5th Cir. 2003)).

The Agency will continue to use the CAMx model to evaluate contributions from upwind states to downwind areas. The agency has used CAMx routinely in previous notice and comment transport rulemakings to evaluate contributions relative to the 1 percent threshold for both ozone and PM_{2.5}. In fact, in the original CSAPR, the EPA found that “[t]here was wide support from commenters for the use of CAMx as an appropriate, state-of-the science air quality tool for use in the [Cross-State Air Pollution] Rule. There were no comments that suggested that the EPA should use an alternative model for quantifying interstate transport.” 76 FR 48229 (August 8, 2011). In this action, the EPA has taken a number of steps based on comments and new information to ensure to the greatest extent the accuracy and reliability of its modeling projections at Step 1 and 2, as discussed elsewhere in this section.

The EPA disagrees with commenters that case law reviewing changes in agency positions such as *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009), is applicable with respect to this issue. As explained above, under the terms of the August 2018 memorandum, the Agency did not conclude that the use of an alternative contribution threshold was justified for any states. But even if it were found that the Agency’s position had changed between this rulemaking action and the August 2018 memorandum, the *FCC v. Fox* factors are met. We have explained above that there are good reasons for continuing to use a 1 percent of NAAQS threshold. We also are aware that we are not using a 1 ppb threshold despite acknowledging the potential for doing so in the August 2018 memorandum. We do not believe that any party has a serious reliance interest that would be sufficient to overcome the countervailing public interest that is served through the EPA’s determination to maintain continuity with its longstanding, more protective 1 percent of NAAQS threshold in this action. *Cf.* 88 FR 9373 (reviewing reliance in the context of the SIP-disapproval action).

The EPA therefore will continue its longstanding practice of applying the 1 percent of NAAQS threshold in this action.

a. States That Contribute Below the Screening Threshold

Based on the EPA’s modeling and considering measured data at violating monitors, the contributions from each of the following states to nonattainment or maintenance-only receptors in the 2023 analytic year are below the 1 percent of the NAAQS threshold: Colorado, Connecticut, the District of Columbia, Delaware, Florida, Georgia, Idaho, Maine, Massachusetts, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Vermont, and Washington.¹⁸⁵ The EPA has already approved these states’ 2015 ozone good neighbor SIP submittals. Because the contributions from these states to projected downwind air quality problems are below the screening threshold in the current modeling, these states are not within the scope of this final rule. Additionally, the EPA has made final determinations that two states outside the modeling domain for the air quality modeling analyzed in this final rulemaking—Hawaii¹⁸⁶ and Alaska¹⁸⁷—do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state.

With respect to Wyoming, our methodology when applied using the 2016v3 modeling suggests that whether the state is linked is uncertain and warrants further analysis. The EPA intends to expeditiously review its assessment with respect to Wyoming and take action addressing Wyoming’s good neighbor obligations for the 2015 ozone NAAQS through a separate action.

b. States That Contribute at or Above the Screening Threshold

Based on the maximum downwind contributions in Table IV.F–1, the Step 2 analysis identifies that the following 21 states contribute at or above the 0.70 ppb threshold to downwind nonattainment receptors in 2023: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. Based on the maximum downwind contributions in Table IV.F–

1, the following 23 states contribute at or above the 0.70 ppb threshold to downwind modeling-based maintenance-only receptors in 2023: Arizona, Arkansas, California, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Texas, Virginia, West Virginia, and Wisconsin. Based on the maximum downwind contribution in Table IV.F–3, the following additional states contribute at or above the 0.70 ppb threshold to downwind violating monitor maintenance-only receptors in 2023: Kansas and Tennessee. (However, the EPA is not taking final action based on this analytical result for these two states at this time.) The levels of contribution between each of these linked upwind states and downwind nonattainment receptors and maintenance-only receptors are provided in the Air Quality Modeling Final Rule TSD.

Among the linked states are several western states—California, Nevada, and Utah. While the EPA has not previously included action on linked western states in its prior CSAPR rulemakings, the EPA has consistently applied the 4-step framework in evaluating good neighbor obligations from these states. On a case-by-case basis, the EPA has found in some instances with respect to the 2008 ozone NAAQS that a unique consideration has warranted approval of a western state’s good neighbor SIP submittal that might otherwise be found to contribute above 1 percent of the NAAQS without concluding that additional emissions reductions are required at Step 3 of the framework.¹⁸⁸ The EPA has also explained in prior actions that its air quality modeling is reliable for assessing downwind air quality problems and ozone transport contributions from upwind states throughout the nationwide modeling domain.¹⁸⁹ The EPA is deferring finalizing a finding at this time for Oregon (*see* section IV.G of this document for additional information).

As explained in the following section, the EPA is not, in this action, altering its prior approval of Oregon’s good neighbor SIP submission for the 2015 ozone NAAQS. For the remaining western states included in this rule, the EPA’s modeling supports a conclusion that these states are linked above the

¹⁸⁵ The status of monitoring sites in California to which Oregon may be linked is under review. *See* section IV.G.

¹⁸⁶ The EPA approved Hawaii’s 2015 ozone transport SIP on December 27, 2021. *See* 86 FR 73129.

¹⁸⁷ The EPA approved Alaska’s 2015 ozone transport SIP on December 18, 2019. *See* 84 FR 69331.

¹⁸⁸ *See* interstate transport approval actions under the 2008 ozone NAAQS for Arizona, California, and Wyoming at 81 FR 36179 (June 6, 2016), 83 FR 65093 (December 19, 2018), and 84 FR 14270 (April 10, 2019), respectively.

¹⁸⁹ *See* 81 FR 71991 (October 19, 2016), 82 FR 9155 (February 3, 2017).

contribution threshold to identified ozone transport receptors in downwind states, and therefore, consistent with the treatment of all other states within the modeling domain, the EPA proposes to proceed to evaluate these states for a determination of “significant contribution” at Step 3.

In conclusion, as described above, states with contributions that equal or exceed 1 percent of the NAAQS to either nonattainment or maintenance-only receptors are identified as “linked” at Step 2 of the good neighbor framework and warrant further analysis for significant contribution to nonattainment or interference with maintenance under Step 3. The EPA finds that for purposes of this final rule, the following 23 states are linked at Step 2 in 2023: Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin. In addition, the EPA finds that the following 20 States are linked at Step 2 in 2026: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia. We note that our updated modeling for this final rule shows that two states, Minnesota and Wisconsin, that we found linked in 2026 at proposal are no longer projected to be linked in that year but are linked in 2023.¹⁹⁰ As at proposal, Alabama is only projected to be linked in 2023, not 2026.

For six states, the EPA’s analysis at this time indicates that a linkage may exist in 2023 for which the EPA had not proposed FIP requirements, or the updated analysis for this final rule suggests that linkages we had previously found in the proposed action are now uncertain and warrant further analysis. The EPA intends to expeditiously address these states in a separate action or actions: Arizona, Iowa, Kansas, New Mexico, Tennessee, and Wyoming.

G. Treatment of Certain Monitoring Sites in California and Implications for Oregon’s Good Neighbor Obligations for the 2015 Ozone NAAQS

The EPA previously approved Oregon’s September 25, 2018 transport SIP submittal for the 2015 ozone

¹⁹⁰ Minnesota and Wisconsin were linked to maintenance-only receptors in Cook County, IL in 2023. Minnesota and Wisconsin are not linked in 2026 because the 2026 average and maximum design values at the monitoring sites are projected to show attainment.

NAAQS on May 17, 2019 (84 FR 22376), because in an earlier round of modeling Oregon was not projected to contribute above 1 percent of the NAAQS to any downwind receptors. In the EPA’s updated modeling used at proposal (2016v2) and again in the final modeling (2016v3), Oregon is modeled to contribute above the 1 percent of NAAQS threshold to several monitoring sites in California that would generally meet the EPA’s definition of nonattainment or maintenance “receptors” at Step 1.¹⁹¹ At proposal, the EPA explained that our analysis of the nature of the air quality problem at these monitoring sites led us to propose a determination that these monitoring sites should not be treated as receptors for purposes of determining interstate transport obligations of upwind states under CAA section 110(a)(2)(D)(i)(I). We explained that we reached this conclusion at Step 1 of our 4-step framework.

The EPA previously made a similar assessment of the nature of certain other monitoring sites in California in approving Arizona’s 2008 ozone NAAQS transport SIP submittal.¹⁹² There, the EPA noted that a “factor [. . .] relevant to determining the nature of a projected receptor’s interstate transport problem is the magnitude of ozone attributable to transport from all upwind states collectively contributing to the air quality problem.”¹⁹³ The EPA observed that only one upwind state (Arizona) was linked above 1 percent of the 2008 ozone NAAQS to the two relevant monitoring sites in California, and the cumulative ozone contribution from all upwind states to those sites was 2.5 percent and 4.4 percent of the total ozone, respectively. The EPA determined the size of those cumulative upwind contributions was “negligible, particularly when compared to the relatively large contributions from upwind states in the East or in certain other areas of the West.”¹⁹⁴ In that action, the EPA concluded the two California sites to which Arizona was linked should not be treated as receptors for the purposes of determining Good Neighbor obligations for the 2008 ozone NAAQS.¹⁹⁵

¹⁹¹ Monitors are included in the docket for this rulemaking. While EPA is providing information about cumulative upwind contribution to the California monitors, the Agency is not making a determination in this action that these monitors are ozone transport receptors.

¹⁹² 81 FR 15200 (March 22, 2016) (proposal); 81 FR 31513 (May 19, 2016) (final rule).

¹⁹³ 81 FR 15203.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

Comment: Commenters criticized what they considered to be unfair treatment of Oregon, stating that the EPA is applying a higher contribution threshold than it applies to other states. Commenters argued that EPA has not established a specific threshold for why the level of upwind-state impact at these sites should not be considered meaningful. Commenters argued that our analysis ignored the fact that there are many monitoring sites in California to which Oregon contributes above 1 percent of the NAAQS. Commenters state that EPA has failed to explain why Oregon is not subject to this rulemaking, while other states contribute lower total downwind ozone contributions and fewer receptors. Commenters concluded that since Oregon is linked it should be subject to the same emissions control determinations at Step 3 and 4 as every other state, or otherwise apply the same “nature of the air quality problem” consideration to eliminate other receptors.

Response: The EPA acknowledges that several commenters opposed the proposed treatment of Oregon and the California monitoring sites to which it is linked in the proposed and final modeling. We also recognize that other commenters expressed confusion regarding the role of this proposed determination at Step 1 and how it relates to the longstanding 4-step interstate transport framework that the EPA is otherwise applying in this action. In recognition of these concerns and the need to give further thought to the appropriate treatment of both upwind states and downwind receptors in these circumstances, the EPA is deferring finalizing a finding at this time for Oregon. The current approval of the state’s SIP submission will remain in place for the time being, pending further review. We make no final determination in this action regarding whether the California monitoring sites at issue should or should not be treated as receptors for purposes of addressing interstate transport for the 2015 ozone NAAQS.

V. Quantifying Upwind-State NO_x Emissions Reduction Potential To Reduce Interstate Ozone Transport for the 2015 Ozone NAAQS

A. The Multi-Factor Test for Determining Significant Contribution

This section describes the EPA’s methodology at Step 3 of the 4-step framework for identifying upwind emissions that constitute “significant” contribution for the states subject to this final rule and focuses on the 23 states with FIP requirements identified in the

previous sections. Following the existing framework as applied in the prior CSAPR rulemakings, the EPA's assessment of linked upwind state emissions is based primarily on analysis of several alternative levels of NO_x emissions control stringency applied uniformly across all of the linked states. The analysis includes assessment of non-EGU stationary sources in addition to EGU sources in the linked upwind states.

The EPA applies a multi-factor test—the same multi-factor test that was used in CSAPR, the CSAPR Update, and the Revised CSAPR Update¹⁹⁶—to evaluate increasing levels of uniform NO_x control stringency. The multi-factor test, which is central to EPA's Step 3 quantification of significant contribution, considers cost, available emissions reductions, downwind air quality impacts, and other factors to determine the appropriate level of uniform NO_x control stringency that would eliminate significant contribution to downwind nonattainment or maintenance receptors. The selection of a uniform level of NO_x emissions control stringency across all of the linked states, reflected as a representative cost per ton of emissions reduction (or a weighted average cost per ton in the case of EPA's non-EGU and EGU analysis for 2026 mitigation measures), also serves to apportion the reduction responsibility among collectively contributing upwind states. This approach to quantifying upwind state emission-reduction obligations using uniform cost was reviewed by the Supreme Court in *EME Homer City Generation*, which held that using such an approach to apportion emissions reduction responsibilities among upwind states that are collectively responsible for downwind air quality impacts “is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.” 572 U.S. at 519.

There are four stages in developing the multi-factor test: (1) identify levels of uniform NO_x control stringency; (2) evaluate potential NO_x emissions reductions associated with each identified level of uniform control stringency; (3) assess air quality improvements at downwind receptors for each level of uniform control stringency; and (4) select a level of control stringency considering the identified cost, available NO_x emissions reductions, and downwind air quality impacts, while also ensuring that emissions reductions do not

unnecessarily over-control relative to the contribution threshold or downwind air quality.

As mentioned in section III.A.2 of this document, commenters on the proposed rule and previous ozone transport rules have suggested that the EPA should regulate VOCs as an ozone precursor. For this final rule, the EPA examined the results of the contribution modeling performed for this rule to identify the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state to each downwind receptor. Of the total upwind-downwind linkages in 2023, the contributions from NO_x emissions comprise 80 percent or more of the total anthropogenic contribution for nearly all of the linkages (121 out of 124 total). Across all receptors, the contribution from NO_x emissions ranges from 84 percent to 97 percent of the total anthropogenic contribution from upwind states. This review of the portion of the ozone contribution attributable to anthropogenic NO_x emissions versus VOC emissions from each linked upwind state leads the Agency to conclude that the vast majority of the downwind air quality areas addressed by the final rule under are primarily NO_x-limited, rather than VOC-limited. Therefore, the EPA continues to find that regulation of VOCs as an ozone precursor in upwind states is not necessary to eliminate significant contribution or interference with maintenance in downwind areas in this final rule. The remainder of this section focuses on EPA's strategy for reducing regional-scale transport of ozone by targeting NO_x emissions from stationary sources to achieve the most effective reductions of ozone transport over the geography of the affected downwind areas.

For both EGUs and non-EGUs, section V.B of this document describes the available NO_x emissions controls that the EPA evaluated for this final rule and their representative cost levels (in 2016\$). Section V.C of this document discusses EPA's application of that information to assess emissions reduction potential of the identified control stringencies. Finally, section V.D of this document describes EPA's assessment of associated air quality impacts and EPA's subsequent identification of appropriate control stringencies considering the key relevant factors (cost, available emissions reductions, and downwind air quality impacts).

This multi-factor approach is consistent with EPA's approach in prior transport actions, such as CSAPR. In

addition, as was evaluated in the CSAPR Update and Revised CSAPR Update, the EPA evaluated whether, based on particularized evidence, its selected control strategy would result in over-control for any upwind state by examining whether an upwind state is linked solely to downwind air quality problems that could have been resolved at a lesser threshold of control stringency and whether an upwind state could reduce its emissions below the 1 percent air quality contribution threshold at a lesser threshold of control stringency. This analysis is described in section V.D of this document.

Finally, while the EPA has evaluated potential emissions reductions from non-EGU sources in prior rules and found certain non-EGU emissions reductions should inform the budgets established in the NO_x SIP Call, this is the first action for which the EPA is finalizing non-EGU emissions reductions within the context of the specific, 4-step interstate transport framework established in CSAPR. The EPA applies its multi-factor test to non-EGUs and independently evaluates non-EGU industries in a consistent but parallel track to its Step 3 assessment for EGUs. This is consistent with the parallel assessment approach taken for EGUs and non-EGUs in the Revised CSAPR Update. Following the conclusions of the EGU and non-EGU multi-factor tests, the identified reductions for EGUs and non-EGUs are combined and collectively analyzed to assess their effects on downwind air quality and whether the rule achieves a full remedy to eliminate “significant contribution” while avoiding over-control.

To ensure that this rule implements a full remedy for the elimination of significant contribution from upwind states, the EPA has reviewed available information on all major industrial source sectors in the upwind states inclusive of commenter-provided data. This analysis leads the EPA to conclude that both EGUs and certain large sources in several specific industrial categories should be evaluated for emissions control opportunities. As discussed in the sections that follow, the EPA determines, for both EGUs and the selected non-EGU source categories, there are impactful emissions reduction opportunities available at reasonable cost-effectiveness thresholds. As in the Revised CSAPR Update, the EPA examines EGUs and non-EGUs in this section on consistent but distinct parallel tracks due to differences stemming from the unique characteristics of the power sector

¹⁹⁶ See CSAPR, Final Rule, 76 FR 48208 (August 8, 2011).

compared to other industrial source categories.

Since the NO_x SIP Call, EGUs have consistently been regulated under ozone transport rules. These units operate in a coordinated manner across a highly interconnected electrical grid. Their configuration and emissions control strategies are relatively homogenous, and their emissions levels and emissions control opportunities are generally very well understood due to longstanding monitoring and data-reporting requirements. Non-EGU sources, by contrast, are relatively heterogeneous, even within a single industrial category, and have far greater variation in existing emissions control requirements, emissions levels, and technologies to reduce emissions. In general, despite these differences, the information available for this rulemaking indicates that both EGUs and certain non-EGU categories have available cost-effective NO_x emissions reduction opportunities at relatively commensurate cost per ton levels, and these emissions reductions will make a meaningful improvement in air quality at the downwind receptors. Section V.B.2 of this document describes EPA's process for selecting specific non-EGU industries and emissions unit types included in this final rulemaking.

The EPA notes that its Step 3 analysis for this FIP does not assess additional emissions reduction opportunities from mobile sources. The EPA continues to believe that title II of the CAA provides the primary authority and process for reducing these emissions at the Federal level. EPA's various Federal mobile source programs, summarized in this section, have delivered and are projected to continue to deliver substantial nationwide reductions in both VOCs and NO_x emissions; these reductions from final rules are factored into the Agency's assessment of air quality and contributions at Steps 1 and 2. Further, states are generally preempted from regulating new vehicles and engines with certain exceptions, and therefore a question exists regarding EPA's authority to address such emissions through such means when regulating in place of the states under CAA section 110(c). See generally CAA section 209. See also 86 FR 23099. As noted earlier, the EPA accounted for mobile source emissions reductions resulting from other federally enforceable regulatory programs in the development of emissions inventories used to support analysis for this final rulemaking, and the EPA does not evaluate any mobile source control measures in its Step 3 evaluation in this

rule.¹⁹⁷ For further discussion of EPA's existing and ongoing mobile source measures, see section V.B.4 of this document.

B. Identifying Control Stringency Levels

1. EGU NO_x Mitigation Strategies

In identifying levels of uniform control stringency for EGUs, the EPA assessed the same NO_x emissions controls that the Agency analyzed in the CSAPR Update and the Revised CSAPR Update, all of which are considered to be widely available in this sector: (1) fully operating existing SCR, including both optimizing NO_x removal by existing operational SCRs and turning on and optimizing existing idled SCRs; (2) installing state-of-the-art NO_x combustion controls; (3) fully operating existing SNCRs, including both optimizing NO_x removal by existing operational SNCRs and turning on and optimizing existing idled SNCRs; (4) installing new SNCRs; and (5) installing new SCRs. Finally, for each of these combustion and post combustion technologies identified, EPA evaluated whether emissions reduction potential from generation shifting at that representative dollar per ton level was appropriate at this Step. Shifting generation to lower NO_x emitting or zero-emitting EGUs may occur in response to economic factors. As the cost of emitting NO_x increases, it becomes increasingly cost-effective for units with lower NO_x rates to increase generation, while units with higher NO_x rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. For the reasons explained in the following sections and supported by technical information provided in the EGU NO_x Mitigation Strategies Final Rule TSD included in the docket for this final rule, the EPA determined that for the regional, multi-state scale of this rulemaking, only EGU NO_x emissions controls 1 and 3 are possible for the 2023 ozone season (fully operating existing SCRs and SNCRs). The EPA finds that it is not possible to

¹⁹⁷ The EPA recognizes that mechanisms exist under title I of the CAA that allow for the regulation of the use and operation of mobile sources to reduce ozone-precursor emissions. These include specific requirements that apply in certain ozone nonattainment areas including motor vehicle inspection and maintenance (I/M) programs, gasoline vapor recovery, clean-fuel vehicle programs, transportation control programs, and vehicle miles traveled programs. See, e.g., CAA sections 182(b)(3), 182(b)(4), 182(c)(3), 182(c)(4), 182(c)(5), 182(d)(1), 182(e)(3), and 182(e)(4). The EPA views these programs as well as others that meet CAA requirements can be effective and appropriate in the context of the planning requirements applicable to designated nonattainment areas.

install state-of-the-art NO_x combustion controls by the 2023 ozone season on a regional scale; those controls are assumed to be available by the beginning of the 2024 ozone season. All cost values discussed in the rest of the section for EGUs are in 2016 dollars.

a. Optimizing Existing SCRs

Optimizing (*i.e.*, turning on idled or improving operation of partially operating) existing SCRs can substantially reduce EGU NO_x emissions quickly, using investments that have already been made in pollution control technologies. With the promulgation of the CSAPR Update and the Revised CSAPR Update, most operators in the covered states improved their SCR performance and have continued to maintain that level of improved operation. However, this optimized SCR performance was not universal and not always sustained. Between 2017 and 2020, as the CSAPR Update ozone-season NO_x allowance price declined, NO_x emissions rates at some SCR-controlled EGUs increased. For example, power sector data from 2019 revealed that, in some cases, operating units had SCR controls that had been idled or were operating partially, and therefore suggested that there remained emissions reduction potential through optimization.¹⁹⁸ The EPA determined in the Revised CSAPR Update that optimizing SCRs was a readily available approach for EGUs to reduce NO_x emissions in the 12 states addressed by a FIP in that rulemaking. Noticeable improvements in emissions rates at units with SCRs during the 2021 and 2022 compliance period further affirm the ability of sources to quickly implement this mitigation strategy and to realize emissions reductions from doing so. This emissions reduction measure is currently available at EGUs across the broader geography affected in this final rulemaking (including in states not previously affected by the Revised CSAPR Update). The EPA thus determines that SCR optimization, of both idled and partially operating controls, is a viable mitigation strategy for the 2023 ozone season.

The EPA estimates a representative marginal cost of optimizing SCR controls to be approximately \$1,600 per ton, consistent with its estimation in the Revised CSAPR Update for this technology. EPA's EGU NO_x Mitigation Strategies Final Rule TSD for this rule describes a range of cost estimates for

¹⁹⁸ See "Ozone Season Data 2018 vs. 2019" and "Coal-fired Characteristics and Controls" at <https://www.epa.gov/airmarkets/power-plant-data-highlights#OzoneSeason>.

this technology noting that the costs are frequently lower than—and for the majority of EGUs, significantly lower than—this representative marginal cost. While the costs of optimizing existing, operational SCR units include only variable costs, the cost of optimizing SCR units that are currently idled considers both variable and fixed costs of returning the control into service. Variable and fixed costs include labor, maintenance and repair, parasitic load, and ammonia or urea for use as a NO_x reduction reagent in SCR systems. Depending on a unit's control operating status, the representative cost at the 90th percentile unit (among the relevant fleet of coal units with SCR covered in this rulemaking) ranges between \$900 and \$1,700 per ton. The EPA performed an in-depth cost assessment for all coal-fired units with SCRs and found that for the subset of SCRs that are already partially operating, the cost of optimizing is often much lower than \$1,600 per ton and is often under \$900 per ton. The EPA anticipates the vast majority of realized cost for compliance with this strategy to be better reflected by the \$900 per ton end of that range (reflecting the 90th percentile of EGUs optimizing SCRs that are already partially operating) because this circumstance is considerably more common than EGUs that have ceased operating their SCR. This cost distinction is reflected in the EPA's RIA cost estimates. When representing the cost of optimization here, the EPA uses the higher value to reflect both optimization of partially operating and idled controls. EPA's analysis of this emissions control is informed by the latest engineering modeling equations used in EPA's IPM platform. These cost and performance equations were recently updated in the summer of 2021 in preparation for this rule, and subsequently evaluated for the final rule in 2022 and determined to still be appropriate. The description and development of the equations are documented in EGU NO_x Mitigation Strategies Final Rule TSD and accompanying documents.¹⁹⁹ They are also implemented in an interactive spreadsheet tool called the Retrofit Cost Analyzer and applied to all units in the fleet. These materials are available in the docket for this action.

The EPA is using the same methodology to identify SCR

¹⁹⁹ The CSAPR Update estimated \$1,400 per ton as a representative cost of turning on idled SCR controls. EPA used the same costing methodology while updating for input cost increases (e.g., urea reagent) to arrive at \$1,600 per ton in the final Revised CSAPR Update (while also updating from 2011 dollars to 2016 dollars).

performance as it did in the Revised CSAPR Update. To estimate EGU NO_x reduction potential from optimizing, the EPA considers the difference between the non-optimized NO_x emissions rates and an achievable operating and optimized SCR NO_x emissions rate. To determine this rate, EPA evaluated nationwide coal-fired EGU NO_x ozone season emissions data from 2009 through 2019 and calculated an average NO_x ozone season emissions rate across the fleet of coal-fired EGUs with SCR for each of these eleven years. The EPA found it prudent to not consider the lowest or second-lowest ozone season NO_x emissions rates, which may reflect SCR systems that have all new components (e.g., new layers of catalyst). Data from these systems are potentially not representative of ongoing achievable NO_x emissions rates considering broken-in components and routine maintenance schedules. Considering the emissions data over the full time period from 2009–2019 results in a third-best rate of 0.079 pounds NO_x per million British thermal units (lb/mmBtu). Therefore, consistent with the Revised CSAPR Update, where EPA identified 0.08 lb/mmBtu as a reasonable level of performance for units with optimized SCR, the EPA finalizes a rate of 0.08 lb/mmBtu as the optimized rate for this rule. The EPA notes that half of the SCR-controlled EGUs achieved a NO_x emissions rate of 0.064 lb/mmBtu or lower over their third-best entire ozone season. Moreover, for the SCR-controlled coal units that the EPA identified as having a 2021 emissions rate greater than 0.08 lb/mmBtu, the EPA verified that in prior years, the majority (more than 90 percent) of these same units had demonstrated and achieved a NO_x emissions rate of 0.08 lb/mmBtu or less on a seasonal or monthly basis. This further supports EPA's determination that 0.08 lb/mmBtu reflects a reasonable emissions rate for representing SCR optimization at coal steam units in identifying uniform control stringency. This emissions rate assumption of 0.08 lb/mmBtu reflects what those units would achieve on average when optimized, recognizing that individual units may achieve lower or higher rates based on unit-specific configuration and dispatch patterns. Units historically performing at, or better, than this rate of 0.08 lb/mmBtu are assumed to continue to operate at that prior performance level.

Given the magnitude and duration of the air quality problems addressed by this rulemaking, the EPA also applied the same methodology to identify a

reasonable level of performance for optimizing existing SCRs at oil- and gas-fired steam units and simple cycle units (for which EPA determined that a 0.03 lb/mmBtu emissions rate reflected SCR optimization) as well as at combined-cycle units (for which the EPA determined that a 0.012 lb/mmBtu emissions rate reflected SCR optimization).

The EPA evaluated the feasibility of optimizing idled SCRs for the 2023 ozone season. Based on industry past practice, the EPA determined that idled controls can be restored to operation quickly (i.e., in less than 2 months). This timeframe is informed by many electric utilities' previous long-standing practice of utilizing SCRs to reduce EGU NO_x emissions during the ozone season while putting the systems into protective lay-up during the non-ozone season months. For example, this was the long-standing practice of many EGUs that used SCR systems for compliance with the NO_x Budget Trading Program. It was quite typical for SCRs to be turned off following the end of the ozone season control period on September 30. These controls would then be put into protective lay-up for several months of non-use before being returned to operation by May 1 of the following ozone season.²⁰⁰ Therefore, the EPA believes that optimization of existing SCRs is possible for the portion of the 2023 ozone season covered under this final rule. The recent successful implementation of this strategy for the Revised CSAPR Update Rule, and corresponding fast improvement in SCR performance rates at units with optimization potential, provides further supporting evidence of the viability of this timeframe.

The vast majority of SCR-controlled units (nationwide and in the 23 linked states for which EPA is issuing a FIP for EGUs) are already partially operating these controls during the ozone season based on reported 2021 and 2022 emissions rates. Notably, the higher ozone season NO_x allowance price observed in 2022 resulted in more units operating their controls closer to their potential and bringing collective emissions from those 12 states closer to the 2023 emissions budgets for those states in this final rule, accordingly.

²⁰⁰ In the 22-state CSAPR Update region, 2005 EGU NO_x emissions data suggest that 125 EGUs operated SCR systems in the summer ozone season while idling these controls for the remaining 7 non-ozone season months of the year. Units with SCR were identified as those with 2005 ozone season average NO_x rates that were less than 0.12 lb/mmBtu and 2005 average non-ozone season NO_x emissions rates that exceeded 0.12 lb/mmBtu and where the average non-ozone season NO_x rate was more than double the ozone season rate.

Existing SCRs operating at partial capacity still provide functioning, maintained systems that may only require an increased chemical reagent feed rate (*i.e.*, ammonia or urea) up to their design potential and catalyst maintenance for mitigating NO_x emissions; such units may require increased frequency or quantity of deliveries, which can be accomplished within a few weeks. In many cases, EGUs with SCR have historically achieved more efficient NO_x removal rates than their current performance and can therefore simply revert to earlier operation and maintenance plans that achieved demonstrably better SCR performance.

In the 12 states subject to this control stringency in the Revised CSAPR Update, the EPA observed significant immediate-term improvements in SCR performance in the first ozone season following finalization of that rule, as evidenced in particular by the sharp drop in emissions rate at Miami Fort unit 7 (*see* EGU NO_x Mitigation Strategies Final Rule TSD). For instance, in June of 2021—within months of the Revised CSAPR Rule being finalized—Miami Fort Unit 7 and Unit 8 (which had substantial SCR optimization potential) were able to reach levels of 0.07 lb/mmBtu of NO_x (a greater than 50 percent reduction from where they had operated the prior year during the same month). Such empirical data further illustrates the viability of this mitigation strategy for the 2023 control period in response to this rule.

Comment: EPA received comments supporting the 0.08 lb/mmBtu emissions rate as achievable and, according to some commenters, underestimate the control's potential. Some of these commenters went on to provide their own analysis demonstrating that the 0.08 lb/mmBtu was achievable not only on average for the non-optimized fleet, but also for these individual units and that the resulting state emissions budgets were likewise achievable. Some commenters suggested that the rate should be lower and premised on EPA using the first- or second-best year instead of the third best year of SCR performance. Some commenters observed that using the same methodology, but omitting SCR units that have since retired, could deliver an even lower SCR performance benchmark rate.

Response: The EPA notes that updating the inventory of coal-fired EGUs to reflect recent retirements and to include data reported since 2019 (*e.g.*, 2009–2021) would provide a lower value of 0.071 lb/mmBtu. However, EPA acknowledges that 2020 operational

data included impacts from COVID–19 pandemic shutdowns (such as atypical electricity demand patterns) which complicate interpretations of typical EGU emissions performance. Additionally, EPA believes that in this context, a unit's retirement in 2020 or 2021 does not obviate the usefulness of its prior SCR operational data for assessing the emissions control performance of other existing SCRs across the fleet. Consequently, EPA is continuing to use the same value of the 0.08 lb/mmBtu emissions rate calculated from the 2009–2019 data set identified at the time of the final Revised CSAPR Update Rule in this rulemaking. EPA's analysis focuses on the third best ozone season average rate because EPA believes that the first- or second-best rate, consistent with its CSAPR Update final rule and in the Revised CSAPR Update, could give undue weight to the emissions control performance of new SCRs in their first year of service and their corresponding newer SCR components. It does not necessarily reflect achievable ongoing NO_x emissions rates at relatively older SCRs. The third-lowest season was selected because it represents a time when the unit was most likely consistently and efficiently operating its SCR in a manner representative of sustained future operation.

Comment: Other commenters suggested that EPA should apply a higher NO_x emissions rate than 0.08 lb/mmBtu to existing SCR at coal EGUs premised on considerations such as: a generally reduced average capacity factor for coal units in recent years, the age of the boiler, coal rank (bituminous or subbituminous), or other unit-specific considerations that commenters claim make the 0.08 lb/mmBtu rate unattainable for a specific unit.

Response: EPA did not find sufficient justification to apply a higher average emissions rate than 0.08 lb/mmBtu. EPA found that some commenters were misunderstanding or misconstruing both EPA's assumption and implementation mechanism as a unit-level requirement for every SCR-controlled unit instead of a reflection of a fleet-wide average based on a third-best rate. The commenters' observation—that 0.08 lb/mmBtu may be difficult for some units to achieve or may not be a preferred compliance strategy for a given unit given its dispatch levels—does not contradict EPA's assumption, but rather supports its methodology and assumptions. As EPA pointed out in the proposed rule, this fleet-level emissions rate assumption of 0.08 lb/mmBtu for non-optimized units reflects, on average,

what those units would achieve when optimized. Some of these units may achieve rates that are lower than 0.08 lb/mmBtu, and some units may operate above that rate based on unit-specific configuration and dispatch patterns. In other words, EPA is using this assumption as the average performance of a unit that optimizes its SCR, recognizing that heterogeneity within the fleet will likely lead some units to overperform and others to underperform this rate. Moreover, a review of unit-specific historical data indicates that this is a reasonable assumption: not only has the group of units with SCR optimization potential demonstrated they can perform at or better than the 0.08 lb/mmBtu rate on average, over 90 percent of the individual units in this group have already met this rate on a seasonal and/or monthly basis based on their reported historical data.

Additionally, EPA's examination of units experiencing SCR performance deterioration included notable instances of poor NO_x control at *increased* capacity factors. As an example, Miami Fort Unit 7 had considerably more hours of operation at a 70 to 79 percent capacity factor in 2019 compared to previous years. However, Miami Fort Unit 7's ozone-season NO_x emissions rate *substantially increased* in 2019 compared to previous years. This SCR performance deterioration runs counter to the notion that an increase in emissions rates is purely driven by reduced capacity factor, as suggested by commenters. This substantial deterioration in the median emissions rate performance is observable even when comparing specific hours in 2019 to specific hours in prior years when the unit operated in the same 70 to 79 percent capacity factor range. In fact, in 2019 the unit experienced notable emissions rate increases from prior years across multiple capacity factor ranges as low as 40 percent to as high as 80 percent. This type of data indicates instances where the increase in emissions rate (and emissions) is not necessitated by load changes but is more likely due to the erosion of the existing incentive to optimize controls (*i.e.*, the ozone-season NO_x allowance price has fallen so low that unit operators find it more economic to surrender additional allowances instead of continuing to operate pollution controls at an optimized level).

EPA observed this pattern in other units identified in this rulemaking as having significant SCR optimization emissions reduction potential. In the accompanying Emissions Data TSD for the supplemental notice that EPA recently released in a proceeding to

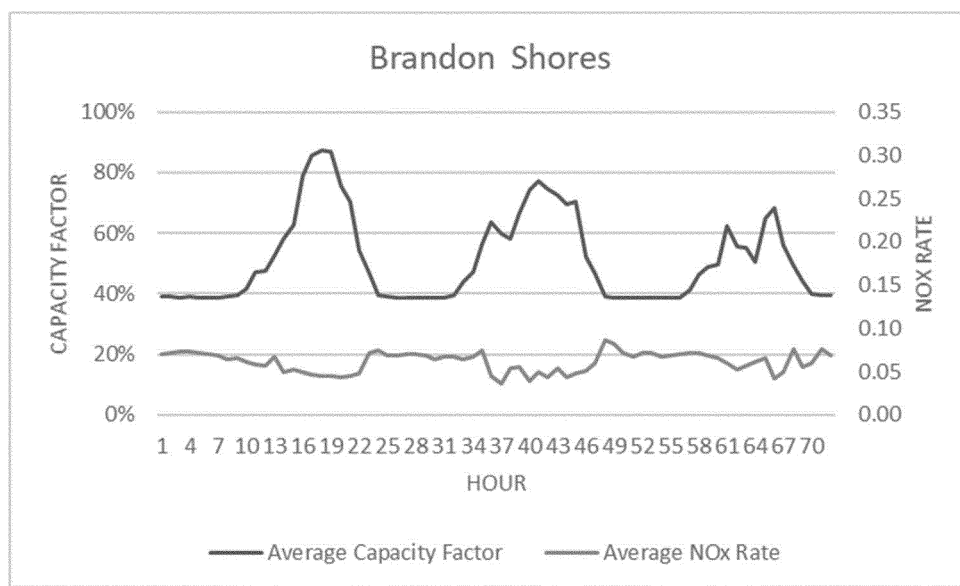
address a recommendation submitted to EPA by the Ozone Transport Commission under CAA section 184(c), EPA noted, “In their years with the lowest average ozone season NO_x emissions rates in this analysis, these EGUs had relatively low NO_x emissions rates at mid- and high-operating levels; moreover, there was little variability in NO_x emissions rates at these operating levels. However, during the 2019 ozone season, these EGUs had higher NO_x emissions rates and greater variability in

NO_x emissions rates across operating levels than in the past, particularly at mid-operating levels.”²⁰¹ That hourly data analysis, included in this docket, controls for operating level changes and still finds there to be instances across multiple SCR-controlled units where hourly emissions rates are increasing even when compared to the same load levels in previous years.

Some commenters have alleged that in recent years coal-fired EGUs have declined in capacity factor and that SCR

performance declines at those lower operating levels. However, hourly data indicate that maintaining consistent SCR performance at lower capacity factors is possible. For example, the unit-level performance data in Figure 2 to section VI.B of this document show the emissions rate at a coal-fired EGU with existing SCR staying relatively low (consistent with our optimization assumption of 0.08 lb/mmBtu) and stable across a wide range of capacity factors.²⁰²

Figure 2 to section V.B.1.a: Example of Consistently Low Unit-level Emissions Rate During Periods of Varying Capacity Factor



Furthermore, most recent data from 2022 illustrates that cycling units do have the ability to adjust cycling patterns in a manner that enables them to maintain a lower emissions rate throughout the season while still achieving a load cycling pattern at the unit. For example, the SCR-controlled Conemaugh Unit 2 in Pennsylvania adjusted operating patterns in 2022 to have a slightly higher minimum load in most hours (maintaining a range of 550 MW–900 MW for most hours as opposed to 450 MW–900 MW observed in 2021). This change in minimum load, and corresponding minimum operating temperature, enabled the unit to maintain emissions rates in the 0.05 lb/mmBtu to 0.10 lb/mmBtu range for most of the 2022 season (as opposed to NO_x emissions rates that regularly exceeded

0.25 lb/mmBtu in the 2021 season). This 2022 improvement in SCR operation occurred during a period when allowance prices increased relative to prior years, creating an incentive for potential emissions reductions through SCR optimization.

Comment: EPA also received comment suggesting it should deviate from its approach in the CSAPR Update of using a nationwide data set of all SCR controlled coal units to establish a third best year, and instead limit the dataset to either just the covered states, or—in the case of some commenters—just to the baseline years of those units at which EPA is identifying optimization potential. They claim the current methodology may capture extremely efficient SCR performance years at the best performing units and that level of

performance may not be available at all units with optimization potential. These commenters also disagree with the EPA finding that SCRs can consistently maintain a 0.08 lb/mmBtu rate over time.

Response: EPA reviewed the data and its methodology and evaluated it against its intention to identify a technology-specific representative emissions rate for SCR optimization. In doing so, EPA did not identify any need to make the suggested change. EPA is interested in the performance potential of a technology, and a larger dataset provides a superior indication of that potential as opposed to a smaller, state-limited dataset. Moreover, EPA’s use of the third best year (as opposed to best) from its baseline period results in an average optimization level that is robust

²⁰¹ “Analysis of Ozone Season NO_x Emissions Data for Coal-Fired EGUs in Four Mid-Atlantic States,” EPA Clean Air Markets Division. December

2020. Available at https://www.epa.gov/sites/production/files/2020-12/documents/184c_emission_data_tsd.pdf.

²⁰² EPA, *Air Markets Program Data*. Available at www.epa.gov/ampd.

to the commenters' concern that EPA should not overstate the fleetwide representative optimization level. Prior experience with EPA's methodology and program has borne out empirical evidence of its reasonableness. In both the CSAPR Update and in Revised CSAPR Update rule, EPA appropriately relied on the largest dataset possible (*i.e.*, nationwide) to derive technology performance averages that it then applied respectively to the CSAPR Update 22-state region and the Revised CSAPR Update's 12-state region. EPA repeats that successful approach in this rule. Finally, as noted in the preceding paragraphs, in affirming the reasonableness of this approach, EPA examined the historical reported data (pre-2021) for the units in the states with SCR optimization potential and found the nationwide derived average appropriate and consistent with demonstrated capability and performance of units within those states. That is, the vast majority of units to which this resulting emissions rate assumption was being applied had demonstrated the ability to achieve this rate in some prior year for an extended monthly or seasonal basis. This information is discussed further in the EGU NO_x Mitigation Strategies Final Rule TSD in the docket.

Comment: Some commenters suggested the price of SCR optimization is higher than the \$1,600 per ton figure proposed due to current market conditions for aqueous ammonia or other input prices.

Response: EPA provides a representative cost for this mitigation technology which is anticipated to reflect the cost, on average, throughout the compliance period for the rule. While there may be volatility in the market during that period where the price falls above or below the single representative threshold value, EPA's EGU NO_x Mitigation Strategies Final Rule TSD explains how the representative cost is derived and is inclusive of consultation and vetting by third party air pollution control consulting groups. Commenters did not demonstrate that observed 2021 elevated prices amid market volatility would continue into the future compliance periods discussed in this rule. Moreover, the selection of the mitigation technology is reflective of a variety of factors including reduction potential and air quality impact. A higher cost (commenter suggests up to \$3,800 per ton) would not change EPA's determination that optimizing already existing SCRs is an appropriate mitigation strategy for Step 3 emissions reduction analysis in this rulemaking as

it would remain one of the most widely available, widely practiced, and lowest cost mitigation measures with meaningful downwind air quality benefit. Appendix B of the EGU NO_x Mitigation Strategies Final Rule TSD further addresses commenters' concerns as it provides a variety of sensitivities showing cost per ton levels under a variety of different input assumptions (including higher material and reagent cost). It supports the continued inclusion of this technology in the rule even in the event that higher reagent costs extend into compliance years.

Comment: While many commenters supported the feasibility of 2023 ozone-season implementation by noting the "immediate availability" of SCR optimization, other commenters argued that the engineering, procurement, and other steps required for SCR optimization were not feasible given the anticipated limited window between rule finalization and the start of the 2023 ozone season.

Response: There is ample evidence of units restoring their optimal performance within a two-month timeframe. Not only do units reactivate SCR performance level at the start of an ozone-season when tighter emissions limits begin, but unit-level data also shows instances where sources have demonstrated the ability to quickly alter their emissions rate within an ozone-season and even within the same day in some cases. Moreover, this emissions control is familiar to sources and was analyzed and included in the Revised CSAPR Update emissions budgets finalized in 2021 and the CSAPR Update emissions budgets finalized in 2016. With this experience, and notice through the March 2022 proposed rule, as well as over two months from final rule to effective date, the viability of this emissions control for the 2023 ozone season is consistent with the 2-week to 2-month timeframe that EPA identified as reasonable in the CSAPR Update, Revised CSAPR Update, and in this rulemaking. Similar to prior rules, commenters provide some unit-level examples where it has taken longer. Also similar to those prior rules, EPA does not find those unit-level examples compelling in the context of its fleet average assumptions and in the implementation context of a trading program which provides compliance alternatives in the event a specific unit prefers more time to implement a given control measure. As noted in *Wisconsin*, ". . . all those anecdotes show is that installation can drag on when companies are unconstrained by the ticking clock of the law." 938 F.3d at 330.

b. Installing State-of-the-Art NO_x Combustion Controls

The EPA estimates that the representative cost of installing state-of-the-art combustion controls is comparable to, if not notably less than, the estimated cost of optimizing existing SCR (represented by \$1,600 per ton). State-of-the-art combustion controls such as low-NO_x burners (LNB) and over-fire air (OFA) can be installed or updated quickly and can substantially reduce EGU NO_x emissions. Nationwide, approximately 99 percent of coal-fired EGU capacity greater than 25 MW is equipped with some form of combustion control; however, the control configuration or corresponding emissions rates at a small portion of those units (including units in those states covered in this action) indicate they do not currently have state-of-the-art combustion control technology. For this rulemaking, the Agency re-evaluated its NO_x emissions rate assumptions for upgrading existing combustion controls to state-of-the-art combustion control. The EPA is maintaining its determination that NO_x emissions rates of 0.146 to 0.199 lb/mmBtu can be achieved on average depending on the unit's boiler configuration,²⁰³ and, once installed, reduce NO_x emissions at all times of EGU operation.

These assumptions are consistent with the Revised CSAPR Update. They are further discussed in the EGU NO_x Mitigation Strategies Final Rule TSD. In particular, the EPA is finalizing, as proposed, the application of the 0.199 lb/mmBtu emissions rate assumption for both boiler types (tangentially and wall fired). EPA's analysis calculated average emissions rates of 0.199 lb/mmBtu for combustion controls on dry bottom wall fired units and 0.146 lb/mmBtu for tangentially fired units. However, many of the likely impacted units burn bituminous coal, and the 0.146 lb/mmBtu nationwide average for tangentially-fired (inclusive of subbituminous units) appears to be below the demonstrated emissions rate of state-of-the-art combustion controls for bituminous coal units of this boiler type. Therefore, EPA's assignment of a 0.199 lb/mmBtu emissions rate for combustion controls at all affected unit types is robust to current and future coal choice at a unit.

The EPA has previously examined the feasibility of installing combustion controls and found that industry had demonstrated ability to install state-of-

²⁰³ Details of EPA's assessment of state-of-the-art NO_x combustion controls are provided in the EGU NO_x Mitigation Strategies Final Rule TSD.

the-art LNB controls on a large unit (800 MW) in under six months when including the pre-installation phases (design, order placement, fabrication, and delivery).²⁰⁴ In prior rules, the EPA has documented its own assessment of combustion control timing installation as well as evaluated comments it received regarding installation of combustion controls from the Institute of Clean Air Companies.²⁰⁵ Those comments provided information on the equipment and typical installation time frame for new combustion controls, accounting for all steps. To date, EPA has found it generally takes between 6–8 months on a typical boiler—covering the time through bid evaluation through start-up of the technology. The deployment schedule is repeated here as:

- 4–8 weeks—bid evaluation and negotiation
- 4–6 weeks—engineering and completion of engineering drawings
- 2 weeks—drawing review and approval from user
- 10–12 weeks—fabrication of equipment and shipping to end user site
- 2–3 weeks—installation at end user site
- 1 week—commissioning and start-up of technology

Given the referenced timeframe of approximately 6 to 8 months to complete combustion control installation in the region, the EPA is finalizing that installation of state-of-the-art combustion controls is a readily available approach for EGUs to reduce NO_x emissions by the start of the 2024 ozone season. More details on these analyses can be found in the *EGU NO_x Mitigation Strategies Final Rule TSD*.

The cost of installing state-of-the-art combustion controls per ton of NO_x reduced is dependent on the combustion control type and unit type. The EPA estimates the cost per ton of state-of-the-art combustion controls to be \$400 per ton to \$1,200 per ton of NO_x removed using a representative capacity factor of 85 percent. This cost fits well within EPA's representative cost threshold observed for SCR optimization and combustion controls (of \$1,600 per ton) which would accommodate combustion control upgrade even under scenarios where a

lower capacity factor is assumed. 99 percent of units have some form of combustion controls, indicating the widespread cost-effectiveness of this control. See the *EGU NO_x Mitigation Strategies Final Rule TSD* for additional details.

At proposal EPA assumed that emissions reductions from combustion control upgrades at affected EGUs in states subject to the Revised CSAPR Update program could occur by 2023 given that those EGUs may have already begun pursuing such upgrades in response to that previous rule. However, EPA does not have data to confirm that presumption, and hence EPA is determining in this final rule that combustion control upgrades for all affected EGUs, regardless of whether they were previously subject to the Revised CSAPR Update program, should be considered available by the 2024 ozone season, consistent with the deployment schedule noted in this section.

Comment: Some commenters suggested that EPA, in its modeling for the proposed rule, overestimated the ability of combustion control technologies to achieve very low NO_x emissions rates. The commenters claim EPA's assumptions are derived from projected NO_x emissions rates based on ideal circumstances for NO_x emissions reductions, including combinations of fuel composition and unit design that are not typical and should not be extrapolated to the national inventory.

Response: EPA's emissions performance rate for state-of-the-art combustion controls is derived from historical data and takes both boiler type and coal choice into account. EPA reviewed historical data and identified the average emissions rates for units with this technology already in place. It segmented this analysis by boiler type (dry-bottom wall-fired boiler and tangentially-fired, and further segmented by coal rank to assess the average performance among these varying parameters. As explained in the *EGU NO_x Mitigation Strategies Final Rule TSD*, EPA chose an emissions rate for which it verified accommodated (*i.e.*, was greater than or equal to) the average performance rate identified above for each boiler configuration with state-of-the-art combustion controls and resulted in reductions consistent with the technology's assumed percent reduction potential when applied to this subset of units. It also assessed whether the rate had been demonstrated by both subbituminous and bituminous coal units with state-of-the-art combustion controls. EPA further assessed the percent reduction that achieving this

rate would require from the specific segment of the fleet identified as having this mitigation measure available. Here too, EPA found that the effective percent reduction for the identified fleet (inclusive of their existing coal rank choice) is well within the historical performance range for this technology. Therefore, EPA is finalizing the combustion control upgrade performance assumption of 0.199 lb/mmBtu as appropriate representative average performance rate for this technology and robust to different boiler types and coal ranks.

c. Optimizing Already Operating SNCRs or Turning on Idled Existing SNCRs

Optimizing already operating SNCRs or turning on idled existing SNCRs can also reduce EGU NO_x emissions quickly, using investments in pollution control technologies that have already been made. Compared to no post-combustion controls on a unit, SNCRs can achieve a 25 percent reduction on average in EGU NO_x emissions (with sufficient reagent). They are less capital intensive but less efficient at NO_x removal than SCRs. These controls are in use to some degree across the U.S. power sector. In the 22 linked states with EGU reductions identified in this final rule, approximately 11 percent of coal-fired EGU capacity is equipped with SNCR.²⁰⁶ Recent power sector data suggest that, in some cases, SNCR controls have been operating less in 2021 relative to performance in prior years. For instance, EPA reviewed the last five years of performance data for all the units with SNCR optimization potential in its Engineering Analysis. It found that in 2021—the most recent year reviewed—that the weighted average ozone season emissions rate for these units was higher than the prior three years (indicating some deterioration in average performance). Moreover, a unit level review illustrated that 80 of the 107 units had performed better in a prior year by an average of 13 percent—indicating substantial optimization potential.²⁰⁷

The EPA determined that optimizing already operating SNCRs or turning on idled SNCRs is an available approach for EGUs to reduce NO_x emissions, has similar implementation timing to restarting idled SCR controls (less than 2 months for a given unit), and therefore could be implemented in time for the 2023 ozone season. In this final rule, the EPA is determining that this emissions

²⁰⁴ The EPA finds that, generally, the installation phase of state-of-the-art combustion control upgrades—on a single-unit basis—can be as little as 4 weeks to install with a scheduled outage (not including the pre-installation phases such as permitting, design, order, fabrication, and delivery) and as little as 6 months considering all implementation phases.

²⁰⁵ EPA-HQ-OAR-2015-0500-0093.

²⁰⁶ <https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6>.

²⁰⁷ See “Historical Emission Rates for Units with SNCR Optimization Potential” in the docket for this rulemaking.

control measure is available beginning in the 2023 ozone season.

Using the Retrofit Cost Analyzer described in the *EGU NO_x Mitigation Strategies Final TSD*, the EPA estimates a representative cost of optimizing SNCR ranging from approximately \$1,800 per ton (for partially operating SNCRs) to \$3,900 per ton (for idled SNCRs). For existing SNCRs that have been idled, unit operators may need to restart payment of some fixed and variable operating costs including labor, maintenance and repair, parasitic load, and ammonia or urea. The EPA determined that the majority of units with existing SNCR optimization potential were already partially operating their controls. Therefore, the EPA finalizes a representative cost of \$1,800 per ton for SNCR optimization as this value best reflects the circumstances of the majority of the affected EGUs with SNCR.

d. Installing New SNCRs

The EPA evaluated potential emissions reductions and associated costs from retrofitting EGUs with new SNCR post-combustion controls at steam units lacking such controls, which can achieve a 25 percent NO_x reduction on average. New SNCR technology provides owners with a relatively less capital-intensive option for reducing NO_x emissions compared to new SCR technology, albeit at the expense of higher operating costs on a per-ton basis and less total emissions reduction potential. SNCR is more widely observed on relatively smaller coal units given its low capital/variable cost ratio. The average capacity of a coal unit with SNCR is half the size of the average capacity of coal unit with SCR.²⁰⁸ Given these observations, the EPA identifies this technology as an emissions reduction measure for coal units less than 100 MW lacking post-combustion NO_x control technology. As described in the *EGU NO_x Mitigation Strategies Final Rule TSD*, the EPA estimated that \$6,700 per ton reflects a representative SNCR retrofit cost level for these units.

For this rulemaking, EPA is not considering SNCR installation timing unto itself but is instead considering how long eligible EGUs may need to adopt either SNCR or SCR as a post-combustion control measure. SNCR installations generally have shorter project installation timeframes relative to other post-combustion controls. The time for engineering review, contract award, fabrication, delivery, and

hookup is as little as 16 months including pre-contract award steps for an individual power plant installing controls on more than one boiler. However, SNCR retrofits have less pollution reduction potential than SCR, and as explained further in the next section, the EPA is identifying the retrofit of new SCR rather than SNCR as a strategy for larger steam units due to this lower removal efficiency. This approach respects empirical evidence that larger coal-fired EGUs which installed post-combustion NO_x control technology have overwhelmingly chosen SCR over SNCRs. Even for smaller units less than 100 MW identified as potential candidates for SNCR technology, the EPA does not want to preclude those units from pursuing SCR in lieu of SNCR.

Therefore, in this final rule the EPA defines the availability of emissions reductions from post-combustion control installation to be in 2026, the same period as the start of SCR-based reductions becoming available, to allow enough time for eligible EGUs to choose between SCR or SNCR. SNCR installation shares similar implementation steps with and also need to account for the same regional factors as SCR installations, which are described in the next section. While the EPA is determining that at least 16 months would be needed to complete all necessary steps of SNCR development and installation, an eligible EGU choosing new SCR instead would require installation timing of 36 to 48 months. EPA believes its finalized joint timing considerations for post-combustion control retrofits (SNCR and SCR) are justified given that post-combustion control retrofit decisions are subject to unit-specific economic and engineering factors and are sensitive to operator compliance strategy choices with respect to multiple regulatory requirements.

Comment: Some commenters argued that post-combustion control timing assumptions (SCR and SNCR) should be decoupled, which could result in the EPA using the 16-month time frame specific to SNCR installation to require emissions reductions related to new SNCR installations by the 2025 ozone season.

Response: The EPA does not agree that decoupling SCR and SNCR timing consideration is justified in the context of this final rule's emissions control program for EGUs. Approximately 1,000 tons of emissions reduction potential are estimated for the small coal EGUs deemed eligible for SNCR retrofit. The incentives provided through the implementation of this rule's trading

program will encourage these EGUs to determine and adopt emissions reduction measures (including SNCR or SCR) as soon as possible to reduce their allowance holding compliance burden. By scheduling SNCR-related emissions reductions potential for the 2026 ozone season, the EPA preserves the opportunity for considerably superior emissions reduction potential from these EGUs should they select SCR retrofit instead, while still requiring post-combustion control emissions reduction potential ahead of the next attainment date.

Comment: Some commenters argued that the upper range of SNCR NO_x removal performance (40 percent) referenced by EPA is optimistic for many boilers.

Response: EPA evaluated both actual performance and engineering literature regarding SNCR retrofit technology and found both sources supported the range of reduction estimates cited by EPA. (Refer to the *EGU NO_x Mitigation Strategies Final Rule TSD* in the docket for this rulemaking for additional information.) Moreover, for purposes of calculating state budgets, EPA assumes 25 percent reduction from this technology—not 40 percent—which reflects a value well within the range of documented performance for this technology. Remaining comments on SNCR performance potential are addressed in the *RTC Document* and in the *EGU NO_x Mitigation Strategies Final Rule TSD*.

e. Installing New SCR

Selective Catalytic Reduction (SCR) controls already exist on over 66 percent of the coal fleet in the linked states that are subject to a FIP in this rulemaking. Nearly every pulverized coal unit larger than 100 MW built in the last 30 years has installed this control, which is generally required for Best Available Control Technology (BACT) purposes. Other than circulating fluidized bed coal units which can achieve a comparably low emissions rate without this technology, the EPA identifies this emissions reduction measure for coal steam units greater than or equal to 100 MW. SCR is widely available for existing coal units of this size and can provide significant emissions reduction potential, with removal efficiencies of up to 90 percent. The EPA limited its consideration of SCR technology to steam units greater than or equal to 100 MW. The costs for retrofitting a plant smaller than 100 MW with SCR increase

²⁰⁸ See *EGU NO_x Mitigation Strategies Final Rule TSD* for additional discussion.

rapidly due to a lack of economies of scale.²⁰⁹

The amount of time needed to retrofit an EGU with new SCR extends beyond the 2023 ozone season. Similar to the SNCR retrofits discussed in this section, the EPA evaluated potential emissions reductions and associated costs from this control technology, as well as the impacts and need for this emissions control strategy, at the earliest point in time when their installation could be achieved. EPA notes that it has previously determined in the context of ozone transport that regional scale implementation of SCR at numerous EGUs is achievable in 36 months. *See* 63 FR 57356, 57447–50 (October 27, 1998). However, since that time, the EPA has found up to 36–48 months to be a more appropriate installation timeframe for regionwide actions when the EPA is evaluating multiple installations at multiple locations.²¹⁰

In the past, the EPA has found the amount of time to retrofit a single EGU with new SCR, depending on the regulatory program under which such control may be required, may vary between approximately 2 and 4 years depending on site-specific engineering considerations and on the number of installations being considered. This includes steps for engineering review, construction permit, operating permit, and control technology installation (including fabrication, pre hookup, control hookup, and testing). EPA's assessment of installation procedures suggests as little as 21 months may be needed for a single SCR at an individual plant and 36 months at a single plant with multiple boilers. EPA's assessment of units with SCR retrofit potential indicate the majority fall into this first classification, *i.e.*, a single SCR at a power plant.

While EPA finds that 36 months is a possible time frame for SCR installation at individual units or plants, the total of nearly 31 GW of coal capacity with SCR retrofit potential and 19 GW of oil/gas steam capacity with SCR retrofit potential within the geographic footprint of the final rule is a scale of retrofit activity that is not demonstrated to have been achieved within a three-year span based on data from the past two decades. Given that some of the

assumed SCR retrofit potential occurs at plants with multiple units identified with retrofit potential, and given the total volume of SCR retrofit capacity being implemented across the region, EPA is allowing in this final rule between 36 to 48 months, consistent with the regional time frame discussed for SCR retrofit in prior rules, for the full implementation of reductions commensurate with this volume of SCR retrofit capacity, as described further in section VI.A of this document.

The Agency examined the cost for retrofitting a coal unit with new SCR technology, which typically attains controlled NO_x rates of 0.05 lb/mmBtu or less. These updates are further discussed in the EGU NO_x Mitigation Strategies Final Rule TSD.²¹¹ Based on the characteristics of coal units of 100 MW or greater capacity that do not have post-combustion

NO_x control technology, the EPA estimated a weighted-average representative SCR cost of \$11,000 per ton.²¹²

The 0.05 lb/mmBtu emissions rate performance assumption for new SCR retrofits is supported by historical data and third party independent review by pollution control engineering and consulting firms. The EPA first examined unit-level emissions rate data for coal-fired units that had a relatively recent SCR installation (within the last 10 years). The best performing 10 percent of these SCR units were demonstrating seasonal emissions rates of 0.036 lb/mmBtu during this time.

While the EPA identified the 0.05 lb/mmBtu performance assumption consistent with historical data, these performance levels are also informed and consistent with the Agency's IPM modeling assumptions used for more than a decade. These modeling assumptions are based on input from leading engineering and pollution control consulting entities. Most recently, these data assumptions were affirmed and updated in the summer of 2021 and included in the docket for this rulemaking.²¹³ The EPA relies on a

²¹¹ As noted in that TSD, approximately half of the recent SCR retrofits (*i.e.*, installed in the last 10 years) have demonstrated an emission rate across the ozone season below 0.05 lb/mmBtu, even absent a requirement or strong incentive to operate at that level in many cases.

²¹² This cost estimate is representative of coal units lacking any post-combustion control. A subset of units within the universe of coal sources with SCR retrofit potential, but that have an existing SNCR technology in place would have a weighted average cost that falls above this level, but still cost effective. See the EGU NO_x Mitigation Strategies Final Rule TSD for more discussion.

²¹³ See "IPM Model—Updates to Cost and Performance for APC Technologies: SCR Cost Development Methodology for Coal-fired Boilers".

global firm providing engineering, construction management, and consulting services for power and energy with expertise in grid modernization, renewable energy, energy storage, nuclear power, and fossil fuels. Their familiarity with state-of-the-art pollution controls at power plants derives from experience providing comprehensive project services—from consulting, design, and implementation to construction management, commissioning, and operations/maintenance. This review and update supported the 0.05 lb/mmBtu performance assumption as a representative emissions rate for new SCR across coal types.

The EPA performed an assessment for oil/gas steam units in which it evaluated the nationwide performance of those units with SCR technology. For these units, the EPA tabulated EGU NO_x ozone season emissions data from 2009 through 2021 and calculated an average NO_x ozone season emissions rate across the fleet of oil- and gas-fired EGUs with SCR for each of these years. The EPA identified the third lowest year which yielded an SCR performance rate of 0.03 lb/mmBtu as representative of performance for this retrofit technology applied to this type of EGU. Next, the EPA evaluated the emissions and operational characteristics for the existing oil/gas steam fleet lacking SCR technology. EPA's analysis indicated that the majority of reduction potential (approximately 76 percent) from these units occurred at units greater than or equal to 100 MW and that were emitting more than 150 tons per ozone season (*i.e.*, approximately 1 ton per day). Moreover, the cost of reductions for units falling below these criteria increased significantly on a dollar per ton basis. Therefore, the EPA identified the portion of the oil/gas steam fleet meeting these criteria (*i.e.*, greater than or equal to 100 MW and emitting more than 150 tons per ozone season) as representative of the SCR retrofit reduction potential.²¹⁴ For this segment of the oil/gas steam units lacking post-combustion NO_x control technology, the EPA estimated a weighted-average representative SCR cost of \$7,700 per ton.

Comment: Some commenters disagreed with EPA's proposed 36-month timeframe for SCR retrofit. These commenters noted that, while possible at the unit or plant level, the collective volume of SCR installation occurring in

²¹⁴ The EPA used a 3-year average of 2019–2021 reported ozone season emissions to derive a tons per ozone season value representative for each covered oil/gas steam unit.

²⁰⁹ IPM Model-Updates to Cost and Performance for APC Technologies. SCR Cost Development Methodology for Coal-fired Boilers. February 2022.

²¹⁰ *See, e.g.*, CSAPR Close-Out, 83 FR 65878, 65895 (December 21, 2018) and Revised CSAPR Update, 86 FR 23102 (April 30, 2021). *See also* Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA-600/R-02/073 (Oct. 2002), available at <https://nepis.epa.gov/Adobe/PDF/P1001GOO.pdf>.

a limited region of the country would not be possible given the labor constraints, supply constraints, and simultaneous outages necessary to complete SCR retrofit projects on such a schedule. They noted that achieving such a timeframe against a backdrop of such challenging circumstances is unprecedented and that EPA's assumptions ignore that many of the remaining unretrofitted coal units reflect more site-specific challenges than those that were already retrofitted on a quicker timeframe.

Response: EPA reviewed the comments and is making several changes in this final rule to address some of the concerns identified by the commenters. In particular, EPA found that its own review of historical retrofit patterns as well as technical information submitted by commenters supported commenters' concerns regarding: (1) current and anticipated constraints in labor and supply markets, (2) the potential collective capacity levels of SCR retrofit within 36 months, and (3) possible site-specific complexities at the remaining units without an existing SCR. To address these concerns, EPA is phasing in its SCR installation requirement over a 48-month time frame in this final rule, instead of a 36-month time frame as proposed (see additional detail and discussion in section VI.A.2.a and the EGU NO_x Mitigation Strategies Final Rule TSD). EPA will require half of the reductions associated with SCR installation in 2026 and the other half in 2027. Additionally, EPA is moving the daily backstop rate for these units with identified SCR reduction potential from 2027 to no later than 2030, which defers the increased allowance surrender ratio for emissions above the backstop rate at any outlier units unable to complete the retrofit during that time frame. These adjustments continue to incentivize reductions in NO_x emissions by the attainment date that are consistent with cost-effective SCR controls, but provide more flexibility (both from timing and technology perspective) in how they are procured.

Some commenters requested more than 48 months to install SCR controls based on the collective total volume of SCR retrofit volume identified and past projects that took five or more years. EPA disagrees with these comments and finds that they ignored key aspects of the proposed rule. First, the final rule does not directly require implementation of SCR; rather, it requires reductions commensurate with SCR installations based on a rigorous assessment of SCR retrofit potential. Implementing the reductions through a trading program means that sources in

many cases, as suggested by the *Regulatory Impact Analysis (RIA)*, will find alternative, and more economic means, of reducing emissions—including reduced generation and retirements that are already planned based on the age of the unit, decarbonization goals, or compliance with other Federal/state/local regulation compliance dates. Moreover, the additional new generation incentives provided by the Inflation Reduction Act (enacted after the proposed rule) will further increase the pace of new generation replacing some of the older generating capacity identified as having retrofit potential.²¹⁵ In short, although EPA identified the total SCR retrofit capacity potential for today's existing fleet and does not premise any reduction requirements of incremental retirements, the announced and planned futures for these units indicates that many will likely retire instead of installing SCR. For the capacity identified at Step 3 which lacks SCR, the planned or projected retirement in place of a retrofit moots the SCR timing for these units. Moreover, it also reduces the demand for associated labor and materials which, in turn, frees up resources for any units proceeding with a SCR retrofit. Therefore, comments which cite labor and supply chain challenges for accommodating the entire fleet capacity identified as having SCR retrofit potential significantly overstate the supply-side challenge—as it ignores the fact that much of this capacity has explicit or expected operation plans that will result in compliance without a retrofit.

Even for sources choosing a SCR retrofit compliance pathway, many of these comments ignore the timing flexibilities of the trading program, which (particularly with the changes to the backstop daily emissions rate in this final rule) allow sources to temporarily comply through means other than SCR retrofit if they experience any site-specific retrofit limitations that increase their time frame. Also, historical examples of SCR retrofit projects that exceeded 48 months in duration do not necessarily demonstrate that such projects are impossible in less than 48 months, but rather that they can extend beyond the timeframe if no requirements or incentives are in place for a faster installation. Some also cite site-specific conditions that resulted an

²¹⁵ See "Regulatory Impact Analysis for 2015 Good Neighbor Plan, Appendix 4A: Inflation Reduction Act EGU Sensitivity Run Results." EPA estimated the compliance costs and emissions changes of the final rule in the presence of the IRA, but given time and resource constraints, did not quantify benefits for this sensitivity.

outlier cases of project timing that would not be representative of the conditions expected at future retrofit projects.²¹⁶

Comment: Some stakeholders suggested that EPA's cost estimates of \$11,000 per ton are premised on a 15-year book life of the equipment and are therefore too optimistic for units that plan to retire in well under 15 years.

Response: EPA analysis of SCR retrofit cost reflects a representative value for the technology based on a weighted average cost. The underlying data and the discussion in the EGU NO_x Mitigation Strategies Final TSD illustrates that these costs can vary significantly at the unit level based on factors such as the length of time a pollution control technology would be in operation, the capacity factor of the unit (*i.e.*, how much does it operate), its size or potential to emit, and its baseline emissions rate. The EPA has not in prior transport rulemakings used such factors as justification to excuse any source that is significantly contributing to nonattainment or interfering with maintenance in another state from eliminating that significant contribution as expeditiously as practicable. Unlike under other statutory provisions that may require retrofit of emissions controls on existing sources, such as under CAA section 111(d) or CAA section 169A, there is no remaining useful life factor expressly identified as a justification to relax the requirements of CAA section 110(a)(2)(D)(i)(I). EPA continues to believe that where an emissions control strategy has been identified at Step 3 that is cost-effective on a regional scale and provides meaningful downwind air quality improvement, and is thus appropriately identified as necessary to eliminate significant contribution under the good neighbor provision, it would not be appropriate to allow emissions to continue in excess of those achievable emissions reductions beyond the timeframe for expeditious implementation of reductions as provided under the larger title I structure of the Act for attaining and maintaining the NAAQS. The court in *Wisconsin* recognized that where such emissions have been identified, they should be eliminated as expeditiously as practicable, and in line with the

²¹⁶ Commenters, for example, cited the timing of SCR installation at Sammis 6 and 7. Here, the SCR design and material delivery schedule were tailored to meet unique site conditions that were unlike many other SCR systems where large modules can be used to maximize shop and ground assembly techniques. Additional information is available at <https://www.babcock.com/home/about/resources/success-stories/sammis-plant>.

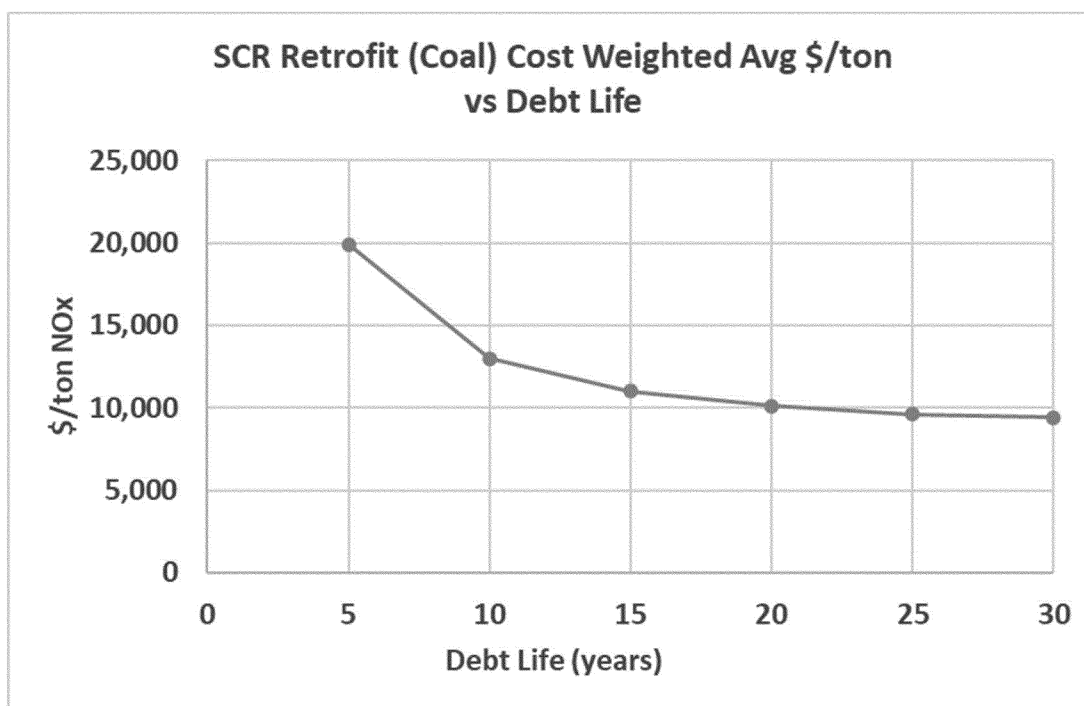
attainment schedule for downwind areas, which, for the 2015 ozone NAAQS, is provided in CAA section 181. 938 F.3d at 313–20.

Further, EPA observes that more than one-third of the identified SCR retrofit potential (in terms of generating capacity) has no planned retirement date within 15 years, and therefore the cost of pollution control technology on

such units would likely be lower, holding all other parameters equal, on a dollar per ton basis by virtue of the length of time the pollution control equipment may be in operation. Nor does EPA agree that units that would retire in less than 15 years should automatically be considered to face an unreasonably higher cost burden. Based on data analyzed in the EGU NO_x

Mitigation Strategies Final Rule TSD, we find that the cost per ton associated with SCR retrofit technology does not begin to increase significantly above the \$11,000/ton benchmark unless units have dramatically lower operating capacity or retire in less than 5 years' time—as illustrated in Figure 1 to section V.B.1.e of this document.

Figure 1 to section V.B.1.e: SCR Retrofit Cost Weighted Average \$/ton vs Debt Life²¹⁷



Finally, EPA's identification of this mitigation strategy is not meant to be limited only to units that experience a retrofit cost that is less than the representative cost threshold. First, that threshold represents an average, meaning that EPA's analysis already recognizes that some units on a facility-specific basis may face costs higher than that threshold. Further, EPA identifies this technology as widely available, implemented in practice already at many existing EGUs, and now standard for any coal-fired unit coming online in the past 25 years. More than 66 percent of the current large coal fleet already has such controls in place. Even if the cost were higher for some units for the reasons provided by commenters—and

there were no less costly means provided to them to achieve the same level of emissions reduction (which the trading program allows for)—that would not necessarily obviate EPA's basis for finding that an emissions-reduction requirement commensurate with this standard pollution control practice for this unit type is warranted. The implementation of emissions reductions through a trading program, and its corresponding compliance flexibilities, make the use of a single representative cost all the more appropriate in this assessment. Therefore, upon reviewing all of the data including the information supplied by commenters, and even accounting for certain units' announced plans to retire earlier than an assumed 15-year book life for SCR retrofit technology, EPA finds its representative

cost for this technology to be appropriate and reasonable for purposes of analysis under CAA section 110(a)(2)(D)(i)(I) and maintains this cost estimate in the final rule.

However, in recognition of the unique circumstances related to the transition of the power sector away from coal-fired and other high-NO_x emitting fuels and generating technologies, which is anticipated to accelerate in the late 2020s and into the 2030s, EPA has adjusted the final rule to avoid imposing a capital-intensive control technology retrofit obligation which could have overall net-negative environmental consequences (*e.g.*, by extending the life of a higher-emitting EGU or necessitating the allocation of material and personnel that could be used for more advanced clean-technology

²¹⁷ "Debt Life" refers to the term length, or duration, for a loan used to finance the retrofit.

innovations). For units that plan to retire by 2030, the final rule—by extending the daily backstop rate to 2030—allows these units to continue to operate, so long as they comply with the mass-based emissions trading program requirements.²¹⁸ Therefore, a unit experiencing a higher dollar per ton retrofit cost due to retirement plans has the flexibility to install less capital intensive controls such as SNCR, procure less costly allowances through either banking or purchase, or they may also reduce their allowance holding requirement through reduced utilization consistent with their phasing out towards a planned retirement date. This flexibility that EPA has included in the final rule is discussed in further detail in section VI.B of this document.

Comment: Some commenters suggested that the 0.05 lb/mmBtu emissions rate assumed for new SCRs at large coal units is not achievable at all coal units with retrofit potential and that EPA should raise this performance assumption to a value of 0.08 lb/mmBtu consistent with that assumption for existing SCRs.

Response: First, EPA believes the commenter misunderstands its intention with the 0.05 lb/mmBtu SCR rate assumption. This is meant to reflect a representative assumption for emissions rate performance for new SCR installed on the currently unretrofitted coal fleet—in this respect, it represents an average, not a maximum. EPA recognizes that some units will likely perform better (*i.e.*, lower) than this rate and some will potentially perform worse (*i.e.*, higher) than this rate—but that 0.05 lb/mmBtu is a reasonable representation of new SCR retrofit potential on a fleet-wide basis and for identifying expected state and regional emissions reduction potential from this technology. It would be inappropriate for EPA to use the worst performing tier of new SCR retrofit for this representative value. Moreover, EPA's review of historical environmental performance for recently installed SCRs does not support any indication that 0.05 is not representative of the retrofit potential for the fleet. EPA found that three quarters of the SCR retrofit projects completed in the last 15 years have achieved a rate of 0.05 lb/mmBtu or better on a monthly or seasonal basis. Moreover, its review of the engineering literature and consultation with third party pollution control engineering consultancies suggests that vendors are

often willing to guarantee 0.05 lb/mmBtu seasonal performance for new SCR retrofit projects. Current SCR catalyst suppliers provide NO_x emissions warranties based at the catalyst's end-of-life period, often after 16,000 to 24,000 hours of operations, with newer catalyst achieving similar or better NO_x removal rates. Standard commercial terms, made by the purchaser to the SCR Retrofit supplier, can specify a system capable of meeting the proposed NO_x emissions rate and define the catalyst operational life before replacement. Thus, achieving the proposed reduction rates is accomplished through the buyer specifying the SCR retrofit requirements and the supplier providing an optimized system design and installing sufficient catalyst for the targeted end-of-life NO_x emissions rate. The agency is confident that SCR retrofit suppliers will be able to warrant their offerings for the emissions rates proposed in the regulation and to provide sufficient operating life for the affected sector.

Comment: Some commenters suggest that the evaluation of pollution control installation cost at Step 3 should be segmented depending on unit characteristics, and by failing to do so understate the cost of retrofitting SCR controls. In particular, these commenters note that units with lower capacity factors, different coal ranks, with pre-existing controls—such as SNCR—face substantially higher dollar per ton reduced costs than those that do not have such controls in place and should not be identified as a cost-effective mitigation strategy.

Response: Consistent with prior CSAPR rulemakings, at Step 3 EPA evaluates a mitigation technology and its representative cost and performance for the fleet on average. This representative cost is inclusive and robust to the portion of the fleet that may face higher dollar per ton cost. Both the “Technical Support Document (TSD) for the Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard, Docket ID No. EPA–HQ–OAR–2021–0668, EGU NO_x Mitigation Strategies Proposed Rule TSD” (Feb. 2022), hereinafter referred to as the EGU NO_x Mitigation Strategies Proposed Rule TSD, and the EGU NO_x Mitigation Strategies Final TSD discuss the SCR retrofit cost specific to the segment of the fleet that has a SNCR in place and notes that those unit-level higher retrofit cost estimates are factored into its determination of the fleet-wide representative number. Although EPA believes its representative cost are

appropriate and underpinned by operating assumptions reflective of the fleet averages, it nevertheless examined how cost would vary based on some of the variables highlighted by commenter. The EPA derived its capacity factor assumption based on expected future operations of this fleet segment that are inclusive of units operating at a range of capacity factors. It also examined how cost would change assuming different coal rank, assuming different book life, and different reagent cost. These analyses are discussed and shown in Appendix B of the EGU NO_x Mitigation Strategies Final Rule TSD and demonstrate that even under different operating assumptions, the variation in cost does not reach a point that would reverse EPA's finding regarding the appropriateness of this technology as part of this final rule's control stringency. Moreover, as discussed in section V.D of this document, EPA identifies appropriate mitigation strategies based on multiple factors—not solely on cost, and there is no indication that an individual unit's higher retrofit cost would obviate the appropriateness of retrofitting this standard and best practice technology at the unit. Finally, in prior rules and in the proposal, EPA recognized that some units will have higher cost and some will have lower cost relative the fleetwide representative value provided. Implementing the region and state reduction requirements through a mass-based trading program provides a means of alternative lower cost compliance for those sources particularly concerned about the higher retrofit cost at their unit.

Comment: Some commenters suggested that EPA's proposed representative cost for SCR pollution control is likely too high and overstates the true cost of such control. They also noted it aligns with agency precedent. These commenters claim that EPA's cost recovery factor is higher than necessary (thus inflating the cost) as it reflects a weighting of utility-owned to merchant-owned plants that is representative of the fleet, but not the unretrofitted fleet with this retrofit potential identified in this rule. They also noted that EPA's assumed interest rate informing the cost estimate was higher than the prime rate in June of 2022.

Response: EPA agrees that its approach for identifying representative cost thresholds is aligned with prior rules and agrees that its approach is reasonable. As the commenter points out, prime rates and cost recovery factors may indeed be lower in recent data than those assumed by EPA for future years. However, given the

²¹⁸ In the RIA, EPA has modeled the mass-based budgets that are premised on retrofit of SCR technology with the option of complying through other strategies, and finds that they are readily achievable through those other strategies.

volatility among these metrics, EPA believes its choices are appropriate to build cost estimates that are robust to future uncertainty, and if these cost input factors do materialize to be the lower values highlighted by commenter, then it will result in a lower cost assumed in this final rule, but would not otherwise alter any of the stringency identification or regulatory findings put forward in this final rule. EPA performed a cost sensitivity analysis in Appendix B of the EGU NO_x Mitigation Strategies Final Rule TSD which shows how cost for this technology would vary based on different assumed levels for this variable. This analysis shows that under lower interest rates such as those put forward by commenter, that technology cost would drop by approximately 15 percent relative to the representative values put forward in this rule.

f. Generation Shifting

At proposal, EPA considered intrastate emissions reduction potential from generation shifting across the representative dollar per ton levels estimated for the emissions controls considered in previous sections. As the cost of emitting NO_x increases, it becomes increasingly cost-effective for units with lower NO_x rates to increase generation, while units with higher NO_x rates reduce generation. Because the cost of generation is unit-specific, this generation shifting occurs incrementally on a continuum. Consequently, there is more generation shifting at higher cost NO_x-control levels.

The EPA recognizes that imposing a NO_x-control requirement on affected EGUs, like any environmental regulation, internalizes the cost of their pollution, which could result in generation shifting away from those sources toward other generators offering electricity at a lower pollution cost. If, in the context of a market-based allowance trading program form of implementation, the EPA imposes a preset emissions budget that is premised only on assumed installation, optimization, and continued operation of unit-specific pollution control technologies, with no accounting for the likely generation shift in the marketplace away from these higher-polluting sources, that preset emissions budget will contain more tons than would be emitted if the affected EGUs achieved the emissions performance level (on a rate basis) selected at step 3. Hence, EPA has previously quantified and required expected emissions reductions from generation shifting in prior transport rules to avoid undermining the program's incentive to

install, optimize, and operate controls identified in the Agency's determinations regarding the requisite level of emissions control at Step 3. *See, e.g.,* 81 FR 74544–45; 76 FR 48280.

As in these prior rules, at proposal, the EPA did not identify generation shifting as a primary mitigation strategy and stringency measure on its own, but included emissions reductions from this strategy as it would be projected to occur in response to the selected emissions control stringency levels (and corresponding allowance price signals in step 4 implementation). For this rule's proposal, the EPA only specified emissions reductions from generation shifting in its preset budget calculations for 2023 and 2024. Because this rule's dynamic budget methodology applies the selected control stringency's emissions rates to the most recently reported heat input at each affected EGU, dynamic budgeting effectively serves a similar purpose to our ex ante quantification of emissions reduction potential from generation shifting for preset budgets in prior transport rules, *i.e.*, to adequately and continuously incentivize the implementation of the emissions control strategies selected at Step 3. Therefore, dynamic budgets under this rule's program moot the need to specify discrete emissions reduction potential from generation shifting for those control periods, as they automatically reflect whatever generation balance affected EGUs would determine in the marketplace inclusive of their response to the emissions performance levels imposed by this rule.

Comment: Commenters offered both support for and opposition against the inclusion of generation shifting at Step 3 analysis for EGUs. Those in support noted that inclusion of emissions reductions from generation-shifting is integral to the successful implementation of the pollution control measures identified in the selected control stringency at Step 3. Those opposed generally argued the EPA was overestimating reduction potential from generation shifting in light of recent volatility and high prices in the markets for lower emitting fuels such as natural gas. Commenters also noted the electrical grid in certain regions has constraints that would make generation shifting more difficult than the EPA assumed. Commenters also asserted that the EPA did not have the legal authority to require generation shifting.

Response: The EPA disagrees with these comments regarding our legal authority but notes this issue is not relevant for purposes of this final action. The EPA continues to believe it has

authority under CAA section 110(a)(2)(D)(i)(I) to consider and require emissions reductions from generation shifting if the EPA were to find that strategy was necessary to eliminate significant contribution. However, based on circumstances currently facing affected EGUs, as well as the inherent strength of the dynamic budget methodology to automatically reflect the market-determined balance of generation across sources responding to this rule, the EPA is not specifying emissions reduction potential from generation shifting as a part of the Step 3 analysis, nor to require any emissions reductions from generation shifting in preset budgets formulated under Step 4 for any control period, for this final rule.

Currently observable market conditions (*e.g.*, fuel prices) present unusual uncertainty with respect to key economic drivers of generation shifting. The availability of emissions reductions through generation shifting, and the magnitude of those emissions, is dependent on the availability and cost of substitute generation. The primary driver of near-term generation shifting-based emissions reductions has been shifting to lower-emitting natural gas generation. Recent volatility and high prices in the natural gas market have increased the uncertainty and reduced the potential of this emissions control strategy at any given cost threshold in the near term. For example, Henry Hub natural gas prices went from under \$3.00/mmBtu during most of the last decade to an average of nearly \$8.00/mmBtu for the most recent (2022) ozone season before declining sharply at the start of 2023. The current volatility in natural gas prices reduces the availability of emissions reductions from generation shifting and make its identification and quantification too uncertain for incorporation into Step 3 emissions reduction estimates for this rulemaking.

The Step 4 dynamic budget-setting process of this rule obviates the need to specify and require discrete emissions reductions from generation shifting under Step 3. As discussed in section VI of this document, the EPA in this final rule will implement a budget-setting approach that relies on two components: first, we have calculated "preset" budgets that reflect the best information currently available about fleet change over the period 2023 through 2029. Second, beginning in 2026, dynamic state emissions budgets will be calculated that will reflect the balance of generation across sources reported to EPA by EGU operators. Between 2026 and 2029, the actual budget that will be implemented will

reflect the greater of either the preset budget or the dynamic budget calculation; from 2030 onwards, the budgets will be set only through the dynamic budget calculation. This overall approach is well suited for a period of significant power sector transition driven by a variety of economic, policy, and regulatory forces and allows for the balance of generation in this period to adjust in response to these forces while nonetheless ensuring that the budgets will continuously incentivize the emissions control stringency identified at Step 3. See section VI.B.4 of this document for further discussion on the interaction of preset and dynamic budgets during the 2026–2029 time period. With these approaches, and on the present record before the Agency, we conclude that the estimation and incorporation of specified emissions reductions from generation shifting at Step 3 is not necessary to eliminate significant contribution from EGUs for the 2015 ozone NAAQS through this rule's program implementation.

In previous CSAPR rulemakings, the EPA included generation shifting in the budget setting process to capture those reductions that would occur through shifting generation as an economic response to the control stringency determined based on the selected NO_x control strategies. See, e.g., 81 FR 74544–45. “Because we have identified discrete cost thresholds resulting from the full implementation of particular types of emissions controls, it is reasonable to simultaneously quantify the reduction potential from generation shifting strategy at each cost level. Including these reductions is important, ensuring that other cost-effective reductions (e.g., fully operating controls) can be expected to occur.” EGU NO_x Mitigation Strategies Final Rule TSD (EPA–HQ–OAR–2015–0500–0554), at 11–12.

Commenters on this rule and prior transport rules have observed that using preset budgets to factor in generation shifting is flawed in that it results in EPA incorporating specific quantities of emissions reductions from discrete levels of generation shifting that are projected to occur but may in fact ultimately transpire differently in the marketplace. Commenters on this rule claim that other variables, such as constraints in transmission capacity or changes in fuel prices, can drive such differences in projected versus realized generation shifting, and these concerns are particularly exacerbated in a time of significant uncertainty around energy supplies and markets together with new laws passed by Congress (e.g., the

Infrastructure Investment and Jobs Act and the Inflation Reduction Act) driving the current transformation of the power sector. By refraining in this rule from specifying discrete emissions reductions from generation shifting in preset budgets and instead relying on a dynamic budgeting approach to reflect market-driven generation patterns, EPA ensures that its budgets remain sufficiently stringent over the long term to continually incentivize the emissions control stringency it determined to be cost-effective and therefore appropriate to eliminate significant contribution at Step 3. Thus, dynamic budgeting addresses the same concern that animated our use of generation shifting in the CSAPR rulemakings, but in doing so uses a market-following approach that will accommodate, over the long term, unforeseen drops or increases in heat input levels.

g. Other EGU Mitigation Measures

The EPA requested comment on whether other EGU ozone-season NO_x Mitigation technologies should be required to eliminate significant contribution. For instance, the EGU NO_x Mitigation Strategies Proposed and Final Rule TSDs discussed certain mitigation technologies that have been applied to “peaking” units (small, low-capacity factor gas combustion turbines often only operating during periods of peak demand).

Comment: Some commenters emphasized that simple cycle combustion turbines play a significant role in downwind contribution, and they highlight that states such as New York have imposed emissions limits on these sources acknowledging their impact on downwind nonattainment. These commenters suggest that EPA pursue and expedite the implementation of these or similar mitigation measures.

Response: As explained in greater detail in the EGU NO_x Mitigation Strategies Final TSD, both the configuration and operation of this segment of the EGU fleet reflects significant variability among units and across time. In other words, one unit may have a capacity factor in a given year that is one hundred times greater than a similar unit in that same year, or even than its own capacity factor from a preceding year. This type of variability and heterogeneity make it unlikely that there is a single cost-effective control strategy across this fleet segment, and commenters did not provide evidence to the contrary. EPA's analysis discussed in the EGU NO_x Mitigation Strategies Final Rule TSD highlights that there are 32 units emitting more than 10 tons per

year on average for the 2019–2021 ozone seasons and lacking combustion controls or more advanced controls (totaling approximately 1,000 tons of ozone season NO_x emissions in 2021). EPA analysis estimates a representative cost of \$22,000 per ton for dry low NO_x burners or ultra-low NO_x burners at these simple cycle combustion turbines, and over \$100,000 per ton for SCR retrofit at some combustion turbines. Therefore, EPA does not identify any such uniform mitigation measure at Step 3 when estimating reduction potential.

Nonetheless, the EPA recognizes that these simple cycle combustion turbines may have cost-effective emissions-reduction opportunities. These units are included in the emissions trading program and therefore, as in prior transport rules, the program continues to subject them to an allowance holding requirement under this rule which will likely incentivize any available cost-effective NO_x reductions from these EGUs. For instance, emissions rates from these units in New York were considerably lower in 2022, when they faced a high allowance price, versus 2021, when the allowance price was much lower. Therefore, we find that the appropriate treatment of these units in this final rule is to continue to include them in the emissions trading program to incentivize cost-effective emissions reductions, but EPA does not find the magnitude or consistency of cost-effective mitigation potential to establish a specific increment of emissions reduction through a specific Step 3 emissions control determination. Moreover, while EPA's program will incentivize any available cost-effective reductions within this cadre of units (and such behavior is captured in its final program evaluation and modeling the RIA), it does not obviate the need for the other EGU cost-effective reductions elsewhere as suggested by some commenters.

2. Non-EGU or Stationary Industrial Source NO_x Mitigation Strategies

In the early stages of preparing the proposed FIP, the EPA evaluated air quality modeling information, annual emissions, and information about potential controls to determine which industries, beyond the power sector, could have the greatest impact on downwind receptors' air quality and therefore the greatest impact in providing ozone air quality improvements in affected downwind states through reducing those emissions. Specifically, the EPA conducted a screening assessment focused on individual emissions units with >100

typy of actual NO_x emissions in 23 upwind states. Once the industries were identified, the EPA used its Control Strategy Tool to identify potential emissions units and control measures and to estimate emissions reductions and compliance costs associated with application of non-EGU emissions control measures. The technical memorandum “Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026” (“Non-EGU Screening Assessment” or “screening assessment”) lays out the analytical framework and data used to prepare proxy estimates for 2026 of potentially affected non-EGU facilities and emissions units, emissions reductions, and costs.²¹⁹

This screening assessment was not intended to identify the specific emissions units subject to the proposed emissions limits for non-EGU sources but was intended to inform the development of the proposed rule by identifying proxies for (1) non-EGU emissions units that potentially had the most impact in terms of the magnitude of emissions and potential for emissions reductions, (2) potential controls for and emissions reductions from these emissions units, and (3) control costs from the potential controls on these emissions units. This information helped shape the proposed rule.

To further evaluate the industries and emissions unit types identified by the screening assessment and to establish the applicability criteria and proposed emissions limits, the EPA reviewed RACT rules, NSPS rules, NESHAP rules, existing technical studies, rules in approved SIP submittals, consent decrees, and permit limits. That evaluation is detailed in the Proposed Non-EGU Sectors TSD prepared for the proposed FIP.²²⁰

In this final rule, for purposes of this part of the Step 3 analysis, the EPA is retaining emissions control requirements for these industries and many of the emissions unit types included in the proposal. However, based on comments that credibly indicated in certain cases that emissions reduction opportunities are either not available for certain unit types or are at costs that are far greater than the EPA estimated at proposal, the EPA has changed the final rule to either remove or adjust the applicability criteria for such units. For a detailed discussion of

²¹⁹ The memorandum is available in the docket here: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0150>.

²²⁰ The TSD for the proposed FIP is available in the docket here: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0145>.

the changes between the proposed FIP and this final rule, in emissions unit types included and in emissions limits, see section VI.C of this document. Tables I.B–2 through I.B–7 in section I.B of this document identify the emissions units and applicable emissions limitations, and Table II.A–1 in section II.A of this document identifies the industries included in the final rule.

For the final rule, to determine NO_x emissions reduction potential for the non-EGU industries and emissions unit types, with the exception of Solid Waste Combustors and Incinerators, we used a 2019 inventory prepared from the emissions inventory system (EIS) to estimate a list of emissions units captured by the applicability criteria for the final rule. For Solid Waste Combustors and Incinerators, the EPA estimated the list of covered units using the 2019 inventory, as well as the NEEDS-v6-summer-2021-reference-case workbook.²²¹ Based on the review of RACT, NSPS, NESHAP rules, as well as SIPs, consent decrees, and permits, we also assumed certain control technologies could meet the final emissions limits.²²² We did not run the Control Strategy Tool to estimate emissions reductions and costs and instead programmed the assessment using R.²²³ Using the list of emissions units estimated to be captured by the final rule applicability criteria, the assumed control technologies that would meet the emissions limits, and information on control efficiencies and default cost/ton values from the control measures database (CMDB),²²⁴ the EPA estimated NO_x emissions reductions and costs for the year 2026. We estimated emissions reductions using the actual emissions from the 2019 emissions inventory. In the assessment, we matched emissions units by Source Classification Code (SCC) from the inventory to the applicable control technologies in the CMDB. We modified SCC codes as necessary to match control technologies to inventory records.

The EPA recognized both at proposal and in the final rule that the cost per ton of emissions controls could vary by industry and by facility. The \$7,500

²²¹ The workbook is available here: <https://www.epa.gov/power-sector-modeling/national-electric-energy-data-system-needs-v6>.

²²² The Final Non-EGU Sectors TSD is available in the docket.

²²³ R is a free software environment for statistical computing and graphics. Additional information is available here: <https://www.r-project.org/>.

²²⁴ More information about the Control Strategy Tool (CoST) and the control measures database (CMDB) can be found at the following link: <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-analysis-modeltools-air-pollution>.

marginal cost/ton threshold reflected in the Non-EGU Screening Assessment functioned as a relative, representative cost/ton level. Similar to the role of cost-effectiveness thresholds the EPA uses at Step 3 to evaluate EGU emissions control opportunities, this threshold is not intended to represent the maximum cost any facility may need to expend but is rather intended to be a representative figure for evaluating technologies to allow for a relative comparison between different levels of control stringency. The value was used to identify potentially cost-effective controls for further evaluation.

In the final rule, partly in recognition of the many comments indicating widely varying cost-per-ton values across industries and facilities, the EPA has updated its analysis of costs for the covered non-EGU industries. This data is summarized in the Technical Memorandum “Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs,” available in the docket. We further respond to comments on the screening assessment in section 2.2 of the response to comments document.

3. Other Stationary Sources NO_x Mitigation Strategies

As part of its analysis for this final rule, the EPA also reviewed whether NO_x mitigation strategies for any other stationary sources may be appropriate. In this section, the EPA discusses three classes of units that have historically been excluded from our interstate air transport programs: (1) solid waste incineration units, (2) electric generating units less than or equal to 25 MW, and (3) cogeneration units. EPA’s initial assessment did not lead it to propose inclusion of the units in these categories. However, EPA requested comment on whether any particular units within this category may offer cost-effective reduction potential.

Based on our request for comment, comments received, and our further evaluation, the EPA is including emissions limits and associated control requirements for the ozone season for solid waste incinerator units in this final rule, in line with the requirements we laid out for comment at proposal. Our analysis in this final rule confirms that these units have emissions reductions of a magnitude, degree of beneficial impact, and cost-effectiveness that is on par with the units in other industrial sectors included in this final rule.

For electric generating units less than 25 MW and cogeneration units previously exempted from EGU emissions budgets established through ozone interstate transport rules, the EPA has determined that these units should not be treated as EGUs in this final rule.

The EPA provides a summary of these three segments, their emissions control opportunities, and potential air quality benefits in the following sections. Additional considerations are further discussed in the EGU NO_x Mitigation Strategies Final TSD and in the *RTC* Document.

a. Municipal Solid Waste Units

At proposal, the EPA solicited comments on whether NO_x emissions reductions should be sought from municipal waste combustors (MWCs) to address interstate ozone transport, specifically on potential emissions limits, control technologies, and control costs. The EPA requested comment on emissions limits of 105 ppmvd on a 30-day rolling average and a 110 ppmvd on a 24-hour block average based on determinations made in the June 2021 Ozone Transport Commission (OTC) *Municipal Waste Combustor Workgroup Report* (OTC MWC Report). See 87 FR 20085–20086. The OTC MWC Report found that MWCs in the Ozone Transport Region (OTR) are a significant source of NO_x emissions and that significant annual NO_x reductions could be achieved from MWCs in the OTR using several different technologies, or combination of technologies at a reasonable cost. The OTC MWC report is included in the docket for this action.

Comment: The EPA received multiple comments supporting the inclusion of emissions limits for MWCs in the final rule. Commenters noted that MWCs are significant sources of NO_x that contribute to ozone problems in the states covered by the proposal. Multiple commenters referenced the OTC MWC report to contend that NO_x emissions from MWCs could be significantly reduced at a reasonable cost. Some commenters reasoned that sources closer to downwind monitors, including MWCs, should be regulated as a more targeted approach and a means to prevent overcontrol of upwind sources. Commenters also noted that the OTC recently signed a memorandum of understanding (MOU) requesting that OTC member states develop cost effective solutions and select the strategy or combination of strategies, as necessary and appropriate, that provides both the maximum certainty and flexibility for that state and its MWCs. Additionally, multiple commenters

noted that MWCs are often located in economically marginalized communities or communities of color. Lastly, one commenter stated that MWCs were arbitrarily excluded from the non-EGU screening assessment prepared for the proposal.

Response: As described in section VI.B.2 of the notice of proposed rulemaking, the EPA assessed emissions reduction potential from non-EGUs by preparing a screening assessment to identify those industries that could have the greatest air quality impact at downwind receptors. While the EPA did not prepare an updated non-EGU screening assessment in preparation for this final rule, the Agency did evaluate MWCs using the criteria developed in the screening assessment for proposal and determined that MWCs should be included in this rulemaking. A discussion of this analysis for MWCs is available in the *Municipal Waste Combustor Supplement to February 28, 2022 Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026*, which is available in the docket for this rule.

Considering EPA's conclusion that MWCs should be included in this final rule if EPA applied the same criteria developed in the screening assessment for proposal, the findings from the OTC MWC report and recent MOU, the fact that many state RACT NO_x rules apply to MWCs, and information received during public comment, the EPA finds that MWCs should be included in this final rule. Thus, the EPA is finalizing NO_x emissions limits and compliance assurance requirements for large MWCs as defined in the regulatory text at § 52.46 and as described in this section.

Comment: Some commenters did not support the inclusion of emissions limits for MWCs in the final rule. Some commenters suggested that the inclusion of NO_x limits in a FIP is not necessary to continue to reduce NO_x emissions from MWCs or to address interstate transport problems. Some commenters noted that many of the MWCs in the states covered by the proposal are already subject to RACT-based NO_x emissions limits that are below the current Federal NSPS NO_x emissions limits for MWCs under 40 CFR part 60, subparts Cb and Eb. One commenter noted that MWCs do not always account for a large percentage of statewide NO_x emissions. Others suggested that voluntary industry actions are also driving downward trends of NO_x emissions for some MWCs. Some commenters also asserted that regulation could interfere with state

waste reduction policies and associated environmental considerations.

Response: Regarding the comments that some MWCs are already subject to RACT NO_x emissions limits, the EPA acknowledges that some states included in this rulemaking have promulgated RACT NO_x emissions limits that apply to certain MWCs, including some that are lower than current MWC NSPS NO_x emissions limits. The EPA does not consider a source to be exempt from this rulemaking just because the source may be subject to other regulatory requirements. As noted, the Agency did evaluate MWCs using the criteria developed in the screening assessment for proposal and has concluded that MWCs should be included in this rulemaking. In considering the emissions limits that are being finalized in this rulemaking, the EPA reviewed existing state RACT rules as described in section VI.C.6 of this document and the "Technical Support Document (TSD) for the Final Rule, Docket ID No. EPA-HQ-OAR-2021-0668, Non-EGU Sectors TSD" (Mar. 2023), hereinafter referred to as Final Non-EGU Sectors TSD. We note that sources already subject to RACT NO_x emissions limits that are equal to or more stringent than the limits finalized in this rulemaking will have the option to streamline regulatory requirements through the Title V permitting process.

Regarding the statement that regulation could interfere with state waste reduction policies and associated environmental considerations, the EPA acknowledges that MWCs serve an important role in municipal solid waste management programs, and that many function as cogeneration facilities that produce electrical power for the power grid. The EPA also analyzed control costs and determined that the required NO_x emissions limits for MWCs can be achieved at a reasonable cost, as described in section VI.C.6 of this document, the Final Non-EGU Sectors TSD, and the OTC MWC Report. Although the EPA does not expect these regulations to disrupt the ability of the industry to provide municipal solid waste and electric services, to the extent a facility is unable to comply with the standards due to technical impossibility or extreme economic hardship, the final rule includes provisions for facility operators to apply for a case-by-case alternative emissions limit. See section VI.C of this document and 40 CFR 52.40(d). In addition, for MWC facilities that are unable to comply with the standard by the 2026 ozone season, the final rule includes provisions for requesting limited extensions of time to

comply. See section VI.C and 40 CFR 52.40(c).

b. Electric Generating Units Less Than or Equal to 25 MW

The EPA has historically not included control requirements for emissions for electric generating units less than or equal to 25 MW of generation for three primary reasons: low potential reductions, relatively high cost per ton of reduction, and high monitoring and other compliance burdens. In the January 11, 1993, Acid Rain permitting rule, the EPA provided for a conditional exemption from the emissions reduction, emitting, and emissions monitoring requirements of the Acid Rain Program for new units having a nameplate capacity of 25 MWe or less that burn fuels with a sulfur content no greater than 0.05 percent by weight, because of the *de minimis* nature of their potential SO₂, CO₂ and NO_x emissions. See 63 FR 57484. The NO_x SIP Call identified these as *Small Point Sources*. For the purposes of that rulemaking, the EPA considered electricity generating boilers and turbines serving a generator 25 MWe or less, to be small point sources. The EPA noted that the collective emissions from small sources were relatively small and the administrative burden to the states and regulated entities of controlling such sources was likely to be considerable. As a result, the rule did not assume reductions from those sources in state emissions budgets requirements (63 FR 57402). Similar size thresholds have been incorporated in subsequent transport programs such as CAIR and CSAPR. As these sources were not identified as having cost-effective reductions and so were not included in those programs, they were also exempted from certain reporting requirements and the data for these sources is, therefore, not of the same caliber as that of covered larger sources.

EPA's preliminary survey of current data, compared to this initial justification, does not appear to offer a compelling reason to depart from this past practice by requiring emissions reductions from these small EGU sources as part of this rule. For instance, as explained in the EGU NO_x Mitigation Strategies Final Rule TSD, EPA has evaluated the costs of SCR retrofits at small EGUs using its Retrofit Cost Analyzer and found that such controls become markedly less cost-effective at lower levels of generating capacity. This analysis concluded that, after controlling for all other unit characteristics, the dollar per ton cost for a SCR retrofit increases by about a factor of 2.5 when moving from a 500

MW to a 10 MW unit, and a factor of 8 when moving to a 1 MW unit.²²⁵ Moreover, the EPA estimates that under 6 percent of nationwide EGU emissions come from units that are less than 25 MW and not covered by current applicability criteria due to this size exemption threshold. Therefore, the EPA is not finalizing any emissions reductions for these units.

Comment: EPA received comment supporting the continued application of the 25 MW threshold.

Response: Consistent with prior rules, the proposal, and stakeholder comment, EPA is continuing to apply its 25 MW applicability threshold for EGUs in this rulemaking. EPA did not find compelling comment to reverse its determination that (1) these sources offer low potential reductions, (2) have relatively high cost per ton, and (3) have high monitoring and other compliance burdens.

c. Cogeneration Units

Consistent with prior transport rules, fossil fuel-fired boilers and combustion turbines that produce both electricity and useful thermal energy (generally referred to as "cogeneration units") and that meet the applicability criteria to be included in the CSAPR NO_x Ozone Season Group 3 Trading Program would be subject to the emissions reduction requirements established in this rulemaking for EGUs. However, those applicability criteria—which the EPA is not altering in this rulemaking (see section VI.B.3 of this document)—exempt some cogeneration units from coverage as EGUs under the trading program. The EPA is finalizing that fossil fuel-fired boilers and combustion turbines that produce both electricity and useful thermal energy and that do not meet the applicability criteria to be included in the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs would not be subject to the Group 3 emissions trading program. However, to the extent a cogeneration unit meets the applicability criteria for industrial non-EGU boilers covered by this rule, that unit will be subject to the relevant requirements and is not exempted by virtue of being a cogeneration unit.

According to information contained in the EPA's Combined Heat and Power Partnership's document "Catalog of CHP Technologies",²²⁶ there are 4,226 CHP installations in the U.S. providing

²²⁵ Preliminary estimate based on representative coal units with starting NO_x rate of 0.2 lb/mmBtu, 10,000 BTU/kwh, and assuming 80 percent reduction.

²²⁶ This document is available at: https://www.epa.gov/sites/default/files/2015-07/documents/catalog_of_chp_technologies.pdf.

83,317 MWe of electrical capacity. Over 99 percent of the installations are powered by 5 equipment types, those being reciprocating engines (52 percent), boilers/steam turbines (17 percent), gas turbines (16 percent), microturbines (8 percent), and fuel cells (4 percent). The majority of the electrical capacity is provided by gas turbine CHP systems (64 percent) and boiler/steam turbine CHP systems (32 percent). The various CHP technologies described herewith are available in a large range of sizes, from as small as 1 kilowatt reciprocating engine systems to as large as 300 megawatt gas turbine powered systems.

NO_x emissions from rich burn reciprocating engine, gas turbine, and microturbine systems are low, ranging from 0.013 to 0.05 lb/mmBtu. NO_x emissions from lean burn reciprocating engine systems and gas-powered steam turbines systems range from 0.1 to 0.2 lb/mmBtu. The highest NO_x emitting CHP units are solid fuel-fired boiler/steam turbine systems which emit NO_x at rates ranging from 0.2 to 1.2 lb/mmBtu.

Under the final rule (consistent with prior CSAPR rulemakings), certain cogeneration units would be exempt from coverage under the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs. Specifically, the trading program regulations include an exemption for a unit that qualifies as a cogeneration unit throughout the later of 2005 or the first 12 months during which the unit first produces electricity and continues to qualify through each calendar year ending after the later of 2005 or that 12-month period and that meets the limitation on electricity sales to the grid. To meet the trading program's definition of "cogeneration unit" under the regulations, a unit (*i.e.*, a fossil-fuel-fired boiler or combustion turbine) must be a topping-cycle or bottoming-cycle type that operates as part of a "cogeneration system." A cogeneration system is defined as an integrated group of equipment at a source (including a boiler, or combustion turbine, and a generator) designed to produce useful thermal energy for industrial, commercial, heating, or cooling purposes and electricity through the sequential use of energy. A topping-cycle unit is a unit where the sequential use of energy results in production of useful power first and then, through use of reject heat from such production, in production of useful thermal energy. A bottoming-cycle unit is a unit where the sequential use of energy results in production of useful thermal energy first, and then, through use of reject heat from such production, in production of useful

power. To qualify as a cogeneration unit, a unit also must meet certain efficiency and operating standards in 2005 and each year thereafter. The electricity sales limitation under the exemption is applied in the same way whether a unit serves only one generator or serves more than one generator. In both cases, the total amount of electricity produced annually by a unit and sold to the grid cannot exceed the greater of one-third of the unit's potential electric output capacity or 219,000 MWh. This is consistent with the approach taken in the Acid Rain Program (40 CFR 72.7(b)(4)), where the cogeneration-unit exemption originated.

The EPA requested comment on requiring fossil fuel-fired boilers in the non-EGU industries identified in section VI.C of this document that serve electricity generators and that qualify for an exemption from inclusion in the CSAPR NO_x Ozone Season Group 3 Trading Program as EGUs to instead meet the same emissions standards, if any, that would apply under this rulemaking to fossil fuel-fired boilers at facilities in the same non-EGU industries that do not serve electricity generators.

Comment: Some stakeholders support the continued exclusion of qualifying cogenerators from the EGU program, but suggested they be regulated as non-EGUs if they don't fit the EGU applicability criteria.

Response: The EPA agrees that there is no basis within the four-step framework to exempt cogeneration units that fall under the applicability criteria of the final rule for non-EGU boilers simply because they are cogeneration units. While cogeneration units do have environmental benefits as noted at proposal, some cogeneration unit-types, particularly boilers, are estimated to have NO_x emissions that would otherwise meet this rule's criteria at Step 3 for constituting "significant contribution." These units can meet the emissions limits that are otherwise finalized for these unit types, and the EPA does not find a basis to exclude them simply because they may have other environmentally-beneficial attributes.

These emissions limits are set forth in section VI.C.5 of this document. Therefore, the final requirements for non-EGUs do not exempt cogeneration units and any cogeneration emissions units meeting the applicability criteria for non-EGUs will be subject to the final emissions limits for the appropriate non-EGU emissions unit. Based on EPA's review of available data, across all of the non-EGU industries covered by this rule, there are four cogeneration

boilers (two in Pulp and Papermill and two in Basic Chemical Manufacturing) that would meet the final rule's applicability criteria for non-EGU units and are included in the analysis of non-EGU emissions reduction potential in section V.C.2 of this document.

4. Mobile Source NO_x Mitigation Strategies

Under a variety of CAA programs, the EPA has established Federal emissions and fuel quality standards that reduce emissions from cars, trucks, buses, nonroad engines and equipment, locomotives, marine vessels, and aircraft (*i.e.*, "mobile sources"). Because states are generally preempted from regulating new vehicles and engines with certain exceptions (*see generally* CAA section 209), mobile source emissions are primarily controlled through EPA's Federal programs. The EPA has been regulating mobile source emissions since it was established as a Federal agency in 1970, and all mobile source sectors are currently subject to NO_x emissions standards. The EPA factors these standards and associated emissions reductions into its baseline air quality assessment in good neighbor rulemaking, including in this final rule. These data are factored into EPA's analysis at Steps 1 and 2 of the 4-step framework. As a result of this long history, NO_x emissions from onroad and nonroad mobile sources have substantially decreased (73 percent and 57 percent since 2002, for onroad and nonroad, respectively)²²⁷ and are predicted to continue to decrease into the future as newer vehicles and engines that are subject to the most recent, stringent standards replace older vehicles and engines.²²⁸

For example, in 2014, the EPA promulgated new, more stringent emissions and fuel standards for light-duty passenger cars and trucks.²²⁹ The fuel standards took effect in 2017, and the vehicle standards phase in between 2017 and 2025. Other EPA actions that are continuing to reduce NO_x emissions include the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (66 FR 5002; January 18, 2001); the Clean Air Nonroad Diesel Rule (69 FR 38957; June 29, 2004); the Locomotive and

Marine Rule (73 FR 25098; May 6, 2008); the Marine Spark-Ignition and Small Spark-Ignition Engine Rule (73 FR 59034; October 8, 2008); the New Marine Compression-Ignition Engines at or Above 30 Liters per Cylinder Rule (75 FR 22895; April 30, 2010); and the Aircraft and Aircraft Engine Emissions Standards (77 FR 36342; June 18, 2012).

Most recently, EPA finalized more stringent emissions standards for NO_x and other pollution from heavy-duty trucks (Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards, 88 FR 4296, January 24, 2023). These standards will take effect beginning with model year 2027. Heavy-duty vehicles are the largest contributor to mobile source emissions of NO_x and will be one of the largest mobile source contributors to ozone in 2025.²³⁰ Reducing heavy-duty vehicle emissions nationally will improve air quality where the trucks are operating as well as downwind. The EPA's existing regulatory program for mobile sources will continue to reduce NO_x emissions into the future.

Comment: The EPA received comments on ozone-precursor emissions from mobile sources, including cars, trucks, trains, ships, and planes. Commenters broadly encouraged the EPA to require emissions reductions from mobile sources in this rule. Commenters stated that the transportation sector plays a significant role in NO_x pollution and ozone formation and urged the EPA to finalize emissions reductions for the transportation sector that will enable attainment of the 2015 ozone NAAQS. Some commenters noted that high proportions of NO_x emissions in various upwind states are attributable to the transportation sector, and stated that EPA should have targeted emissions reductions from mobile sources first before requiring more stringent emissions controls from stationary sources in the same upwind states.

Response: The EPA agrees with commenters that a variety of sources, including mobile sources in the transportation sector, produce NO_x emissions that contribute to ozone air quality problems across the U.S. This rule, as with prior interstate transport actions, does not ignore those emissions, and it credits those on-the-books measures of states and the Federal Government within the four-step framework by including emissions and

²²⁷ US EPA. Our Nation's Air: Status and Trends Through 2019. <https://gispub.epa.gov/air/trendsreport/2020/#home>.

²²⁸ National Emissions Inventory Collaborative (2019). 2016v1 Emissions Modeling Platform. Retrieved from <http://views.cira.colostate.edu/wiki/wiki/10202>.

²²⁹ Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emissions and Fuel Standards, 79 FR 23414 (April 28, 2014).

²³⁰ Zawacki et al, 2018. Mobile source contributions to ambient ozone and particulate matter in 2025. *Atmospheric Environment*. Vol 188, pg 129–141. Available online: <https://doi.org/10.1016/j.atmosenv.2018.04.057>.

emissions reductions from these sources in the emissions inventory for air quality modeling, which informs Steps 1 and 2 of this analysis. Thus, this rule accurately represents emissions from mobile sources that are used to evaluate the contribution of states to ozone air quality problems in other states. See section IV.C of this document.

The EPA notes that its Step 3 analysis for this FIP does not assess additional emissions reductions opportunities from mobile sources. The EPA continues to believe that title II of the CAA provides the primary authority and process for reducing these emissions at the Federal level. EPA’s various Federal mobile source programs, summarized above in this section, have delivered and are projected to continue to deliver substantial nationwide reductions in both VOCs and NO_x emissions; these reductions from final rules are factored into the Agency’s assessment of air quality and contributions at Steps 1 and 2. Further, states are generally preempted from regulating new vehicles and engines with certain exceptions, and therefore a question exists regarding the EPA’s authority to address such emissions through such means when regulating in place of the states under CAA section 110(c). See generally CAA section 209. See also 86 FR 23099.²³¹ In

any case, the existence of mobile source emissions noted by commenters does not lead to the conclusion that the EPA must require mobile source reductions in this rule or that the EPA has not properly identified “source[s] or other type[s] of emissions activity” in upwind states that “significantly contribute” for purposes of the Good Neighbor Provision. The EPA is committed to continuing the effective implementation and enforcement of current mobile source standards and continuing its efforts on new standards. The EPA will continue to work with state and local air agencies to incorporate emissions reductions from the transportation sector into required ozone attainment planning elements.

C. Control Stringencies Represented by Cost Threshold (\$ per ton) and Corresponding Emissions Reductions

1. EGU Emissions Reduction Potential by Cost Threshold

For EGUs, as discussed in section V.A of this document, the multi-factor test considers increasing levels of uniform control stringency in combination with considering total NO_x reduction potential and corresponding air quality improvements. The EPA evaluated EGU NO_x emissions controls that are widely available (described previously in

section V.B.1 of this document), that were assessed in previous rules to address ozone transport, and that have been incorporated into state planning requirements to address ozone nonattainment.

The EPA evaluated the EGU sources within the State of California and found there were no covered coal steam sources greater than 100 MW that would have emissions reduction potential according to EPA’s assumed EGU SCR retrofit mitigation technologies.²³² The EGUs in the state are sufficiently well-controlled resulting in the lowest fossil-fuel emissions rate and highest share of renewable generation among the 23 states examined at Step 3. EPA’s Step 3 analysis, including analysis of the emissions reduction factors from EGU sources in the state, therefore resulted in no additional emissions reductions required to eliminate significant contribution from any EGU sources in California.

The following tables summarize the emissions reduction potentials (in ozone season tons) from these emissions controls across the affected jurisdictions. Table V.C.1–1 focuses on near-term emissions controls while Table V.C.1–2 includes emissions controls with extended implementation timeframes.

TABLE V.C.1–1—EGU OZONE-SEASON EMISSIONS AND REDUCTION POTENTIAL (TONS)—2023

State	Baseline 2023 OS NO _x	Reduction potential (tons) for varying levels of technology inclusion		
		SCR optimization	SCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades
Alabama	6,412	32	32	32
Arkansas	8,955	28	28	28
Illinois	7,721	70	70	247
Indiana	13,298	856	856	858
Kentucky	13,900	299	901	901
Louisiana	9,974	515	515	611
Maryland	1,214	0	0	8
Michigan	10,746	4	4	19
Minnesota	5,643	98	98	139
Mississippi	6,283	73	984	984
Missouri	20,094	7,339	7,339	7,497
Nevada	2,372	4	4	4
New Jersey	915	143	143	143
New York	3,977	64	64	64
Ohio	10,264	1,154	1,154	1,154
Oklahoma	10,470	199	890	890
Pennsylvania	8,573	336	336	436
Texas	41,276	909	909	1,142
Utah	15,762	7	7	7
Virginia	3,329	164	242	263
West Virginia	14,686	554	1,099	1,380

²³¹ This is not to say that states lack other options to reduce emissions from mobile sources. For example, a general list of types of transportation control measures can be found in CAA section 108(f). In addition, in accordance with section 177,

states may (but are not required to) adopt California vehicle emissions standards for which a waiver has been granted from the preemption provisions in section 209(a). States that decide to adopt California vehicle emissions standards may also choose to

submit those standards to be included as a part of their SIP.

²³² The only coal-fired power plant in California is the 63 MW Argus Cogeneration facility in Trona, California.

TABLE V.C.1-1—EGU OZONE-SEASON EMISSIONS AND REDUCTION POTENTIAL (TONS)—2023—Continued

State	Baseline 2023 OS NO _x	Reduction potential (tons) for varying levels of technology inclusion		
		SCR optimization	SCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades
Wisconsin	6,321	7	7	26
Total	222,184	12,854	15,681	16,832

* The EPA shows reduction potential from state-of-the-art LNB upgrade as near-term emissions controls, but explains in section V.B and VI.A of this document that this reduction potential would not be implemented until 2024.

TABLE V.C.1-2—EGU OZONE-SEASON EMISSIONS AND REDUCTION POTENTIAL (TONS)—2026 *

State	Baseline 2026 OS NO _x	Reduction potential (tons) for varying levels of technology inclusion			
		SCR optimization	SCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades	SCR/SNCR optimization + combustion control upgrades + SCR/SNCR retrofits
Alabama	6,371	32	32	32	604
Arkansas	8,728	28	28	28	4,697
Illinois	6,644	70	70	230	1,281
Indiana	9,468	768	768	770	1,333
Kentucky	13,211	299	739	739	5,303
Louisiana	9,704	515	515	611	5,894
Maryland	901	51	51	59	59
Michigan	7,790	4	4	19	1,959
Minnesota	4,197	98	98	139	1,613
Mississippi	6,022	73	984	984	3,938
Missouri	18,612	7,339	7,339	7,497	11,231
Nevada	1,146	4	4	4	4
New Jersey	915	143	143	143	143
New York	3,977	64	64	64	589
Ohio	9,083	1,154	1,154	1,154	1,154
Oklahoma	10,259	199	890	890	5,968
Pennsylvania	8,362	352	352	452	1,204
Texas	39,684	909	909	1,142	15,980
Utah	9,930	7	7	7	7,338
Virginia	3,019	164	242	263	646
West Virginia	13,185	401	947	1,227	3,507
Wisconsin	5,016	7	7	26	623
Total	196,225	12,680	15,346	16,480	75,067

* The EPA shows all emissions reduction potential identified for assumed SCR retrofits in the Step 3 analytic year 2026, but explains in sections V.B and VI.A of this document that for Step 4 implementation this emissions reduction potential will be phased in during the 2026 and 2027 ozone season control periods.

2. Non-EGU or Industrial Source Emissions Reduction Potential

As described in the memorandum titled “Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs,” the EPA uses the 2019 emissions inventory, the list of emissions units estimated to be captured by the applicability criteria, the assumed control technologies that would meet the emissions limits, and

information on control efficiencies and default cost/ton values from the CMDB, to estimate NO_x emissions reductions and costs for the year 2026. The estimates using the 2019 inventory and information from the CMDB identify proxies for emissions units, as well as emissions reductions, and costs associated with the assumed control technologies that would meet the final emissions limits. Emissions units subject to the final rule emissions limits may differ from those estimated in this assessment, and the estimated emissions reductions from and costs to meet the

final rule emissions limits may also differ from those estimated in this assessment. The costs do not include monitoring, recordkeeping, reporting, or testing costs.

Table V.C.2-1 summarizes the industries, estimated emissions unit types, assumed control technologies, estimated annual costs (2016\$), and estimated ozone season emissions reductions in 2026, and Table V.C.2-2 summarizes the estimated reductions by state.

TABLE V.C.2-1—BY INDUSTRY IN 2026, ESTIMATED EMISSIONS UNIT TYPES, ASSUMED CONTROL TECHNOLOGIES, ANNUAL COSTS (2016\$), AND ESTIMATED EMISSIONS REDUCTIONS (OZONE SEASON TONS)

Industry/industries	Emissions unit type	Assumed control technologies that meet final emissions limits	Annual costs (2016\$)	Ozone season emissions reductions
Pipeline Transportation of Natural Gas	Reciprocating Internal Combustion Engine	NSCR or Layered Combustion, Layered Combustion, SCR, NSCR.	385,463,197	32,247
Cement and Concrete Product Manufacturing.	Kiln	SNCR	10,078,205	2,573
Iron and Steel Mills and Ferroalloy Manufacturing.	Reheat Furnaces	LNB	3,579,294	408
Glass and Glass Product Manufacturing ..	Furnaces	LNB	7,052,088	3,129
Iron and Steel Mills and Ferroalloy Manufacturing.	Boilers	SCR, LNB + FGR	8,838,171	440
Metal Ore Mining .....	.....	.....	621,496	18
Basic Chemical Manufacturing .....	.....	.....	49,697,848	1,748
Petroleum and Coal Products Manufacturing.	.....	.....	5,128,439	147
Pulp, Paper, and Paperboard Mills .....	.....	.....	62,268,540	1,836
Solid Waste Combustors and Incinerators	Combustors or Incinerators	ANSCR or LNT TM and SNCR	38,949,560	2,071
Totals .....	.....	.....	571,676,839	44,616

TABLE V.C.2-2—ESTIMATED EMISSIONS REDUCTIONS (OZONE SEASON TONS) BY UPWIND STATE IN 2026

State	2019 OS emissions *	OS NO _x reductions
AR	8,790	1,546
CA	16,562	1,600
IL	15,821	2,311
IN	16,673	1,976
KY	10,134	2,665
LA	40,954	7,142
MD	2,818	157
MI	20,576	2,985
MO	11,237	2,065
MS	9,763	2,499
NJ	2,078	242
NV ²³³	2,544	0
NY	5,363	958
OH	18,000	3,105
OK	26,786	4,388
PA	14,919	2,184
TX	61,099	4,691
UT	4,232	252
VA	7,757	2,200
WV	6,318	1,649
Totals	302,425	44,616

* The 2019 OS season emissions are calculated as 5/12 of the annual emissions from the following two emissions inventory files: nonegu_SmokeFlatFile_2019NEI_POINT_20210721_controlupdate_13sep2021_v0 and oilgas_SmokeFlatFile_2019NEI_POINT_20210721_controlupdate_13sep2021_v0.

In Table V.C.2-3 by industry and emissions unit type, the EPA provides a summary of the control technologies applied and their average costs across

all of the non-EGU emissions units. The average cost per ton values range from \$939 to \$14,595 per ton. Note that the average cost per ton values are in 2016

dollars and reflect simple averages and not a percentile or other representative cost values from a distribution of cost estimates.

TABLE V.C.2-3—BY INDUSTRY, EMISSIONS UNIT TYPE, ASSUMED CONTROL TECHNOLOGIES, AND ESTIMATED AVERAGE COST PER TON BY CONTROL TECHNOLOGY ACROSS ALL NON-EGU EMISSIONS UNITS

Industry/industries	Emissions unit type	Assumed control technologies that meet final emissions limits	Average cost/ton values (2016\$)
Pipeline Transportation of Natural Gas	Reciprocating Internal Combustion Engine	NSCR or Layered Combustion, Layered Combustion, SCR, NSCR.	4,981
Cement and Concrete Product Manufacturing	Kiln	SNCR	1,632

²³³ We are not aware of existing non-EGU emissions units in Nevada that meet the applicability criteria for non-EGUs in the final rule.

If any such units in fact exist, they would be subject to the requirements of the rule just as in any other state. In addition, any new emissions unit in

Nevada that meets the applicability criteria in the final rule will be subject to the final rule's requirements. See section III.B.1.d.

TABLE V.C.2-3—BY INDUSTRY, EMISSIONS UNIT TYPE, ASSUMED CONTROL TECHNOLOGIES, AND ESTIMATED AVERAGE COST PER TON BY CONTROL TECHNOLOGY ACROSS ALL NON-EGU EMISSIONS UNITS—Continued

Industry/industries	Emissions unit type	Assumed control technologies that meet final emissions limits	Average cost/ton values (2016\$)
Iron and Steel Mills and Ferroalloy Manufacturing	Reheat Furnaces	LNB	3,656
Glass and Glass Product Manufacturing	Furnaces	LNB	939
Iron and Steel Mills and Ferroalloy Manufacturing	Boilers	SCR or LNB + FGR	8,369
Metal Ore Mining .....	.....	.....	14,595
Basic Chemical Manufacturing .....	.....	.....	11,845
Petroleum and Coal Products Manufacturing .....	.....	.....	14,582
Pulp, Paper, and Paperboard Mills .....	.....	.....	14,134
Solid Waste Combustors and Incinerators	Combustors or Incinerators	ANSCR or LNT TM and SNCR	7,836
Overall Average Cost/Ton .....	.....	.....	5,339

Refer to the memorandum titled “Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs” for additional estimates—including by industry and by state. These estimates are proxy estimates, and the EPA also did not prepare detailed engineering analyses for the industries, facilities, and individual emissions units identified for the final rule. Emissions units subject to the final rule emissions limits may differ from those estimated in this assessment, and the estimated emissions reductions from and costs to meet the final rule emissions limits may also differ from those estimated in this assessment.

Comment: Regarding the marginal cost threshold of \$7,500/ton used to assess potential emissions reductions in the non-EGU screening assessment prepared for proposal, commenters raised a range of questions, including (1) why the EPA used a marginal cost threshold that is much higher than the \$2,000/ton threshold used in the 2021 Revised CSAPR Update Rule, (2) why the EPA used a “one size fits all” approach for addressing the estimated cost and actual emissions reductions achievable, particularly for existing sources of NO_x emissions, (3) why the EPA set a \$7,500/ton marginal cost threshold for all non-EGUs, despite acknowledging the heterogeneity of industry, emissions unit types and control options and failing to consider the actual costs associated with achieving the proposed reductions at different types of emissions units in order to artificially inflate the marginal cost threshold and to justify otherwise cost-prohibitive NO_x control technologies. Commenters also stated that controls for their industry are not cost-effective using the EPA’s presumptive value of \$7,500/ton and

that the value may not be technically feasible to apply to existing sources that would have to retrofit controls.

Response: The EPA notes that the primary purpose of the *Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026* (non-EGU screening assessment) was to identify potentially impactful industries and emissions unit types for further evaluation.²³⁴ In the non-EGU screening assessment memorandum we presented an analytical framework to further analyze potential emissions reductions and costs and included proxy estimates for 2026.

As noted in section V.D. of this document, at proposal the EPA found that based on data available at that time and for the purposes of the non-EGU screening assessment, it appeared that a \$7,500 marginal cost-per-ton threshold could be used as a proxy to identify cost-effective emissions control opportunities. Also, the \$7,500 marginal cost-per-ton threshold is higher than the cost-per-ton value used in the Revised Cross-State Air Pollution Rule Update because that rulemaking assessed significant contribution for the less protective 2008 ozone NAAQS, and it is reasonable when assessing significant contribution associated with the more protective 2015 ozone NAAQS, that a potentially more costly universe of emissions controls and related potential reductions should be included in the analysis.²³⁵ Similar to the role of cost-

²³⁴ The non-EGU screening assessment memorandum is available in the docket here: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0150>.

²³⁵ As the amount of air pollution that is allowed in the ambient air is reduced (i.e., when a NAAQS is revised), it is reasonable to expect that further emissions reductions may be necessary to bring areas into attainment with that more protective standard. At the same time, the available remaining emissions reduction opportunities will likely have become more costly compared to a prior period, because other CAA requirements, including such as earlier transport rules, will have consumed those

effectiveness thresholds the EPA uses at Step 3 to evaluate EGU emissions control opportunities, this threshold is not intended to represent the maximum cost any facility may need to expend but is rather intended to be a representative figure for evaluating technologies to allow for a relative comparison between different levels of control stringency. The EPA’s potential cost threshold for non-EGU controls at proposal was intended to serve a similar representative purpose. Based on the EPA’s updated analysis for this final rule, the EPA recognizes that the \$7,500/ton threshold does not reflect the full range of cost-effectiveness values that are likely present across the many different types of non-EGU industries and emissions units assessed.

While the potentially impactful industries (identified in Step 1 of the analytical framework presented in the non-EGU screening assessment) were directly used, the proxy estimates for emissions unit types, emissions reductions, and costs from the non-EGU screening assessment were not directly used to establish applicability thresholds and emissions limits in the proposal. To further evaluate the impactful industries and emissions unit types and establish the proposed emissions limits, the EPA reviewed RACT rules, NSPS rules, NESHAP rules, existing technical studies (e.g., Ozone Transport Commission, Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions, October 17, 2012), rules in approved SIP submittals, consent decrees, and permit limits.²³⁶

emissions reduction opportunities that were the least costly. The EPA noted this same possibility in the original CSAPR rulemaking, see 76 FR 48210.

²³⁶ This review is detailed in the Final Non-EGU Sectors TSD available in the docket here: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0668-0145>.

D. Assessing Cost, EGU and Non-EGU NO_x Reductions, and Air Quality

To determine the emissions that are significantly contributing to nonattainment or interfering with maintenance, the EPA applied the multi-factor test to EGUs and non-EGUs separately, considering for each the relationship of cost, available emissions reductions, and downwind air quality impacts. Specifically, for each sector, the EPA finalizes a determination regarding the appropriate level of uniform NO_x control stringency that would collectively eliminate significant contribution to downwind nonattainment and maintenance receptors. Based on the air quality results presented in this section, we find that the emissions control strategies that were identified and evaluated in sections V.B and V.C of this document and found to be both cost-effective and feasible, deliver meaningful air quality benefits through projected reductions in ozone levels across the linked downwind nonattainment and maintenance receptors in the relevant analytic years 2023 and 2026. Further, EPA finds the emissions control strategies in upwind states that would deliver these benefits to be widely available and in use at many other similar EGU and non-EGU facilities throughout the country, particularly in those areas that have historically or now continue to struggle to attain and maintain the 2015 ozone NAAQS. Applying these emissions control strategies on a uniform basis across all linked upwind states continues to constitute an efficient and equitable solution to the problem of allocating upwind-state responsibility for the elimination of significant contribution. This approach continues to effectively address the “thorny” causation problem of interstate pollution transport for regional-scale pollutants like ozone that transport over large distances and are affected by the vagaries of meteorology. *EME Homer City*, 572 U.S. at 514–16. It requires the most impactful sources in each state that has been found to contribute to ozone problems in other states to come up to minimum standards of environmental performance based on demonstrated NO_x pollution-control technology. *Id.* at 519. When the effects of these emissions reductions are assessed collectively across the hundreds of EGU and non-EGU industrial sources that are subject to this rule, the cumulative improvements in ozone levels at downwind receptors, while they may vary to some extent, are both measurable and meaningful and will assist downwind areas in attaining

and maintaining the 2015 ozone NAAQS.

In addition to the findings of cost-effectiveness, feasibility and widespread availability that support EPA’s identification of the appropriate level of emissions-control stringency at Step 3 discussed in sections V.B and V.C, the findings regarding air quality improvement in this section—as in prior transport rules—are a central component of our Step 3 analytic findings as to the definition of “significant contribution.” EPA’s assessment of air quality improvement for all of the emissions control strategies included shows continued air quality improvement with each additional control strategy measure. Within the group of selected control strategies for EGUs and non-EGUs no clear “knee-in-the-curve” is evident; *i.e.*, there is no point at which there is a noticeable decline in the rate of air quality improvement up through the control stringency level selected. However, if EPA were to go beyond the selected control stringency through inclusion of additional EGU or non-EGU NO_x mitigation technologies for the covered sources and unit-types that are, at least on the record of this action, not widely available, uncertain or untested, and/or far more costly, a “knee-in-the-curve” does materialize, where the incremental air quality benefit per dollar spent per ton on mitigation measures plateaus even as costs increase dramatically. In the Revised CSAPR Update, EPA explained that a knee in the curve “is not on its own a justification for not requiring reductions beyond that point,” 86 FR 23107, but does indicate that it is a useful indicator for informing potential stopping points. The observation that no “knee-in-the-curve” materializes at the stringency levels up through that selected by EPA supports EPA’s identified control stringency.

Further, as the Supreme Court has explained, “while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid ‘under-control,’ *i.e.*, to maximize achievement of attainment downwind.” 572 U.S. at 523. While the ultimate purpose of the good neighbor provision is to eliminate significant contribution and not necessarily to resolve downwind areas’ nonattainment and maintenance problems, we have evaluated the expected attainment status at each identified receptor as we examine the air quality effects of the different emissions control strategies identified. As discussed further in this section, the EPA notes that multiple receptors shift into projected attainment status or shift from projected

nonattainment to maintenance status up through the stringency level ultimately selected by EPA. (And all receptors show improvement in air quality even if their status does not change.) These analytic findings at Step 3 cement EPA’s identification of the selected EGU and non-EGU mitigation measures as the appropriate control stringency to fulfill its statutory obligation to eliminate significant contribution for the 2015 ozone NAAQS for the covered states. The EPA also evaluated whether the final rule resulted in possible over-control scenarios by evaluating if an upwind state is linked solely to downwind air quality problems that could have been resolved at a lower cost threshold, or if an upwind state could have reduced its emissions below the 1 percent of NAAQS air quality contribution threshold at a lower cost threshold. The Agency finds no overcontrol from this rule. See section V.D.4 of this document.

1. EGU Assessment

For EGUs, the EPA examined the emissions reduction potential associated with each EGU emissions control technology (presented in section V.C.1 of this document) and its impact on the air quality at downwind receptors. Specifically, EPA identified and assessed the projected average air quality improvements relative to the base case and whether these improvements are sufficient to shift the status of receptors from projected nonattainment to maintenance or from maintenance to attainment. Combining these air quality factors, costs, and emissions reductions, the EPA identified a control stringency for EGUs that results in substantial air quality improvement from emissions controls that are available in the timeframe for which air quality problems at downwind receptors persist. For all affected jurisdictions, this control stringency reflects, at a minimum, the optimization of existing post-combustion controls and installation of state-of-the-art NO_x combustion controls, which are widely available at a representative cost of \$1,800 per ton. EPA’s evaluation also shows that the effective emissions rate performance across affected EGUs consistent with realization of these mitigation measures does not over-control upwind states’ emissions relative to either the downwind air quality problems to which they are linked at Step 1 or the 1 percent contribution threshold that triggers further evaluation at Step 3 of the 4-step framework for the 2015 ozone NAAQS.

Similarly, the EPA also identified installation of new SCR post-combustion controls at coal steam sources greater than or equal to 100 MW and for a more limited portion of the oil/gas steam fleet that had higher levels of emissions as components of the required control stringency. These SCR retrofits are widely available starting in the 2026 ozone season at \$11,000 and \$7,700 per ton respectively. For all but 3 of the affected states (Alabama, Minnesota, and Wisconsin, which are no longer linked in 2026 at Steps 1 and 2 in EPA's base case air quality modeling for this final rule), EPA's evaluation shows that the effective emissions rate performance across EGUs consistent with the full realization of these mitigation measures does not over-control upwind states' emissions in 2026 relative to either the downwind air quality problems to which they are linked at Step 1 or the 1 percent contribution threshold that triggers further evaluation at Step 3 of the 4-step framework for the 2015 ozone NAAQS (see the Ozone Transport Policy Analysis Final Rule TSD for details).

To assess downwind air quality impacts for the nonattainment and maintenance receptors identified in section IV.D of this document, the EPA evaluated the air quality change at that receptor expected from the progressively more stringent upwind EGU control stringencies that were available for that time period in upwind states linked to that receptor. This assessment provides the downwind ozone improvements for consideration and provides air quality data that is used to evaluate potential over-control situations.

To assess the air quality impacts of the various control stringencies at downwind receptors for the purposes of Step 3, the EPA evaluated changes resulting from the emissions reductions associated with the identified emissions controls in each of the upwind states, as well as assumed corresponding reductions of similar stringency in the downwind state containing the receptor to which they are linked. By applying these emissions reductions to the state containing the receptor, the EPA assumes that the downwind state will

implement (if it has not already) an emissions control stringency for its sources that is comparable to the upwind control stringency identified here. Consequently, the EPA is accounting for the downwind state's "fair share" of the responsibility for resolving a nonattainment or maintenance problem as a part of the over-control evaluation.²³⁷

For this assessment, the EPA used an ozone air quality assessment tool (ozone AQAT) to estimate downwind changes in ozone concentrations related to upwind changes in emissions levels. The EPA focused its assessment on the years 2023 and 2026 as they pertain to the last years for which ozone season emissions data can be used for purposes of determining attainment for the Moderate (2024) and Serious (2027) attainment dates. For each EGU emissions control technology, the EPA first evaluated the magnitude of the change in ozone concentrations at the nonattainment and maintenance receptors for each relevant year (*i.e.*, 2023 and 2026). Next, the EPA evaluated whether the estimated change in concentration would resolve the receptor's nonattainment or maintenance concern by lowering the average or maximum design values, respectively, below 71 ppb. For a complete set of estimates, see the Ozone Transport Policy Analysis Final Rule TSD or the ozone AQAT Excel file.

For 2023, the EPA evaluated potential air quality improvements at the downwind receptors outside of California associated with available EGU emissions control technologies in that timeframe. The EPA determined for the purposes of Step 3 that the average air quality improvement at the receptors relative to the engineering analytics base case was 0.06 ppb for emissions reductions commensurate with optimization of existing SCR/SNCRs and combustion control upgrades. The EPA determined for the purposes of

²³⁷ For EGUs, this analysis for the Connecticut receptors shows no EGU reduction potential in Connecticut from the emissions reduction measures identified given that state's already low-emitting fleet; however, EGU reductions were identified in Colorado and these reductions were included in the over-control analysis.

Step 3 that no receptors switch from maintenance to attainment or from nonattainment to maintenance with these mitigation strategies in place. Table V.D.1–1 summarizes the results of EPA's Step 3 evaluation of air quality improvements at these receptors using AQAT.

For 2026, the EPA determined that the average air quality improvement at these receptors relative to the engineering analytics base case was 0.47 ppb for emissions reductions commensurate with optimization of existing SCR/SNCRs, combustion control upgrades, and new post-combustion control (SCR and SNCR) retrofits at eligible units are assumed to be implemented. The EPA determined for the purposes of Step 3 that in 2026, all but one of the receptors are expected to remain nonattainment or maintenance across these control stringencies, with one receptor in Larimer County, Colorado (Monitor 080690011), switching from maintenance to attainment and two receptors (one in Fairfield County, Connecticut (Monitor 90013007), and one in Galveston, Texas (Monitor ID 481671034)) switching from nonattainment to maintenance with these mitigation strategies in place.²³⁸ Table V.D.1–2 summarizes the results of EPA's Step 3 evaluation of air quality improvements at the receptors included in the AQAT analysis. For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Final Rule TSD and to the Ozone AQAT included in the docket for this rule.

²³⁸ As in prior rules, for the purpose of defining significant contribution at Step 3, the EPA evaluated air quality changes resulting from the application of the emissions reductions in only those states that are linked to each receptor as well as the state containing the receptor. By applying reductions to the state containing the receptor, the EPA ensures that it is accounting for the downwind state's fair share. This method holds each upwind state responsible for its fair share of the downwind problems to which it is linked. Reductions made by other states to address air quality problems at other receptors do not increase or decrease this share. The air quality impacts on design values that reflect the emissions reductions in all linked states action are further discussed in sections V.D.3 and V.D.4 of this document.

TABLE V.D.1-1—AIR QUALITY AT THE RECEPTORS IN 2023 FROM EGU EMISSIONS CONTROL TECHNOLOGIES ^a

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)	
			Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade	Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade
40278011	Arizona	Yuma	70.36	70.34	72.05	72.04
80350004	Colorado	Douglas	71.12	71.10	71.71	71.70
80590006	Colorado	Jefferson	72.63	72.61	73.32	73.31
80590011	Colorado	Jefferson	73.29	73.27	73.89	73.87
80690011	Colorado	Larimer	70.79	70.78	71.99	71.98
90010017	Connecticut	Fairfield	71.62	71.56	72.22	72.16
90013007	Connecticut	Fairfield	72.99	72.90	73.89	73.80
90019003	Connecticut	Fairfield	73.32	73.25	73.62	73.55
90099002	Connecticut	New Haven	70.61	70.51	72.71	72.61
170310001	Illinois	Cook	68.13	68.11	71.82	71.80
170314201	Illinois	Cook	67.92	67.88	71.41	71.37
170317002	Illinois	Cook	68.47	68.37	71.27	71.17
350130021	New Mexico	Dona Ana	70.83	70.82	72.13	72.12
350130022	New Mexico	Dona Ana	69.73	69.72	72.43	72.42
350151005	New Mexico ^b	Eddy				
350250008	New Mexico	Lea				
480391004	Texas	Brazoria	70.59	70.52	72.69	72.62
481210034	Texas	Denton	69.93	69.88	71.73	71.68
481410037	Texas	El Paso	69.82	69.81	71.43	71.41
481671034	Texas	Galveston	71.82	71.70	73.13	73.01
482010024	Texas	Harris	75.33	75.25	76.93	76.85
482010055	Texas	Harris	71.19	71.10	72.20	72.10
482011034	Texas	Harris	70.32	70.25	71.52	71.45
482011035	Texas	Harris	68.01	67.94	71.52	71.45
490110004	Utah	Davis	71.88	71.87	74.08	74.07
490353006	Utah	Salt Lake	72.48	72.47	74.07	74.06
490353013	Utah	Salt Lake	73.21	73.20	73.71	73.70
550590019	Wisconsin	Kenosha	70.75	70.65	71.65	71.55
551010020	Wisconsin	Racine	69.59	69.46	71.39	71.25
551170006	Wisconsin	Sheboygan	72.64	72.46	73.54	73.36
Average AQ Change Relative to Base (ppb)						0.06
Total PPB Change Across All Receptors Relative to Base ^c						1.58

Table Notes:

^a The EPA notes that the design values reflected in tables V.D.1-1 and -2 correspond to the engineering analysis EGU emissions inventory that was used in AQAT to determine state-level baseline emissions and reductions at Step 3. These tools are discussed in greater detail in the Ozone Transport Policy Analysis Final Rule TSD.

^b New Mexico Eddy and Lea monitors have no values in tables V.D.1-1 and 1-2 as EPA does not have calibration factors for these monitors as no contributions were calculated for them from the proposal AQ modeling

^c The cumulative ppb change only shows the aggregate change across all problematic receptors (some of which are located within close proximity to one another) in this part of the Step 3 analysis. Section VIII of this document provides a more complete picture of the air quality impacts of the final rule.

TABLE V.D.1-2—AIR QUALITY AT RECEPTORS IN 2026 FROM EGU EMISSIONS CONTROL TECHNOLOGIES

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)	
			Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit	Baseline (engineering analysis)	SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit
40278011	Arizona	Yuma	69.87	69.84	71.47	71.44
80590006	Colorado	Jefferson	71.70	71.36	72.30	71.95
80590011	Colorado	Jefferson	72.06	71.59	72.66	72.19
80690011	Colorado	Larimer	69.84	69.54	71.04	70.73
90013007	Connecticut	Fairfield	71.25	70.98	72.06	71.78
90019003	Connecticut	Fairfield	71.58	71.34	71.78	71.54
350130021	New Mexico	Dona Ana	70.06	69.89	71.36	71.19
350130022	New Mexico	Dona Ana	69.17	69.00	71.77	71.60
350151005	New Mexico	Eddy				
350250008	New Mexico	Lea				
480391004	Texas	Brazoria	69.89	68.96	72.02	71.06
481671034	Texas	Galveston	71.29	70.02	72.51	71.22
482010024	Texas	Harris	74.83	73.86	76.45	75.46
490110004	Utah	Davis	69.90	69.34	72.10	71.52
490353006	Utah	Salt Lake	70.50	69.96	72.10	71.55
490353013	Utah	Salt Lake	71.91	71.45	72.31	71.84
551170006	Wisconsin	Sheboygan	70.83	70.51	71.73	71.41
Average AQ Change Relative to Base (ppb)						0.47
Total PPB Change Across All Receptors Relative to Base (ppb)						7.04

Figures 1 and 2 to section V.D.1 of this document, included in Appendix I of the Ozone Transport Policy Analysis Final Rule TSD available in the docket for this rulemaking, illustrate the air quality improvement relative to the estimated representative cost associated with the previously identified emissions control technologies. The graphs show improving air quality at the downwind receptors as emissions reductions commensurate with the identified control technologies are assumed to be implemented. Figure 1 to section V.D.1 of this document reflects emissions reductions commensurate with optimization of existing SNCRs and SCR. Figure 2 to section V.D.1 of this document reflects emissions reductions commensurate with installation of new post combustion controls (mainly SCR) layered on top of the emissions reduction potential from the technologies represented in Figure 1 to section V.D.1 of this document. The graphic, and underlying AQAT receptor-by-receptor analysis demonstrates that air quality continues to improve at downwind receptors as EPA examines increasingly stringent EGU NO_x control technologies. While all major technology breakpoints identified in sections V.B and V.C of this document show continued air quality improvements at problematic receptors and at cost and technology levels that are commensurate with mitigation strategies that are proven to be widely available and implemented, EPA's quantification and application of those breakpoints reflect certain exclusions to: (1) preserve this consistency with widely observed mitigation measures in states, and (2) remove any retrofit assumptions at marginal units that would have much higher dollar per ton representative cost and little or no air quality benefit. For instance, the EPA does not define the SCR retrofit breakpoint (\$11,000 per ton) to include retrofit application at steam units less than 100 MW or at oil/gas steam units emitting at less than 150 tons per ozone season. The emissions reductions from these potential categories of measures are small and do not constitute additional "breakpoints" in EPA's estimation. They would entail much higher dollar per ton costs, going beyond what is widely observed in the fleet. This careful calibration of technology breakpoints through exclusion of measures that are clearly not cost-effective in terms of air quality benefit allows for the identification of an EGU uniform control stringency that is an appropriate reflection of those readily available and widely

implemented emissions reduction strategies that will have meaningful downwind air quality impact.

Moreover, these technologies (and representative cost) are demonstrated ozone pollution mitigation strategies that are widely practiced across the EGU fleet and are of comparable stringency to emissions reduction measures that many downwind states have already instituted. The coal SCR retrofit measures driving the majority of the emissions reductions in this action not only reflect industry best practice, but they also reflect prevailing practice among EGUs. More than 66 percent of the existing coal capacity already has this technology in place. For nearly 25 years, all new coal-fired EGUs that commenced construction have had SCR (or equivalent emissions rates). The 1997 proposed amendments to subpart Da revised the NO_x standard based on the use of SCR. The NO_x SIP Call (promulgated in 1998) established emissions reduction requirements premised on extensive SCR installation (142 units) and incentivized well over 40 GWs of SCR retrofit in the ensuing years.²³⁹ Similarly, the Clean Air Interstate Rule established emissions reductions requirements in 2006 that assumed SCR would be installed on another 58 units (15 GW) in the ensuing years among just 10 states, and an even greater volume of capacity chose SCR retrofit measures in the wake of finalizing that action.²⁴⁰

Basing emissions reduction requirements for EGUs on SCR retrofits is also consistent with regulatory approaches adopted by states, which—particularly in downwind areas more impacted by ozone transport contribution from upwind state emissions—have already adopted SCR-based standards as part of stringent NO_x control programs. Regulatory programs that impose stringent RACT requirements on all major power plants and Lowest Achievable Emission Rate (LAER) standards on all new major sources of NO_x have resulted in remaining coal-fired generating resources in states along the Northeast Corridor such as Connecticut, Delaware, New Jersey, New York, and Massachusetts all being retrofitted with SCR.²⁴¹ The Maryland Code of Regulations requires coal-fired sources to operate existing SCR controls or install SCR controls by specified

dates.²⁴² Programs like North Carolina's Clean Smokestacks Act and Colorado's Clean Air, Clean Jobs Act have also required or prompted SCR retrofits on units.²⁴³ Unit-level BART requirements for the first Regional Haze planning period also determined SCR retrofits (and corresponding emissions rates) were cost-effective controls for a variety of sources in the U.S.²⁴⁴

As shown in Figure 1 to section V.D.1 of this document,²⁴⁵ the majority of EGU emissions reduction potential and associated air quality improvements estimated for 2023 occurs from optimization of existing SCRs, with some additional reductions from installation of state-of-the-art combustion controls at the same representative cost threshold. At the slightly higher representative cost threshold of \$1,800 per ton, there is some additional air quality improvement from optimization of existing SNCRs. These measures taken together represent the control stringency at which near-term incremental EGU NO_x reduction potential and corresponding downwind ozone air quality improvements are maximized. This evaluation shows that EGU NO_x reductions for each of the near-term emissions control technologies are available at reasonable cost and that these reductions provide meaningful improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors. Figure 1 to section V.D.1 of this document²⁴⁶ highlights (1) the continuous connection between identified emissions reduction potential and downwind air quality improvement across the range of near-term mitigation measures assessed, and (2) the cost-effective availability of these reductions and corresponding air quality improvements.

Additional considerations that are unique to EGUs provide additional support for EPA's determination to include SCR and SNCR optimization as part of the identified near-term control stringency, including:

²⁴² COMAR 26.11.38 (control of NO_x Emissions from Coal-Fired Electric Generating Units).

²⁴³ <https://www.epa.gov/system/files/documents/2021-09/table-3-30-state-power-sector-regulations-included-in-epa-platform-v6-summer-2021-refe.pdf>.

²⁴⁴ See table 3–35 BART regulations in EPA IPM documentation available at <https://www.epa.gov/airmarkets/documentation-epas-power-sector-modeling-platform-v6-summer-2021-reference-case>.

²⁴⁵ Included in Appendix I of the Ozone Transport Policy Analysis Final Rule TSD, which is available in the docket for this rulemaking.

²⁴⁶ Included in Appendix I of the Ozone Transport Policy Analysis Final Rule TSD, which is available in the docket for this rulemaking.

²³⁹ 63 FR 57448.

²⁴⁰ 71 FR 25345.

²⁴¹ EPA-HQ-OAR–2020–0272. Comment letter from Attorneys General of NY, NJ, CT, DE, MA.

- these controls are already installed and available for operation on these units;

- they are on average already partially operating, but not necessarily optimized;

- the reductions are available in the near-term (during ozone seasons when the problematic receptors are projected to persist), including by the 2023 ozone season aligned with the Moderate area attainment date; and

- these sources are already covered under the existing CSAPR NO_x Ozone Season Group 2 or Group 3 Trading Programs or the Acid Rain Program and thus have the monitoring, reporting, recordkeeping, and all other necessary elements of compliance with the trading program already in place.

The majority of EGU emissions reduction potential and associated air quality improvements estimated to start in 2026 occur from retrofitting uncontrolled steam sources with post-combustion controls. At the representative cost threshold of \$11,000 per ton, there are significant additional air quality improvements from emissions reductions commensurate with installation of new SCRs and SNCRs. These measures taken together with the near-term emissions reduction measures described previously represent the level of control stringency in 2026 at which incremental EGU NO_x reduction potential and corresponding downwind ozone air quality improvements are maximized. This evaluation shows that EGU NO_x reductions for each of the emissions control technologies are available at reasonable cost and that these reductions can provide improvements in downwind ozone concentrations at the identified nonattainment and maintenance receptors.

The EPA finds that the control stringency that reflects optimization of existing SCRs and SNCRs, installation of state-of-the-art combustion controls, and the retrofitting of new post combustion controls at the coal and oil/gas steam capacity described previously is projected to result in nearly 73,000 tons of NO_x reduction (approximately 40 percent of the 2026 baseline level) for the 19 linked states in 2026 subject to a FIP for EGUs, which will deliver notable air quality improvements across all transport-impacted receptors and assist in fully resolving one downwind air quality receptor for the 2015 ozone NAAQS. Figure 2 to section V.D.1 of this document²⁴⁷ demonstrates the

continuous connection between identified emissions reduction potential and downwind air quality improvement across the range of mitigation measures assessed in 2026. At no point do the additional emissions mitigation measures examined here fail to produce corresponding downwind air quality improvements.

The EPA is determining that the appropriate EGU control stringency is commensurate with the full operation of all existing post-combustion controls (both SCRs and SNCRs) and state-of-the-art combustion control upgrades for those states linked to downwind nonattainment or maintenance receptors in 2023. For those states also linked in 2026, the EPA is determining that the appropriate EGU control stringency also includes emissions reductions commensurate with the retrofit of SCR at coal steam units of 100 MW or greater capacity (excepting circulating fluidized bed units), new SNCR on coal steam units of less than 100 MW capacity and circulating fluidized bed units, and SCR on oil/gas steam units greater than 100 MW that have historically emitted at least 150 tons of NO_x per ozone season.

As noted previously in section V.B of this document and in the EGU NO_x Mitigation Strategies Final Rule TSD, the EPA considered other methods of identifying mitigation measures (e.g., SCRs on smaller units, combustion control upgrades on combustion turbines, SCRs on combined cycle and simple cycle combustion turbines). The emissions reductions from these potential categories of measures do not constitute additional “technology breakpoints” in EPA’s estimation, but rather reflect a different tier of assessment where further mitigation measures are based on inclusion of smaller and/or different generator-type units (rather than different pollution control technologies). Emissions reductions from these measures are relatively small and would entail much higher dollar per ton costs, going beyond what is widely observed in the fleet. Although these additional measures are not included in EPA’s technology breakpoint analysis discussed in this section, the EPA did analyze the cost, potential reductions, and air quality impact of these additional measures to affirm that they do not merit inclusion in the final stringency for this action. That analysis shows the potential emissions reductions and air quality improvements from these additional measures occur beyond a notable “knee-in-the-curve” breakpoint. In other words, there are very little additional emissions reductions and air quality

improvement at problematic receptors, and the cost associated with these measures increases substantially on a dollar per ton basis. The graphic capturing this effect (located in Appendix I of the Ozone Transport Policy Analysis Final Rule TSD) illustrates the significant decline in cost-effectiveness of reductions if these measures had been included in EPA’s final stringency.²⁴⁸

2. Non-EGU Assessment

Using a 2019 emissions inventory, the list of emissions units estimated to be captured by the applicability criteria, the assumed control technologies that would meet the emissions limits, and information on control efficiencies and default cost/ton values from the control measures database, the EPA estimated NO_x emissions reductions and costs for the year 2026. Given the EPA’s conclusion that the 2026 ozone season is the earliest date by which the required controls can be installed across the identified non-EGU industries, the EPA assessed the effects of these controls in 2026 under its multi-factor test. In the assessment, we matched emissions units by Source Classification Code (SCC) from the inventory to the applicable control technologies in the CMDB. We modified SCC codes as necessary to match control technologies to inventory records. For additional details about the steps taken to estimate emissions units, emissions reductions, and costs, see the memorandum titled “Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs” available in the docket. The estimates using the 2019 inventory and information from the CMDB identify proxies for emissions units, as well as emissions reductions, and costs associated with the assumed control

²⁴⁸ This is not to discount the potential effectiveness of these or other NO_x mitigation strategies outside the context of this rulemaking, which addresses regional ozone transport on a nationwide basis based on the present record. States and local jurisdictions may find such measures particularly impactful or necessary in the context of local attainment planning or other unique circumstances. Further, while the EPA finds on the present record that this rule is a complete remedy to the problem of interstate transport for the 2015 ozone NAAQS for the covered states, the EPA has in the past recognized that circumstances may arise after the promulgation of remedies under CAA section 110(a)(2)(D)(i)(I) in which the exercise of further remedial authority against specific stationary sources or groups of sources under CAA section 126 may be warranted. See Response to Clean Air Act Section 126(b) Petition From Delaware and Maryland, 83 FR 50444, 50453–54 (Oct. 5, 2018).

²⁴⁷ Included in Appendix I of the Ozone Transport Policy Analysis Final Rule TSD, which is available in the docket for this rulemaking.

technologies that would meet the final emissions limits. Emissions units subject to the final rule emissions limits may differ from those estimated in this assessment, and the estimated emissions reductions from, and costs to meet, the final rule emissions limits may also differ from those estimated in this assessment. The costs do not include monitoring, recordkeeping, reporting, or testing costs.

After reviewing public comments and updating some of the data used to provide an accurate assessment of the likely potential emissions reductions that could be achieved from the identified emissions units in the industries analyzed for proposal, the EPA finds that in general, these emissions reductions (with some modifications from proposal) are necessary to eliminate significant contribution at Step 3. The EPA's use of the analytical framework presented in the non-EGU screening assessment to identify potentially impactful industries and emissions unit types in the proposal remains valid. The EPA's criteria were intended to identify industries and emissions unit types that on a broad scale impact multiple receptors to varying degrees. The EPA focused its non-EGU screening assessment on (1) emissions and potential emissions reductions from these industries and emissions units and (2) the potential impact that emissions reductions from those industries and emissions units could deliver to the receptors.

While commenters criticized the analytical framework in the non-EGU screening assessment for assuming potentially unachievable emissions reductions at Step 3, or for not corresponding to a precise list of emissions units that would be covered at Step 4, these comments did not offer an alternative methodology for the Step 3 analysis to identify those industries and emissions units that potentially have the greatest impact and therefore should be scrutinized more closely for emissions reduction opportunities.²⁴⁹ Further, contrary to some commenters' assertions, the EPA's assessment did not result in an unbounded scope of regulation of industrial sources. Of the approximately 40 industries defined by North American Industry Classification System codes the EPA analyzed, only

seven industries were identified as having emissions and potential emissions reduction opportunities that met the EPA's air quality criteria for further assessment.

At proposal, the EPA found that based on data available at that time and for the purposes of the screening assessment, it appeared that a \$7,500 marginal cost-per-ton threshold could be used as a proxy to identify cost-effective emissions control opportunities. Similar to the role of cost-effectiveness thresholds the EPA uses at Step 3 to evaluate EGU emissions control opportunities, this threshold is not intended to represent the maximum cost any facility may need to expend but is rather intended to be a representative figure for evaluating technologies to allow for a relative comparison between different levels of control stringency. For example, in the EGU analysis, the \$11,000/ton average cost threshold for an SCR retrofit represents a range of SCR retrofit costs for units for which the 90th percentile cost-per-ton is roughly \$21,000. See section V.B.a of this document. The EPA's potential cost threshold for non-EGU controls at proposal was intended to serve a similar representative purpose. We respond briefly to comments regarding the use of the \$7,500/ton threshold in section V.C of this document. Comments regarding the screening assessment are further addressed in section 2.2 of the response to comments document in the docket.

Based on the EPA's updated analysis for this final rule, the EPA recognizes that the \$7,500/ton threshold does not reflect the full range of cost-effectiveness values that are likely present across the many different types of non-EGU industries and emissions units assessed. However, the EPA nonetheless finds that, with some adjustments from proposal, the overall mix of emissions controls it identified at proposal is appropriate to eliminate significant contribution to nonattainment or interference with maintenance in downwind areas. In the final analysis, we find that the average cost-per-ton of emissions reductions across all non-EGU industries in this rule generally ranges from approximately \$939/ton to \$14,595/ton, with an overall average of approximately \$5,339/ton. See memorandum titled "Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs," available in the docket.

Nonetheless, overall the EPA finds that the range of cost-effectiveness values for non-EGU industries and emissions units compares favorably with the values used to evaluate EGUs. As discussed in the preceding paragraphs, the representative cost for EGUs to retrofit SCR is \$11,000/ton. This reflects a range of cost estimates, with \$20,900/ton reflecting the 90th percentile of units (see section V.B.a of this document). The higher end of the estimated average cost range for certain non-EGU industrial emissions units is also in that range. While specific emissions units may have higher costs associated with installing pollution control technologies than other similar unit types, this does not in itself undermine the Agency's conclusion that a level of emissions control associated with a specific emissions limit or control technology is appropriate to require across the linked upwind state region, in light of the overall emissions reductions and air quality benefits at downwind receptors that those controls are projected to deliver.

We note that the non-EGU control cost estimates in this final rule were based on historical actual emissions. This can affect the presentation of cost-per-ton values at the unit level, and it would not be appropriate to abandon uniform control stringency among like units in the covered industries across or within upwind states based on such cost differentials.

The EPA finds it appropriate to require a uniform level of emissions control across similar emissions unit types to, among other things, prevent two potential outcomes related to shifting production, either between units within the same facility or between units at different facilities. First, if some units were exempted from control requirements because of historically low actual emissions, there is a risk that source owners or operators may shift production to these specific units, increasing their utilization and resulting in emissions increases from these units. Second, if some owners or operators were able to avoid the control requirements of the final rule on this basis, they could gain a competitive advantage vis-à-vis other facilities within their respective industries. Production could shift from units at another facility subject to the control requirements to the units that avoided control requirements (and thus avoid costs the regulated facility should bear), potentially resulting in emissions increases. The effect of such an approach in such circumstances would be mere emissions shifting rather than the elimination of significant

²⁴⁹ For example, while the EPA has found it appropriate to limit the scope of emissions units that would be subject to emissions limits and controls in the iron and steel industry in light of comments regarding certain sources' inability to meet the EPA's proposed emission limits, this does not alter the EPA's determination that this industry is an impactful industry and that certain emissions controls should still be required.

contribution. Finally, as we have explained in prior transport actions, the cost-effectiveness figure is not the only factor that the agency considers at Step 3, *see* 86 FR 23073, and if used in isolation to make a policy decision without considering other information, could produce a result that is inconsistent with the objective of ensuring significant contribution is eliminated.²⁵⁰

In addition to our evaluation of cost-effectiveness on a cost per ton basis, the EPA’s determination at Step 3 for non-EGUs is also informed by the overall level of emissions reductions that will be achieved across the region and the effect those reductions are projected to have on air quality at the downwind receptors (discussed more later in this section). We are also influenced by the fact that these emissions control strategies for non-EGUs are generally well demonstrated to be feasible on many existing units, as established

through our review of consent decrees, permits, RACT determinations, and other data sources. These levels of emissions control have in many cases already been required by states with downwind nonattainment areas for the 2015 ozone NAAQS.

The EPA determined that, for 2026, the incremental average air quality improvement at receptors relative to the EGU case when SCR post-combustion controls were installed was 0.19 ppb when non-EGU controls were applied, based on the Step 3 analysis. The total average air quality improvement was 0.66 ppb when the non-EGU improvement was added to the EGU improvement, meaning that the non-EGU increment accounts for about 29 percent of this average air quality improvement. In general, the air quality results from non-EGU emissions reductions yield additional important downwind benefits to the air quality benefits of the EGU strategy. For

example, the total ppb improvement summed over all of the receptors from EGUs was 7.04 ppb and the non-EGU increment adds another 2.82 ppb of improvement bringing the total to 9.87 (when accounting for rounding). Non-EGUs account for 29 percent of this total air quality improvement as well. Further, these figures should not be considered in isolation; EPA is not comparing EGU strategy effects and non-EGU effects to make a selection between two different approaches. Rather, both the selected EGU and non-EGU emissions reduction strategies at the cost-effectiveness values identified in section V.B and V.C of this document present a comprehensive solution to eliminating significant contribution for the covered states. The combined effect of the EGU and non-EGU strategies is further presented in the following section.

TABLE V.D.2–2—AIR QUALITY AT RECEPTORS IN 2026 FROM NON-EGU INDUSTRIES

Monitor ID No.	State	County	Average DV (ppb)		Max DV (ppb)	
			Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU	Baseline (engineering analysis)	EGU SCR/SNCR optimization + LNB upgrade + SCR/SNCR retrofit + non-EGU
40278011	Arizona	Yuma	69.87	69.80	71.47	71.40
80590006	Colorado	Jefferson	71.70	71.34	72.30	71.93
80590011	Colorado	Jefferson	72.06	71.57	72.66	72.16
80690011	Colorado	Larimer	69.84	69.53	71.04	70.72
90013007	Connecticut	Fairfield	71.25	70.66	72.06	71.46
90019003	Connecticut	Fairfield	71.58	71.06	71.78	71.26
350130021	New Mexico	Dona Ana	70.06	69.86	71.36	71.16
350130022	New Mexico	Dona Ana	69.17	68.96	71.77	71.56
350151005	New Mexico	Eddy				
350250008	New Mexico	Lea				
480391004	Texas	Brazoria	69.89	68.50	72.02	70.58
481671034	Texas	Galveston	71.29	69.28	72.51	70.47
482010024	Texas	Harris	74.83	73.39	76.45	74.98
490110004	Utah	Davis	69.90	69.28	72.10	71.46
490353006	Utah	Salt Lake	70.50	69.91	72.10	71.50
490353013	Utah	Salt Lake	71.91	71.40	72.31	71.80
551170006	Wisconsin	Sheboygan	70.83	70.27	71.73	71.17
Average AQ Change Relative to Base (ppb)						0.66
Total PPB Change Across All Receptors Relative to Base (ppb)						9.87

Table Notes:

^a The EPA notes that the design values reflected in Table V.D.–2 correspond to the engineering analysis EGU emissions inventory that was used in AQAT to determine state-level baseline emissions and reductions at Step 3. These tools are discussed in greater detail in the Ozone Transport Policy Analysis Final Rule TSD.

^b New Mexico Eddy and Lea monitors have no values in Table V.D.2–2 as EPA does not have calibration factors for these monitors as no contributions were calculated for them from the proposal AQ modeling.

^c The cumulative ppb change only shows the aggregate change across all problematic receptors (some of which are located within close proximity to one another) in this part of the Step 3 analysis. Section VIII of this document provides a more complete picture of the air quality impacts of the final rule.

²⁵⁰ Nonetheless, recognizing the diverse non-EGU industries and emissions units covered in this action and the potential that certain individual facilities and emissions units may face extreme

hardship in meeting the general requirements being finalized in this action, the EPA has provided mechanisms in the regulatory requirements for industrial sources that provide for some flexibility

in the emissions limits based on a demonstration of technical impossibility or extreme economic hardship. *See* section VI.C of this document.

For more information about how this assessment was performed and the results of the analysis for each receptor, refer to the Ozone Transport Policy Analysis Final Rule TSD and to the Ozone AQAT included in the docket for this rule.

3. Combined EGU and Non-EGU Assessment

The EPA used the Ozone AQAT to evaluate the combined impact of these selected stringency levels for both EGUs and non-EGUs on all receptors remaining in the 2026 air quality

modeling base case to inform the air quality effects of the rule and to conduct our over-control analysis. EPA’s evaluation demonstrated air quality improvement at the remaining nonattainment or maintenance receptors outside of California (see section IV.D of this document for receptor details). The EPA estimated that the average air quality improvement at these receptors relative to the engineering analytics base case was 0.66 ppb for emissions reductions commensurate with optimization of existing SCR/SNCRs,

combustion control upgrades, application of new post-combustion control (SCR and SNCR) retrofits at eligible units, and all estimated emissions reductions from the non-EGU industries. Table V.D.3–1 summarizes the results of EPA’s Step 3 evaluation of air quality improvements at these receptors using AQAT. In summary, the collective application of these mitigation measures and emissions reductions are projected to deliver meaningful downwind air quality improvements.

TABLE V.D.3–1—CHANGE IN AIR QUALITY AT RECEPTORS IN 2026 FROM FINAL RULE EGU AND NON-EGU EMISSIONS REDUCTIONS^{a b c}

Sector/technology	Ozone season emissions reductions	Total PPB change across all downwind receptors ^d	Average PPB change across all downwind receptors
EGU (SCR/SNCR optimization + LNB upgrade)	16,282	0.71	0.05
EGU SCR/SNCR Retrofit	55,672	6.34	0.42
Non-EGU Industries	44,616	2.82	0.19
Total .....	.....	9.87	0.66

Table Notes:

^a As in prior rules, for the purpose of defining significant contribution at Step 3, the EPA evaluated air quality changes resulting from the application of the emissions reductions in only those states that are linked to each receptor as well as the state containing the receptor. By applying reductions to the state containing the receptor, the EPA ensures that it is accounting for the downwind state’s fair share. In addition, this method holds each upwind state responsible for its fair share of the downwind problems to which it is linked. Reductions made by other states to address air quality problems at other receptors do not increase or decrease this share. The air quality impacts on design values that reflect the emissions reductions in all linked states and associated health and climate benefits are discussed in section VII of this document.

^b The EPA notes that the design values reflected in Tables V.D.1–1 and –2 correspond to the engineering analysis EGU emissions inventory used in AQAT to determine state-level baseline emissions and reductions at Step 3. These tools are discussed in greater detail in the Ozone Transport Policy Analysis Final Rule TSD. Additionally, these emissions reduction values vary slightly from the technology reduction estimates described in section V.C of this document, as the values here reflect the sum of the final identified stringency for each state (e.g., SCR retrofit potential is not assumed in Alabama, Minnesota, and Wisconsin).

^c The total and average ppb results from non-EGUs emissions reductions shown here were generated using the Step 3 AQAT methodology consistent with that for EGUs (i.e., including reductions from the state containing the receptor and excluding states that are not explicitly linked to particular receptors). The values shown in Table V.C.2–1 were prepared for the non-EGU screening assessment using a methodology where states within the program make emissions reductions for all receptors. States that contain receptors (i.e., Connecticut and Colorado) that are not linked to other receptors are not assumed to make reductions under that methodology.

^d The cumulative ppb change only shows the aggregate change across all problematic receptors (some of which are located within close proximity to one another) in this part of the Step 3 analysis. Section VIII of this document provides a picture of the projected air quality impacts of the final rule using modeling techniques that differ from the methodologies employed here.

4. Over-Control Analysis

The EPA applied its over-control test to this same set of aggregated EGU and non-EGU data described in the previous section. The EPA performed air quality analysis using the Ozone AQAT to determine whether the emissions reductions for both EGUs and non-EGUs potentially create an “over-control” scenario. As in prior transport rules following the holdings in *EME Homer City*, overcontrol would be established if the record indicated that, for any given state, there is an identified, less stringent emissions control approach for that state, by which (1) the expected ozone improvements would be sufficient to resolve all of the downwind receptor(s) to which that state is linked; or (2) the expected ozone improvements would reduce the upwind state’s ozone contributions below the screening

threshold (i.e., 1 percent of the NAAQS or 0.70 ppb) to all receptors. In *EME Homer City*, the Supreme Court held that the EPA cannot “require[] an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked.” 572 U.S. at 521. On remand from the Supreme Court, the D.C. Circuit held that this means that the EPA might overstep its authority “when those downwind locations would achieve attainment even if less stringent emissions limits were imposed on the upwind States linked to those locations.” *EME Homer City II*, 795 F.3d at 127. The D.C. Circuit qualified this statement by noting that this “does not mean that every such upwind state would then be entitled to less stringent emissions limits. Some of those upwind States may still be subject

to the more stringent emissions limits so as not to cause other downwind locations to which those States are linked to fall into nonattainment.” *Id.* at 14–15. Further, as the Supreme Court explained, “while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid ‘under-control,’ i.e., to maximize achievement of attainment downwind.” 572 U.S. at 523. The Court noted that “a degree of imprecision is inevitable in tackling the problem of interstate air pollution” and that incidental over-control may be unavoidable. *Id.* “Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.” *Id.*²⁵¹

²⁵¹ Although the Court described over-control as going beyond what is needed to address “nonattainment” problems, the EPA interprets this

Consistent with these instructions from the Supreme Court and the D.C. Circuit, using the Ozone AQAT, the EPA first evaluated whether reductions resulting from the selected control stringencies for EGUs in 2023 and 2026 combined with the emissions reductions selected for non-EGUs in 2026 can be anticipated to resolve any downwind nonattainment or maintenance problems (see the Ozone Transport Policy Analysis Final Rule TSD for details on the construction and application of AQAT).

Similar to our approach in the CSAPR Update and the Revised CSAPR Update, our primary overcontrol assessment examines the receptor changes from the emissions reductions of the upwind states found linked to a receptor. Consistent with prior Rules, EPA also assumed that downwind states that are not upwind states in this rule implement reductions commensurate with the rule's requirements (this treatment applies specifically to Colorado and Connecticut). This configuration effectively presents an equitable representation of the effects of the rule in that linked upwind states do not shift their responsibility to other upwind states linked to different receptors. It also effectively resolves any interdependence and "which state goes first?" questions. Furthermore, the downwind states in which a receptor is located are held to a "fair share" of emissions reductions—*i.e.*, the same level of emissions control stringency that the upwind states must implement.

The EPA also repeated this analysis using an alternative configuration, as described in the Ozone Transport Policy Analysis Final Rule TSD. In this configuration, we looked at the combined effect of the entire program across all linked upwind states on each receptor and did not assume that a downwind state that is not also an upwind state makes any additional emissions reductions beyond the baseline in the relevant year. This configuration effectively isolates how the rule as a whole, and just the rule, will affect air quality and linkages. While the first configuration described is, in the Agency's view, the more appropriate way to evaluate overcontrol, taken together the configurations provide a more robust basis on which to rest our conclusions regarding overcontrol. In any case, as further

holding as not impacting its approach to defining and addressing both nonattainment and maintenance receptors. In particular, the EPA continues to interpret the Good Neighbor provision as requiring it to give independent effect to the "interfere with maintenance" prong. *Accord Wisconsin*, 938 F.3d at 325–27.

illustrated in the Ozone Transport Policy Analysis Final Rule TSD, our analysis under both configurations establishes that there is no overcontrol and so there is no need to reconcile any difference in results between them.

We also looked at the ordering of increments of emissions reduction and have found that it does not matter whether we assume EGU emissions controls would be applied first, followed by non-EGU controls, or vice-versa. For 2023, the question is moot as there are only EGU reductions to examine. For 2026, the analysis showed there would be no overcontrol either way. In 2026, the EPA's overcontrol analysis (as presented here) examined all EGU reductions first and layered in non-EGU reductions in the last step of the overcontrol check. However, the EPA also examined an alternative ordering scenario where the non-EGU reductions were assessed prior to the EGU reductions associated with installation of new SCR post-combustion controls (see the Ozone Transport Policy Analysis Final Rule TSD for details). This ordering did not impact the results of the overcontrol test. The specific results of these analyses are presented in the TSD.

The control stringency selected for 2023 (a representative cost threshold of \$1,800 per ton for EGUs) includes emissions reductions commensurate with optimization of existing SCRs and SNCRs and installation of state-of-the-art combustion controls, is not estimated to change the status of any receptors.²⁵² Thus, the nonattainment or maintenance receptors that the states are linked to remain unresolved. Nor do any states' contribution levels drop below the 1 percent of NAAQS threshold. Thus, the EPA determined that none of the 23 linked states have all of their linkages resolved at the final EGU level of control stringency in 2023, and hence, the EPA finds no over-control in the final level of stringency.

Based on the air quality baseline modeling for 2026, all receptors to which Alabama, Minnesota, and Wisconsin are linked in 2023 are projected to be in attainment in 2026. Therefore, no additional stringency is finalized for EGUs or non-EGUs in those states beyond the 2023 level of stringency. For the remaining 20 states,

²⁵² For purposes of this rule, the violating monitor receptors inform our determinations at Step 1 and 2 by strengthening the analytical basis on which we conclude upwind states are linked in 2023. Because no linkages identified using our air quality modeling methodology resolve in 2023 under the selected control stringency, it is not necessary to evaluate overcontrol with respect to the additional set of violating-monitor receptors.

the selected control stringency beginning in 2026 includes additional EGU controls and the non-EGU emissions reductions.

The EPA assesses air quality impacts and overcontrol in the year 2026 in this final rule, even though the rule accommodates the potential need for individual facilities (both EGU and non-EGU) to have some additional time to come into compliance. The EPA views this additional time to be a reflection of need (based on demonstrated impossibility) that is justified at Step 4 of the interstate transport framework rather than at Step 3. As explained in section VI.A of this document, with respect to EGUs, the EPA extends the full implementation of the SCR retrofit-based reductions across 2026 and 2027 to accommodate any *unit-level* scheduling challenges. However, we find that many sources can meet a three-year installation time and the trading program features and the allowance price will incentivize these reductions to occur as soon as possible. Similarly, with respect to non-EGU industrial sources, the final rule provides limited circumstances for individual facilities to seek and to be granted extensions of time to install required pollution controls and achieve the emissions rates established in this rule based on a showing of necessity. Those circumstances where an extension may be warranted for any specific facility are unknown at this time and will be evaluated through a source-specific application process, where the need for extension can be established with source-specific evidence. See section VI.C of this document. Further, 2026 is the critical analytic year associated with the last full ozone season before the 2027 Serious area attainment date and is the year by which significant contribution must be eliminated if at all possible. Therefore, for purposes of this analysis, the collective *state and regional* representation of these reductions are fully assumed in 2026. The potential ability of both EGU and non-EGU sources to have some amount of additional time beyond 2026 to comply with requirements that we have determined at Step 3 are necessary to eliminate significant contribution does not necessitate evaluating a later year than 2026 for overcontrol. The stringency of the control program does not alter in any year beyond 2026.²⁵³ By

²⁵³ Thus, we note, this circumstance is different than the record on which overcontrol was found in *EME Homer City*. There, CSAPR would have implemented an increase in the emissions control stringency of the rule (as reflected in a change in emissions control stringency expressed as dollars

Continued

fully reflecting all Step 3 emissions reductions in its overcontrol test for 2026, EPA ensures that it is not understating the emissions impact and benefit when performing the test.

The EPA used the Ozone AQAT to evaluate the impact of this selected stringency level (as well as other potential stringency levels) on all receptors remaining in the 2026 air quality modeling base case. This assessment shows that the selected control stringency level is estimated to change the status of three receptors to attainment or maintenance in 2026. Brazoria County, Texas (Monitor ID 480391004); and Galveston County, Texas (Monitor ID 481671034), are estimated to come into attainment. We observe that one of the Fairfield, Connecticut, receptors (Monitor ID 090013007) is estimated to go from nonattainment to maintenance (when EGU emissions reductions with SCR are applied, prior to the application of the non-EGU emissions reductions). This receptor is expected to remain in maintenance even after the application of the non-EGU emissions reductions. Based on these data, EPA finds that all linked states except Arkansas, Mississippi, and Oklahoma are projected to continue to be linked to nonattainment or maintenance receptors after implementation of all identified Step 3 reductions, and hence, the EPA finds no over-control in its determination of that level of stringency for those states. Arkansas, Mississippi, and Oklahoma are linked to at least one of the two Texas receptors that are projected to come into attainment with the full implementation of the control strategy at Step 3. However, these two Texas receptors are expected to remain as maintenance-only receptors prior to the final increment of reductions assessed (the addition of the non-EGU reductions), so EPA concludes that imposition of the incremental non-EGU

per ton from \$100/ton to \$500/ton). That change in stringency marked a determination that EPA had made at Step 3 regarding the degree of emissions reduction that sources needed to achieve beginning in 2014. But in that year, the court found EPA's record to reveal that certain states would not need to go up to that higher level of stringency because air quality problems and/or linkages were already projected to be resolved at the lower level of stringency. See 795 F.3d at 128–30. The analogous year to 2014 here is 2026. The stringency level of this control program does not change post-2026. Nor do we think individual sources should gain the benefit of delaying emissions reductions simply in the hopes that they could show those reductions would be overcontrol; each source must be held to the elimination of its portion of significant contribution. Necessity may demand some additional amount of time for compliance, but equity demands that individual sources not gain an untoward advantage from delay and reliance on other sources' timelier compliance.

level is appropriate to avoid under-control as to these states and does not constitute overcontrol.²⁵⁴

Next, the EPA evaluated the potential for over-control with respect to the 1 percent of the NAAQS threshold applied in this final rulemaking at Step 3 of the good neighbor framework, assessed for the selected control stringencies for each state for each period that downwind nonattainment and maintenance problems persist (*i.e.*, 2023 and 2026). Specifically, the EPA evaluated whether the selected control stringencies would reduce upwind emissions to a level where the contribution from any of the 23 linked states in 2023 or 20 linked states in 2026 would be below the 1 percent threshold. The EPA finds that for the mitigation measures assumed in 2023 and in 2026, all states that contributed greater than or equal to the 1 percent threshold in the base case are projected to continue to contribute greater than or equal to 1 percent of the NAAQS to at least one remaining downwind nonattainment or maintenance receptor for as long as that receptor remained in nonattainment or maintenance. EPA notes that in 2026, for Oklahoma, when the incremental level of stringency associated with the non-EGU control strategy is applied, Oklahoma's contribution to Galveston County Texas is expected to drop below the 1 percent threshold (at the same time that the receptor has its maintenance problems resolved). EPA concludes that this does not constitute overcontrol because both the receptor and the contribution are estimated to remain above the maintenance level and linkage threshold at the prior level of stringency and, thus, since otherwise justified at Step 3, the full stringency for 2026 is appropriate to avoid under-control. For more information about this assessment, refer to the Ozone Transport Policy Analysis Final Rule TSD and the Ozone AQAT.

Therefore, EPA finds that all of the selected EGU and non-EGU NO_x reduction strategies selected in EPA's Step 3 analysis can be applied to all states linked in 2026 to eliminate significant contribution to nonattainment and interference with maintenance of the 2015 ozone NAAQS without introducing an overcontrol

²⁵⁴ Even with full implementation of the rule, these two receptors are only projected to come into attainment by a relatively small degree, and no policy option is ascertained in the record by which attainment could be achieved to an even lesser degree. Nonetheless, the EPA further evaluated whether there were any overcontrol concerns through sensitivity analyses. Under all scenarios, the EPA finds there is no overcontrol. See the Ozone Transport Policy Analysis Final Rule TSD for more discussion and analysis.

problem based on the present record. The Supreme Court has directed the EPA to avoid both over-control and under-control in addressing good neighbor obligations. In addition, the D.C. Circuit has reinforced that over-control must be established based on particularized, record evidence on an as-applied basis.

The determination that the stringency of this action does not constitute overcontrol for any linked state is further reinforced by EPA's observation in section III.A of this document regarding the nature of the ozone problem. Ozone levels are known to vary, at times dramatically, from year to year. Future ozone concentrations and the formation of ground level ozone may also be impacted by factors in future years that the EPA cannot fully account for at present. For example, changes to meteorological conditions could affect future ozone levels. Climate change could also contribute to higher than anticipated ozone levels in future years through wildfires and heat waves, which can contribute directly and indirectly to higher levels of ozone. Any modeling projection can be characterized as having some uncertainty, and that is not a sufficient reason to ignore modeling results. However, in the context of the overcontrol test, the question is whether it is clear according to particularized evidence that there is no need for the emissions reductions in question. See *EME Homer City*, 572 U.S. at 523 (“[A] degree of imprecision is inevitable in tackling the problem of interstate air pollution. Slight changes in wind patterns or energy consumption, for example, may vary downwind air quality in ways EPA might not have anticipated.”). Under this standard, the degree of attainment that is projected to occur under the rule in relation to the Texas receptors discussed above is not so large or certain to occur that it would be appropriate to attempt to devise a less stringent emissions control strategy for the relevant linked states as a result, particularly in light of the fact that at the penultimate stringency level the receptors are not resolved.

It is also possible that ozone-precursor emissions from certain sources may decline beyond what we currently project in this rule. For example, the IRA may result in reductions in fossil-fuel fired generation, which should in turn result in lower NO_x emissions during the ozone season.²⁵⁵ We have

²⁵⁵ As discussed in section IV.C.2.b, there are also potential ways in which the IRA may not necessarily result in reductions in NO_x emissions from EGUs.

assessed this scenario to ensure our overcontrol conclusions are robust even if the IRA has those effects. As discussed in the Regulatory Impact Analysis, the EPA conducted additional modeling of the final policy scenario (inclusive of economically efficient methods of compliance available within the Step 4 implementation programs) using its IPM tool. The EPA observes that the differences in estimated costs and emissions reductions in the IRA sensitivity (presented in Appendix 4A of the RIA) suggests that there would also be differences in estimated health and climate benefits under that scenario, although the Agency did not have time under this rulemaking schedule to quantify those differences. The EPA also used AQAT to conduct an additional EGU modeling sensitivity reflecting the IRA. Both the IPM sensitivity and the corresponding AQAT assessment of the IRA scenarios demonstrated no overcontrol as every state linkage to a downwind problematic receptor persisted in the penultimate level of stringency when EPA performed its Step 3 evaluation—even when the impacts of the IRA are incorporated. This further affirmed EPA's conclusion of no overcontrol concerns at the stringency level of the final rule. This overcontrol sensitivity is further discussed in the Ozone Transport Policy Analysis Final Rule TSD, Appendix K.

In light of the mandate of the CAA to protect the public health and environment through the elimination of significant contribution under the Good Neighbor Provision for the 2015 ozone NAAQS, nothing in the present record establishes on an as-applied, particularized basis that this rule will result in an unnecessary degree of control of upwind-state emissions.

Comment: Many commenters alleged that the rule overcontrols emissions by more than necessary to eliminate significant contribution for the 2015 ozone NAAQS, on the basis that the emissions reductions are unnecessary or are unnecessarily stringent.

Response: As discussed earlier in this section, EPA has analyzed whether this rule “overcontrols” emissions and has found based on a robust, multi-faceted analysis, that it does not. In particular, EPA has not identified a lesser-stringency emissions control strategy for any state that would either fully resolve the air quality problems at a downwind receptor location or resolve that upwind state's linkage to a level below the 1 percent of NAAQS contribution threshold. No commenter has provided a particularized, as-applied analysis demonstrating that EPA's emissions

control strategy will actually result in any overcontrol of emissions in the manner the EPA or courts have understood that term, and overcontrol allegations must be proven through particularized, as-applied challenges. *See EME Homer City*, 795 F.3d at 127; *see also Wisconsin*, 938 F.3d at 325 (“[T]he way to contest instances of overcontrol is not through generalized claims that EPA's methodology would lead to over-control, but rather through a ‘particularized, as-applied challenge.’” Accordingly, as we did when presented with similar arguments in *EME Homer III*, we reject Industry Petitioners' arguments because they do no more than speculate that aspects of ‘EPA's methodology *could* lead to over-control of upwind States.’”) (cleaned up) (citing *EME Homer City*, 795 F.3d at 136–137).

Comment: For 2 of the 20 states linked in 2026, Arkansas and Mississippi, the last downwind receptor to which these two states are linked (*i.e.*, Brazoria County, Texas) was estimated to achieve attainment and maintenance after full application of EGU reductions and Tier 1 non-EGU reductions at proposal. Commenters noted that this suggested application of the estimated non-EGU, and/or some EGU, emissions reductions constituted over-control for these states.

Response: EPA notes that at proposal, this downwind receptor only resolved by a small margin after the application of all EGU and Tier 1 non-EGU emissions reductions. As explained earlier in this section, the final rule air quality modeling shows that the receptors to which these states are linked do not resolve upon full implementation of the identified EGU reductions by themselves, and only reach attainment by a small degree following the additional reductions from the non-EGU control strategy.²⁵⁶ If the EPA were to select the control stringency of this penultimate step, both upwind-state contribution and downwind-state air quality receptors would persist while the cost-effective emissions reductions that were identified to eliminate significant

²⁵⁶ Because in the final record we do not identify cost, air quality, and emission reduction factors that sufficiently differentiate either source-type or emissions control strategy among the Tier 1 and Tier 2 industries identified at proposal, we combined the non-EGU industries and emissions reductions into one group, and we are finalizing requirements for all non-EGU industries and most emissions unit types identified at proposal. In light of the small degree to which the relevant receptors reach attainment and the multi-faceted assessment of overcontrol we have undertaken, the overcontrol assessment with respect to non-EGUs in the final rule is sufficient to establish that there is no overcontrol.

contribution remain available but unimplemented. This would constitute under-control. Consequently, as described, the EPA views the control stringency required of these states in this final rule as not constituting over-control and appropriate to eliminate significant contribution to nonattainment and interference with maintenance of this NAAQS in line with our Step 3 determinations for all other states. See the Ozone Transport Policy Analysis Final Rule TSD section C.3 for discussion and analysis regarding overcontrol for states solely linked to one or both of these receptors.

Comment: Commenters raised a variety of arguments that the enhancements to the EGU trading program in this action will result in overcontrol of power plant emissions. They alleged that dynamic budgeting would cause the budget to continually decrease even after significant contribution is eliminated. They similarly argue that annual emissions bank recalibration and the emissions backstop emissions rate have not been shown to be justified to eliminate significant contribution.

Response: This final rule's determination regarding the appropriate level of control stringency for EGUs finds that the amounts of NO_x emissions reduction achieved through these strategies at EGUs are appropriate and cost-justified under the Step 3 multifactor analysis. These determinations are associated with particular emissions control technologies and strategies as detailed in sections V.B.1 and V.C.1 above. It is the implementation of those strategies at the covered EGU sources and the air quality effects of those strategies (coupled with non-EGUs) in the relevant analytic year of 2026 on which we base our determination of significant contribution at Step 3. This includes the evaluation of whether there is overcontrol, which is also conducted for the 2026 analytic year as explained above. As explained below, we disagree that the enhancements to the trading program at Step 4 implicate the need for further overcontrol analysis. These enhancements operate together to ensure the trading program continues to maintain the Step 3 emissions control stringency over time. These enhancements reflect lessons learned through EPA's experience with prior trading programs implemented under the good neighbor provision. None of commenters' arguments that these enhancements result in overcontrol are persuasive.

Commenters contend that these enhancements to the trading program go

beyond a mass-based budget approach as applied in CSAPR. Because these improvements in the program result in a continuing incentive for each covered EGU source to maintain the pollution control performance the EPA found appropriate to eliminate significant contribution at Step 3, commenters believe these enhancements must necessarily result in prohibited overcontrol. These arguments appear to be premised on the assumption that overall emissions may later decline to such a point that there is no longer a linkage between a particular state and any downwind receptors for reasons other than the requirements of this rule.

As an initial matter, no commenter has provided an empirical analysis demonstrating that the control stringency identified at Step 3 to eliminate significant contribution would actually result in any overcontrol. The case law is clear that over-control allegations must be proven through particularized, as-applied challenges. See prior response to comments. More importantly here, the Group 3 trading program enhancements do not impose increased stringency in years after 2030 and do not force emissions to continually be reduced to ever lower levels. They are only designed to incentivize the implementation of the Step 3 emissions control stringency that eliminates significant contribution. The circumstances that could potentially cause a receptor or linkage to resolve at some point in the future after 2026 are not circumstances that are within the power of this rule to control. Nor would those circumstances present a justification as to why upwind sources should no longer be obligated to eliminate their own significant contribution. *Wisconsin*, 938 F.3d at 324–25 (rejecting overcontrol arguments premised on attributing air quality problems to other emissions).

Further, the EPA is not constrained by the statute to only implement good neighbor obligations through fixed, unchanging, mass-based emissions budgets. See section III.B.1 of this document. The EPA has defined the “amount” of emissions that must be prohibited to eliminate significant contribution in this action based on a series of determinations of which emissions control strategies, for certain identified EGU and non-EGU sources, are appropriate applying the Step 3 multifactor analysis. Notably, the non-EGU industrial source emissions reductions in this action are *not* being achieved at Step 4 through mass-based emissions trading, nor are they required to be by any provision of the CAA. See section III.B.1.

As explained in sections III.B.1.d and VI.B.1 of this document, the EPA finds good reason based on its experience with trading programs that using fixed, mass-based, ozone-season wide budgets does not necessarily ensure the elimination of significant contribution over the entire region of linked states or throughout each ozone season. Even in the original CSAPR rulemaking, which promulgated only fixed, mass-based budgets, such outcomes were never the EPA’s intention to allow. See, e.g., 76 FR 48256–57 (“[I]t would be inappropriate for a state linked to downwind nonattainment or maintenance areas to stop operating existing pollution control equipment (which would increase their emissions and contribution).”). Despite the EPA’s expectations in CSAPR, the experience of the Agency since that time establishes a real risk of “under-control” if the existing trading framework is not enhanced. See *EME Homer City*, 572 U.S. at 523 (“[T]he Agency also has a statutory obligation to avoid ‘under-control,’ i.e., to maximize achievement of attainment downwind.”).

Further, the EPA has already once adjusted its historical approach to better account for known, upcoming changes in the EGU fleet to ensure mass-based emissions budgets adequately incentivize the control strategy determined at Step 3. This adjustment was introduced in the Revised CSAPR Update. See 82 FR 23121–22. The EPA now believes it is appropriate to ensure in a more comprehensive manner, and in perpetuity, that a mass-based emissions-trading framework incentivizes continuing implementation of the Step 3 control strategies to ensure significant contribution is eliminated in all upwind states and remains so. This is fully analogous in material respect to an approach to implementation at Step 4 that relies on application of unit-specific emissions limitations, which under the Act would typically apply in perpetuity and may only be modified through a future SIP- or FIP-revision rulemaking process. See CAA section 110(i) prohibiting modifications to implementation plan requirements except by enumerated processes. The availability of unit-specific emissions rates as a means to eliminate significant contribution is discussed in further detail in section III.B.1 of this document. The EPA also explained this in the proposal. See 87 FR 20095–96.

Further, these enhancements are directly related to assisting downwind areas specifically with the goal of attaining and maintaining the 2015 8-hour ozone NAAQS. In this respect, they are not “unnecessary” or

“unrelated” to carrying out the mandates of CAA section 110(a)(2)(D)(i)(I). Taking measures to ensure that each upwind source covered by an emissions trading program is adequately incentivized to eliminate excessive emissions (as found at Step 3) throughout the entirety of each ozone season is entirely appropriate in light of the nature of the ozone problem. Ozone exceedances recur on varying days throughout the summertime ozone season, and it is not possible to predict in advance which specific days will have high ozone. Further, impacts to public health and the environment from ozone can occur through short-term exposure (e.g., over a course of hours, i.e., on a daily basis). The 2015 ozone NAAQS is expressed as an 8-hour average, and only a small number of days in excess of the ozone NAAQS can cause a downwind area to be in nonattainment. Thus, even a small number of exceedances can result in continuing and/or increased regulatory burdens on the downwind jurisdiction. Taking these considerations into account, it is evident that a fixed, mass-based emissions program that does not adequately incentivize emissions reductions commensurate with our Step 3 determinations on each day of every ozone season going forward does not provide a sufficient guarantee that the emissions that significantly contribute on those particular days and at particular receptor locations when ozone levels are at risk of exceeding the NAAQS have been eliminated. See section V.B.1.a and VI.B of this document for more discussion of data observations regarding SCR optimization.

These enhancements are also consistent with the general policies and principles EPA has long applied in implementing the NAAQS through the SIP/FIP framework of section 110. Emissions control measures relied on to meet CAA requirements must be permanent and enforceable and included in the implementation plan itself. See, e.g., *Montana Sulfur & Chem. Co. v. EPA*, 666 F.3d 1174, 1196 (9th Cir. 2012); 40 CFR 51.112(a). In the General Preamble laying out EPA’s plans for implementing the 1990 CAA Amendments, the EPA identified a core “principle” that control strategies should be “accountable.” “This means, for example, that source-specific limits should be permanent and must reflect the assumptions used in the SIP demonstrations.” 57 FR 13498, 13568 (April 16, 1992). EPA went on, “The principles of quantification, enforceability, replicability, and

accountability apply to all SIPs and control strategies, including those involving emissions trading, marketable permits and allowances.” *Id.* EPA also explained that its “emissions trading policy provides that only trades producing reductions that are surplus, enforceable, permanent, and quantifiable can get credit and be banked or used in an emissions trade.” *Id.* These principles follow from the language of the Act, including CAA section 110(a)(2), 107(d)(3)(E)(iii), 110(i), and 110(l). These provisions and principles further underscore the importance of ensuring that the emissions reductions the EPA has found necessary to eliminate significant contribution are in fact implemented on a consistent and permanent basis even within the context of an emissions trading program.

The EPA disagrees that the budget adjustments that would occur over time under this final rule (for example, the annual dynamic-budget adjustment) must be reassessed each time they occur through notice and comment rulemaking under CAA section 307(d). This would serve no purpose. The formulas that the EPA will apply to adjust the budgets and allowance bank are set in this final rule and are intended to maintain, not increase (or decrease), program stringency. While the EPA intends to provide an opportunity for stakeholders to review and propose corrections to its data as it implements the established budget formulas, no larger reassessment of the emissions control program is needed on an ongoing basis, because, again, that program is simply calibrated to ensure that emissions reductions commensurate with the determination of “significance” in Step 3 continue to be obtained over the long term. As described earlier, these trading program provisions are analogous to, or mimic, the effect of unit-specific emissions limitations that apply in perpetuity.²⁵⁷

Commenters also confuse the “amount” of emissions that must be eliminated under CAA section 110(a)(2)(D)(i)(I) as being synonymous with a fixed, mass-based budget that reflects the residual emissions allowed following the elimination of significant contribution. However, EPA views the “amount” to be eliminated as those emissions that are in excess of the cost-

effective emissions control strategies identified in Step 3. This is further explained in section III.B.1 of this document.

Thus, this rule is in compliance with the overcontrol principles that the D.C. Circuit applied on remand in *EME Homer City* to find certain instances of overcontrol in CSAPR’s emissions control strategies. The D.C. Circuit found that EPA had imposed more stringent emissions-control strategies for certain states than were necessary to resolve all of those states’ linkages. 795 F.3d at 128–30. Specifically, for sulfur dioxide, the court found certain receptors would reach attainment if all linked upwind states had implemented “cost controls” at \$100/ton or \$400/ton, rather than EPA’s selected stringency level of \$500/ton. Similarly, for ozone season NO_x, the court found that receptors were projected to attain the NAAQS at stringencies below \$500/ton. The court’s focus was on the stringency of the emissions control obligations as determined through the application of cost thresholds at Step 3 of the analysis. The court did not hold that EPA may only use fixed, mass-based budgets to implement those reductions. The court did not hold that EPA must permit individual polluting sources to be allowed to increase their emissions at some point in the future. The court did not hold that EPA’s good neighbor FIPs must, effectively, contain termination clauses, such that they cease to ensure the implementation of the control stringency determined as necessary at Step 3, the moment a downwind receptor reaches attainment. Indeed, such a rule would contravene the statute’s clear, forward-looking directive that EPA must also eliminate upwind emissions that interfere with maintenance of the NAAQS; see *North Carolina*, 531 F.3d at 908–911; *Wisconsin*, 938 F.3d at 325–26.

The *EME Homer City* court on remand in fact rejected various arguments that other aspects of EPA’s emissions control strategy in CSAPR resulted in overcontrol, holding that EPA had properly given effect to the interfere with maintenance prong, and noting that petitioners failed to make out proven, as-applied demonstrations of overcontrol:

At bottom, each of those claims is an argument that EPA’s methodology could lead to over-control of upwind States that are found to interfere with maintenance at a downwind location. That could prove to be correct in certain locations. But the Supreme Court made clear in *EME Homer* that the way to contest instances of over-control is not through generalized claims that EPA’s methodology would lead to over-control, but

rather through a “particularized, as-applied challenge.” *EME Homer*, 134 S. Ct. at 1609, slip op. at 31. And petitioners do not point to any actual such instances of over-control at downwind locations.

795 F.3d at 137. The court went on to observe, “EPA may only limit emissions ‘by just enough to permit an already-attaining State to maintain satisfactory air quality.’ If States have been forced to reduce emissions beyond that point, affected parties will have meritorious as-applied challenges.” *Id.* (quoting 572 U.S. at 521–22). But this too was not a holding that EPA may not ensure effective and permanent implementation of an emissions control stringency that EPA has found warranted under CAA section 110(a)(2)(D)(i)(I). Such an approach is available through the more conventional CAA practice of setting unit-specific emissions limitations that would apply on a permanent and enforceable basis. See CAA sections 110(a)(2) and 302(y) (providing for SIPs and FIPs to include “enforceable emissions limitations” in addition to economic incentive measures like trading programs).²⁵⁸ This is in fact how EPA intends to ensure significant contribution is eliminated from non-EGU industrial sources for which a mass-based trading regime is, at least at the present time, unworkable (see section VI.C of this document). And EPA has provided for the elimination of significant contribution through source-specific emissions limitations in prior transport actions as well, so this position is not novel. See section III.B of this document.

Nonetheless, EPA recognizes that under the Act, both FIPs and SIPs may be revised, and states may replace FIPs with SIPs if EPA approves them. Any such revision must be evaluated to ensure no applicable CAA requirements are interfered with. See, e.g., *Indiana v. EPA*, 796 F.3d 803 (7th Cir. 2015). For example, states may be able to demonstrate in the future that through some other permanent and enforceable methods of emissions reduction that they have adopted into their SIP, they will be able to achieve a similar emissions control stringency with different emissions reduction requirements imposed on different sources as compared to the FIPs finalized in this action. See section VI.D of this document.

Therefore, commenters’ contentions that EPA’s trading program enhancements result in prohibited

²⁵⁷ We note further that because all of the trading program provisions, including the dynamic budget-setting provisions and process, are established by this final FIP rulemaking, the ministerial future-year budget adjustment process complies with the CAA section 110(i) prohibition on modification of implementation plan requirements except by enumerated process.

²⁵⁸ “Emissions limitation” is in turn defined at CAA section 302(k) as a “requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. . . .”

overcontrol are not proven through as-applied, particularized challenges, and they are premised on an incorrect understanding of the CAA and the relevant case law. The Agency rejects the contention that it must somehow provide in the present FIP action for a relaxation in the stringency of the Step 4 implementation program and thus allow for the recurrence of pollution that we have found here, in this action, significantly contributes to downwind ozone nonattainment and maintenance problems.

VI. Implementation of Emissions Reductions

A. NO_x Reduction Implementation Schedule

This action will ensure that emissions reductions necessary to eliminate significant contribution will be achieved “as expeditiously as practicable” and no later than the downwind attainment dates except where compliance by those dates is not possible. See CAA section 181(a); *Wisconsin*, 938 F.3d at 318–20. The timing of this action will provide for all possible emissions reductions to go into effect beginning in the 2023 ozone season for the covered states, which is aligned with the next upcoming attainment date of August 3, 2024, for areas classified as Moderate nonattainment under the 2015 ozone standard. Additional emissions reductions that the EPA finds not possible to implement by that attainment date will take effect as expeditiously as practicable. Emissions reductions commensurate with SCR mitigation measures for EGUs will start in 2026 and be fully implemented by 2027. Emissions reductions through the mitigation measures for industrial sources will generally go into effect in 2026; however, as explained in section VI.C of this document, we have provided for case-by-case extensions of up to one year based on a demonstration of necessity (with the potential for up to an additional two years based on a further demonstration). The full suite of emissions reductions is generally anticipated to take effect by the 2027 ozone season, which is aligned with the August 3, 2027, attainment date for areas classified as Serious nonattainment under the 2015 ozone NAAQS. This rule constitutes a full remedy for interstate transport for the 2015 ozone NAAQS for the states covered; the EPA does not anticipate further rulemaking to address good neighbor obligations under this NAAQS will be required for these states with the finalization of this rule.

EPA’s determinations regarding the timing of this rule are informed by and in compliance with several recent court decisions. The D.C. Circuit has reiterated several times that, under the terms of the Good Neighbor Provision, upwind states must eliminate their significant contributions to downwind areas “consistent with the provisions of [title I of the Act],” including those provisions setting attainment deadlines for downwind areas.²⁵⁹ In *North Carolina*, the D.C. Circuit found the 2015 compliance deadline that the EPA had established in CAIR unlawful in light of the downwind nonattainment areas’ 2010 deadline for attaining the 1997 NAAQS for ozone and PM_{2.5}.²⁶⁰ Similarly, in *Wisconsin*, the Court found the CSAPR Update unlawful to the extent it allowed upwind states to continue their significant contributions to downwind air quality problems beyond the downwind states’ statutory deadlines for attaining the 2008 ozone NAAQS.²⁶¹ In *Maryland*, the Court found the EPA’s selection of a 2023 analysis year in evaluating state petitions submitted under CAA section 126 unlawful in light of the downwind Marginal nonattainment areas’ 2021 deadline for attaining the 2015 ozone NAAQS.²⁶² The Court noted in *Wisconsin* that the statutory command—that compliance with the Good Neighbor Provision must be achieved in a manner “consistent with” title I of the CAA—may be read to allow for some deviation from the mandate to eliminate prohibited transport by downwind attainment deadlines, “under particular circumstances and upon a sufficient showing of necessity,” but concluded that “[a]ny such deviation would need to be rooted in Title I’s framework” and would need to “provide a sufficient level of protection to downwind States.”²⁶³

1. 2023–2025: EGU NO_x Reductions Beginning in 2023

The near-term EGU control stringencies and corresponding

²⁵⁹ *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019), and *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020).

²⁶⁰ *North Carolina*, 531 F.3d at 911–913.

²⁶¹ *Wisconsin*, 938 F.3d at 303, 3018–20.

²⁶² *Maryland*, 958 F.3d at 1203–1204. Similarly, in *New York v. EPA*, 964 F.3d 1214 (D.C. Cir. 2020), the Court found the EPA’s selection of a 2023 analysis year in evaluating New York’s section 126 petition unlawful in light of the New York Metropolitan Area’s 2021 Serious area deadline for attaining the 2008 ozone NAAQS. 964 F.3d at 1226 (citing *Wisconsin* and *Maryland*).

²⁶³ *Wisconsin*, 938 F.3d at 320 (citing CAA section 181(a) (allowing one-year extension of attainment deadlines in particular circumstances) and *North Carolina*, 531 F.3d at 912).

reductions in this rulemaking cover the 2023, 2024, and 2025 ozone seasons. This is the period in which some reductions will be available, but the portion of full remedy reductions related to post combustion control installation identified in sections V.B through V.D of this document are not yet available. The EGU NO_x mitigation strategies available during these initial 3 years are the optimization of existing post-combustion controls (SCRs and SNCRs) and combustion control upgrades. As described in sections V.B through V.D of this document and in accompanying TSDs, these mitigation measures can be implemented in under two months in the case of existing control optimization and in 6 months in the case of combustion control upgrades. These timing assumptions account for planning, procurement, and any physical or structural modification necessary. The EPA provides significant historical data, including the implementation of the most recent Revised CSAPR Update, as well as engineering studies and input factor analysis documenting the feasibility of these timing assumptions. However, these timing assumptions are representative of fleet averages, and the EPA has noted that some units will likely overperform their installation timing assumptions, while others may have unit configuration or operational considerations that result in their underperforming these timing assumptions. As in prior interstate transport rules, the EPA is implementing these EGU reductions through a trading program approach. The trading program’s option to buy additional allowances provides flexibility in the program for outlier sources that may need more time than what is representative of the fleet average to implement these mitigation strategies while providing an economic incentive to outperform rate and timing assumptions for those sources that can do so. In effect, this trading program implementation operationalizes the mitigation measures as state-wide assumptions for the EGU fleet rather than unit-specific assumptions.

However, starting in 2024, as described in section VI.B.7 of this document, unit-specific backstop daily emissions rates are applied to coal units with existing SCR at a level consistent with operating that control. The EPA believes that implementing these emissions reductions through state emissions budgets starting in 2023 while imposing the unit-specific backstop emissions rates in 2024 achieves the necessary environmental

performance as soon as possible while accommodating any heterogeneity in unit-level implementation schedules regarding daily operation of optimized SCRs.

Additionally, as in prior rules, the EPA assumes combustion control upgrade implementation may take up to 6 months. In the Revised CSAPR Update, covering 12 of the 22 states for which emissions reduction requirements for EGUs are established under this action, the EPA finalized the rule in March of 2021 and thus did not require these combustion control-based emissions reductions in ozone-season state emissions budgets until 2022 (year two of that program).²⁶⁴ The EPA is applying the same timing assumption regarding combustion control upgrades for this rulemaking. Given the same relationship here between the date of final action and the year one ozone season, the EPA is not assuming the implementation of any additional combustion control upgrades in state emissions budgets until year two (*i.e.*, the 2024 ozone season). Any identified combustion control upgrade emissions reductions are reflected beginning in the 2024 ozone-season budgets for all covered states. For the 12 states covered under the Revised CSAPR Update, any identified emissions reduction potential from combustion control upgrade is included and reflected in those state budgets beginning in 2024—which means EGUs in those states have even more time than the 14 months between finalization of this rule and the 2024 ozone season if they started any planning or installation earlier in response to the Revised CSAPR Update.

2. 2026 and Later Years: EGU and Stationary Industrial Source NO_x Reductions Beginning in 2026

The EPA finds that it is not possible to implement all necessary emissions controls across all of the affected EGU and non-EGU sources by the August 3, 2024, Moderate area attainment date. In accordance with the good neighbor provision and the downwind attainment schedule under CAA section 181 for the 2015 ozone NAAQS, the EPA is aligning its analysis and implementation of the emissions reductions addressing significant contribution from EGU and non-EGU sources that require relatively longer lead time at a sectoral scale with the 2026 ozone season. The 2026 ozone season is the last full ozone season that precedes the August 3, 2027, Serious area attainment date for the 2015 ozone

NAAQS.²⁶⁵ The EPA proposed to require compliance with all of the remaining EGU and non-EGU control requirements beginning in the 2026 ozone season. The EPA continues to find 2026 to be the relevant analytic year for purposes of its Step 3 analysis, including its analysis of overcontrol, as discussed in section V.D.4 of this document. However, many commenters argued that full implementation of the EGU and industrial source control strategies is not feasible for every source by the 2026 ozone season. The EPA addresses these technical comments specifically in sections V.B and VI.C of this document. The EPA also commissioned a study to develop a better understanding of the time needed for installation of emissions controls for the industrial sector units covered in this rule, which is included in the docket and discussed in section VI.A.2.b of this document. While the EPA does not agree with all of the commenters' assertions regarding the time they claim is needed for control installation, in other respects the concerns raised were sufficient to justify some adjustments to the compliance schedule for the final rule. We have provided for the emissions reductions commensurate with assumed EGU post-combustion emissions control retrofits to be phased in over the 2026 and 2027 ozone season emissions budgets, and we have provided a process in the final regulations for individual non-EGU industrial sources to seek limited compliance extensions extending no later than 2029 based on a case-by-case demonstration of necessity. This compliance schedule delivers substantial emissions reductions in the 2026 and 2027 ozone seasons and before the 2027 Serious area attainment date, and it only allows compliance extensions beyond that attainment date based on a rigorous, source-specific demonstration of need for the additional time.²⁶⁶

²⁶⁵ For each nonattainment area classified under CAA section 181(a) for the 2015 ozone NAAQS, the attainment date is "as expeditiously as practicable" but not later than the date provided in table 1 to 40 CFR 51.1303(a). Thus, for areas initially designated nonattainment effective August 3, 2018 (83 FR 25776), the latest permissible attainment dates are: August 3, 2021 (for Marginal areas), August 3, 2024 (for Moderate areas), August 3, 2027 (for Serious areas), and August 3, 2033 (for Severe areas).

²⁶⁶ While we generally use the term "necessity" to describe the showing that non-EGU facilities must meet in seeking compliance extensions, the elements for this showing are designed to allow the EPA to make a judgment that comports with the standard of "impossibility" established in case law such as *Wisconsin*. In other words, the "necessity" for additional time is effectively a showing by the source that it would be "impossible" for it to meet the compliance deadline.

The timing of this final rule provides three to four years for EGU and non-EGU sources to install whatever controls they deem suitable to comply with required emissions reductions by the start of the 2026 and 2027 ozone seasons. In addition, the publication of the proposal provided roughly an additional year of notice to these source owners and operators that they should begin engineering and financial planning (steps that can be taken prior to any capital investment) to be prepared to meet this implementation timetable.

The EPA views this timeframe for retrofitting post-combustion NO_x emissions controls and other non-EGU controls to be reasonable and achievable. A 3-year period for installation of control technologies is consistent with the statutory timeframe for implementation of the controls required to address interstate pollution under section 110(a)(2)(D) and 126 of the Act, the statutory timeframes for implementation of RACT in ozone nonattainment areas classified as Moderate or above, and other statutory provisions that establish control requirements for existing stationary sources of pollution.

For example, section 126 of the CAA authorizes a downwind state or tribe to petition the EPA for a finding that emissions from "any major source or group of stationary sources" in an upwind state contribute significantly to nonattainment in, or interfere with maintenance by, the downwind state. If the EPA makes a finding that a major source or a group of stationary sources emits or would emit pollutants in violation of the relevant prohibition in CAA section 110(a)(2)(D), the source(s) must shut down within three months from the finding unless the EPA directly regulates the source(s) by establishing emissions limitations and a compliance schedule extending no later than three years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as practicable.²⁶⁷ Thus, in the provision that allows for direct Federal regulation of sources violating the good neighbor provision, Congress established three years as the maximum amount of time available from a final rule to when emissions reductions need to be achieved at the relevant source or group of sources. Because this action is not taken under CAA section 126(c), the mandatory timeframe for implementation of emissions controls

²⁶⁷ CAA 110(a)(2)(D)(i) and 126(c).

under that provision is not directly applicable, but it is informative.

In response to arguments from sources that more time than has been provided in the final rule is necessary, this provision strongly indicates that allowing time beyond a three-year period must be based on a substantial showing of impossibility. Our analysis based on comments and considering additional information is that the additional time we have provided in the final rule is both justified and sufficient in light of the statutory objective of expeditious compliance.

Additionally, for ozone nonattainment areas classified as Moderate or higher, the CAA requires states to implement RACT requirements less than three years after the statutory deadline for submitting these measures to the EPA.²⁶⁸ Specifically, for these areas, CAA sections 182(b)(2) and 182(f) require that states implement RACT for existing VOC and NO_x sources as expeditiously as practicable but no later than May 31, 1995, approximately 30 months after the November 15, 1992, deadline for submitting RACT SIP revisions. For purposes of the 2015 ozone NAAQS, the EPA has interpreted these provisions to require implementation of RACT SIP revisions as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation, which is less than three years after the deadline for submitting RACT SIP revisions.²⁶⁹ For areas initially designated nonattainment with a Moderate or higher classification effective August 3, 2018 (83 FR 25776), that implementation deadline falls on January 1, 2023, approximately 29 months after the August 3, 2020

²⁶⁸ See, e.g., 40 CFR 51.1112(a)(3) and 51.1312(a)(3)(i) (requiring implementation of RACT required pursuant to initial nonattainment area designations no later than January 1 of the fifth year after the effective date of designation, which is less than 3 years after the SIP submission deadline under 40 CFR 51.1112(a)(2) and 51.1312(a)(2)(i), respectively).

²⁶⁹ 40 CFR 51.1312(a)(2)(i) (requiring submission of RACT SIP revisions no later than 24 months after the effective date of designation) and 40 CFR 51.1312(a)(3)(i) (requiring implementation of RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of designation). For reclassified areas, states must implement RACT SIP revisions as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification. 40 CFR 51.1312(a)(3)(ii); see also 83 FR 62989, 63012–63014.

submission deadline.²⁷⁰ Moderate ozone nonattainment areas must also implement all reasonably available control measures (including RACT) needed for expeditious attainment within three years after the statutory deadline for states to submit these measures to the EPA as part of a Moderate area attainment demonstration.²⁷¹ Nonattainment areas for the 2015 ozone NAAQS that were reclassified to Moderate nonattainment in October 2022 face this same regulatory schedule, meaning that their sources are required to implement RACT controls in 2023. With the exception of the Uinta Basin, which is not an identified receptor in this action, no Marginal nonattainment area met the conditions of CAA section 181(a)(5) to obtain a one-year extension of the Moderate area attainment date. 87 FR 60899 (Oct. 7, 2022). Thus, all Marginal areas (other than Uinta) that failed to attain have been reclassified to Moderate. *Id.* In the October 2022 final rulemaking EPA made determinations that certain Marginal areas failed to attain by the attainment date, reclassified those areas to Moderate, and established SIP submission deadlines and RACM and RACT implementation deadlines. EPA set the attainment SIP submission deadlines for the bumped up Moderate areas to be January 1, 2023. See 87 FR 60897, 60900. The implementation deadline for RACM and RACT is also January 1, 2023. *Id.*

The EPA notes that the types and sizes of the EGU and non-EGU sources that the EPA includes in this rule, as well as the types of emissions control

²⁷⁰ 40 CFR 51.1312(a)(2)(i) (requiring submission of RACT SIP revisions no later than 24 months after the effective date of designation).

²⁷¹ See, e.g., 40 CFR 51.1108(d) (requiring implementation of all control measures (including RACT) needed for expeditious attainment no later than the beginning of the attainment year ozone season, which, for a Moderate nonattainment area, occurs less than 3 years after the deadline for submission of reasonably available control measures under 40 CFR 51.1112(c) and 51.1108(a) and 40 CFR 51.1308(d) (requiring implementation of all control measures (including RACT) needed for expeditious attainment no later than the beginning of the attainment year ozone season, which, for a Moderate nonattainment area, occurs less than three years after the deadline for submission of reasonably available control measures under 40 CFR 51.1312(c) and 51.1308(a)). Because the attainment demonstration for a Moderate nonattainment area (including RACT needed for expeditious attainment) is due three years after the effective date of the area's designation (40 CFR 51.1308(a) and 51.1312(c)), and all Moderate nonattainment areas must attain the NAAQS as expeditiously as practicable but no later than 6 years after the effective date of the area's designation (40 CFR 51.1303(a)), the beginning of the "attainment year ozone season" (as defined in 40 CFR 51.1300(g)) for such an area is less than three years after the due date for the attainment demonstration.

technologies on which the EPA bases the emissions limitations that would take effect for the 2026 and 2027 ozone seasons, generally are consistent with the scope and stringency of RACT requirements for existing major sources of NO_x in downwind Moderate nonattainment areas and some upwind areas, which many states have already implemented in their SIPs.²⁷² Thus, the timing Congress allotted for sources in downwind states to come into compliance with RACT requirements bears directly on the amount of time that should be allotted here and indicates, as does CAA section 126, that three years is an outer limit on the time that should be given sources to come into compliance where possible. In light of the January 1, 2023, deadline for implementation of RACT in Moderate nonattainment areas, the EPA finds that a May 1, 2026 deadline for full implementation of the emissions control requirements in this final rule would generally provide adequate time for any individual source to install the necessary controls, barring the circumstances of necessity discussed further in this section.

Finally, with respect to emissions standards for hazardous air pollutants, section 112(i)(3) of the CAA requires the EPA to establish compliance dates for each category or subcategory of existing sources subject to an emissions standard that "provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard," with limited exceptions. CAA section 112(i)(3)(B) authorizes the EPA to grant an extension of up to 1 additional year for an existing source to comply with emissions standards "if such additional period is necessary for the installation of controls," and sections 112(i)(4) through (7) provide for limited compliance extensions where other conditions are met.²⁷³ Here again, where Congress was concerned with addressing emissions of pollutants that impact public health, a 3-year time period was allotted as the time needed for existing sources to come into compliance where possible. As discussed further in section VI.A.2.b of this document, the process for obtaining a compliance extension for industrial sources in this rule is generally modeled on 40 CFR 63.6(i)(3), which implements

²⁷² See the Final Non-EGU Sectors TSD for a discussion of SIP-approved RACT rules in effect in downwind states.

²⁷³ See, e.g., CAA section 112(i)(4), which provides for limited compliance extensions granted by the President based on national security interests.

the extension provision for existing sources under CAA section 112(i)(3)(B).

All of these statutory timeframes for implementation of new control requirements on existing stationary sources indicate that Congress considered 3 years to be not only a sufficient amount of time but an upper bound of time allowable (barring instances of impossibility) for existing stationary sources to install or begin the installation of pollution controls as necessary for expeditious attainment, to eliminate prohibited interstate transport of pollutants, and to protect public health.

Further, the EPA notes that, given the number of years that have passed since EPA's promulgation of the 2015 ozone NAAQS and related nonattainment area designations in 2018, and in light of the *Maryland* court's holding that good neighbor obligations for the 2015 ozone NAAQS should have been implemented by the Marginal area attainment date in 2021,²⁷⁴ the implementation of good neighbor obligations for these NAAQS is already delayed, and the sources subject to NO_x emissions control in this rule have continued to operate for several years without the controls necessary to eliminate their significant contribution to ongoing and persistent ozone nonattainment and maintenance problems in other states. Under these circumstances, we find it reasonable to require compliance with the control requirements for all non-EGUs and the EGU reductions related to post-combustion control retrofit identified in section V.B.1.b of this document beginning in the 2026 ozone season (with full implementation by the 2027 ozone season for EGUs, and the availability of source-specific extensions based on a demonstration of necessity for non-EGUs).

As the D.C. Circuit noted in *Wisconsin*, the good neighbor provision requires upwind states to "eliminate their substantial contributions to downwind nonattainment in concert with the attainment deadlines" in the downwind states, even where those attainment deadlines occur before EPA's statutory deadline under CAA section 110(c) to promulgate a FIP.²⁷⁵

²⁷⁴ 958 F.3d at 1203–1204 (remanding the EPA denial of section 126 petition based on the EPA analysis of downwind air quality in 2023 rather than 2021, the year containing the Marginal area attainment date).

²⁷⁵ 938 F.3d at 317–318. For example, the court observed that the EPA may shorten the deadline for SIP submissions under CAA section 110(a)(1) and may issue FIPs soon thereafter under CAA section 110(c)(1), to align the upwind states' deadline for satisfying good neighbor obligations with the downwind states' deadline for attaining the NAAQS. *Id.* at 318.

Referencing the Supreme Court's description of the attainment deadlines as "the heart" of the CAA, the *Wisconsin* court noted that some deviation from the mandate to eliminate prohibited transport by downwind attainment deadlines may be allowed only "under particular circumstances and upon a sufficient showing of necessity."²⁷⁶

For the reasons provided in the following sub-sections, the EPA finds that installation of certain EGU controls and all non-EGU controls is not possible by the Moderate area attainment date for the 2015 ozone NAAQS (*i.e.*, August 3, 2024),²⁷⁷ and, for certain sources, may not be possible by the 2026 ozone season or even the August 3, 2027, Serious area attainment date. While the EPA's technical analysis demonstrates that for any individual source, control installation could be accomplished by the start of the 2026 ozone season, in light of the scope of this rule coupled with current information on the present economic capacity of sources, control-installation vendors, and associated markets for labor and material, it is the EPA's judgment that a three-year timeframe is not possible for all sources subject to this rule collectively to come into compliance. Therefore, additional time beyond 2026 will be allowed for certain facilities in recognition of these constraints on the processes needed for installation of controls across all of the covered sources.

a. EGU Schedule for 2026 and Later Years

As discussed in sections V.B through V.D of this document, significant emissions reduction potential exists and is included in EPA's quantification of significant contribution based on the potential to install post-combustion controls (SCR and SNCRs) at EGUs. However, as discussed in detail in those sections, the assumption for installation of this technology on a region-wide scale is 36–48 months in this final rule. This amount of time allows for all necessary procurement, permitting, and installation milestones across multiple units in the covered region. Therefore, the EPA finds that these emissions reductions are not available any earlier than the 2026 compliance period. Starting in 2026, state emissions budgets will reflect full implementation of assumed SNCR mitigation measures and

²⁷⁶ *Id.* at 316 and 319–320 (noting that any such deviation must be "rooted in Title I's framework" and "provide a sufficient level of protection to downwind States").

²⁷⁷ Compliance by the August 3, 2021, Marginal area attainment date is also impossible as that date has passed.

implementation of half the emissions reduction potential identified for assumed SCR mitigation measures. For each year in 2027 and beyond, state emissions budgets include all of the emissions reductions commensurate with these post-combustion control technologies identified for covered units in Step 3. The EPA notes that similar compliance schedules and post-combustion control retrofit installations have been realized successfully in prior programs allowing similar timeframes. Subsequent to the NO_x SIP Call and the parallel Finding of Significant Contribution and Rulemaking on Section 126 Petitions (which became effective December 28, 1998, and February 17, 2000, respectively²⁷⁸), nearly 19 GW of SCR retrofit came online in 2002 and another 42 GW of SCR retrofit came online for steam boilers in 2003, illustrating that a considerable volume of SCR retrofit capacity is possible within a 36-month period.

Comment: Some commenters disagreed with EPA's proposed 36-month timeframe for SCR retrofit. These commenters noted that, while possible at the unit or plant level, the collective volume of assumed SCR installation would not be possible given the labor constraints, supply constraints, and simultaneous outages necessary to complete SCR retrofit projects on such a schedule. They noted that many of the remaining coal units lacking SCR pose more site-specific installation challenges than those that were already retrofitted on a quicker timeframe.

Response: EPA is making several changes in this final rule to address these concerns. First, EPA is phasing in emissions reductions commensurate with assumed SCR installations consistent with a 36-to-48-month time frame in this final rule, instead of a 36-month time frame as proposed. EPA is implementing half of this emissions reduction potential in 2026 ozone-season NO_x budgets for states containing these EGUs and the other half of this emissions reduction potential in 2027 ozone-season NO_x budgets for those states. This phase-in approach to implementing SCR retrofit reduction potential over a three to four year period is in response to comments, including those from third-party full-service engineering firms. These commenters highlighted that while the

²⁷⁸ See 63 FR 57356 (October 27, 1998); 65 FR 2674 (January 18, 2000). The D.C. Circuit stayed the NO_x SIP Call by an order issued May 25, 1999. After upholding the rule in most respects in *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000), the court lifted the stay by an order issued June 22, 2000.

proposed 36-month time frame is viable at the plant level, it would be “very unlikely” that the collective volume of SCR capacity could be installed in a three-year time frame based on a variety of factors. First, the commenters identified constraints on labor needed to retrofit 32 GW of capacity, highlighting that the Bureau of Labor and Statistics projects that there will be a decline in boilermaker employment over the decade and that the Associated Builders and Contractors (ABC) identifies the need for 650,000 additional skilled craft professionals on top of the normal hiring pace to meet the economy-wide demand created by infrastructure investment and other clean energy projects (e.g., carbon capture and storage). They highlighted the decline in companies serving this type of large-scale retrofit project as the lack of new coal units and the retirement of coal units has curtailed activity in this area over the past five years. They also identified supply bottlenecks for key SCR components that would slow the ability to implement a large volume of SCR within 3 years, affecting electrical conduits, transformers, piping, structural and plate steel, and wire (with temporary price increases ranging from 30 percent to 200 percent). Finally, commenters note that site-specific conditions can make retrofits for individual units a lengthier process than historical averages (e.g., under prior rules more accommodating sites retrofitted first) and that four years may be necessary for some projects, accordingly. EPA found the technical justification submitted in comment consistent with its prior assessments that a range of 39–48 months is appropriate for SCR-retrofit timing within regional-scale programs.²⁷⁹ Therefore, EPA is adjusting the timeframe to still incentivize these reductions by the attainment date while accommodating the potential for some SCR retrofits to require between 36–48 months for installation.

Some commenters requested more than 48 months for SCR installation based on past projects that took five or more years. EPA disagrees with these commenters for two reasons. First, while EPA is identifying SCR retrofit potential to define significant contribution at Step 3, the rule only requires emissions reductions commensurate with that technology, implemented through a trading program, meaning that operators of EGUs eligible for SCR retrofit may pursue a variety of strategies for reducing emissions. Such compliance

flexibility will accommodate extreme or unique circumstances in which a desired SCR retrofit is not achieved by the 2027 ozone season, although EPA finds such a circumstance exceedingly unlikely. Second, the historical examples that exceeded 48 months do not necessarily demonstrate that such projects are impossible to execute in less than 48 months, but rather that they can extend beyond that timeframe if no requirements or incentives are in place for a faster installation. As the D.C. Circuit has recognized, historical data on the amount of time sources have taken to install pollution controls do not in themselves establish the minimum amount of time in which those controls could be installed if sources are subject to a legal mandate to do so. See *Wisconsin*, 938 F.3d at 330 (“[A]ll those anecdotes show is that installation can drag on when companies are unconstrained by the ticking clock of the law.”).

b. Non-EGU or Industrial Source Schedule for 2026 and Later Years

The EPA proposed to require that all emissions reductions associated with the requirements for non-EGU industrial sources go into effect by the start of the 2026 ozone season, but also requested comment on its control-installation timing estimates for non-EGUs and requested comment on the possibility of providing for limited compliance extensions based on a showing of necessity. See 87 FR 20104–05.

Comment: The EPA received numerous comments regarding the inability of various non-EGU industries to install controls to comply with the emissions limits by 2026. Specifically, commenters raised concerns regarding the ability to meet these deadlines due to the ongoing geopolitical instability triggered by the war in Ukraine, COVID–19 pandemic-driven disruptions, and supply chain delays and shortages. Commenters also claimed that the EPA’s three-year installation timeframe for non-EGUs does not account for the time needed to obtain necessary permits. Commenters stated that even where controls are feasible for a source, some sources would need to shut down due to their inability to install controls by 2026 and requested that the EPA provide additional time for sources to come into compliance. Commenters from multiple non-EGU industries stated that the proposed applicability criteria will require controls to be installed on thousands of non-EGU emissions units. Because of the number of emissions units, commenters raised concerns with permitting delays and the unavailability of skilled labor and

necessary components. Commenters suggested various timelines for control installation timing ranging from one additional year to seven years. Other commenters asserted that the data supported the conclusion that all non-EGU sources, or at least some non-EGU sources, could install controls by 2026 or earlier, and that EPA has a legal obligation to impose good neighbor requirements as expeditiously as practicable by such sources, including earlier than 2026 if possible.

Response: After reviewing the information received during the public comment period and the additional information presented in the Non-EGU Control Installation Timing Report, the EPA has concluded that the majority of non-EGUs can install and operate the required controls by the 2026 ozone season. For the non-EGU control requirements on which the EPA has based its Step 3 findings as described in section V of this document, the emissions limits will generally go into effect starting with the 2026 ozone season (except where an individual source qualifies for a limited extension of time to comply based on a specific demonstration of necessity, as described in this section). The EPA finds that meeting the emissions limitations of this final rule through installation of necessary controls by an ozone season before 2026 is not expected to be possible for the industrial sources covered by this final rule.

The EPA recognizes that labor shortages, supply shortages, or other circumstances beyond the control of source owner/operators may, in some cases, render compliance by 2026 impossible for a particular industrial source. Therefore, the final rule contains provisions allowing source owner/operators to request limited compliance extensions based on a case-by-case demonstration of necessity. Under these provisions, the owner or operator of a source may initially apply for an extension of up to one year to comply with the applicable emissions control requirements, which if approved by the EPA, would require compliance no later than the 2027 ozone season. The EPA may grant an additional case-based extension of up to two additional years for full compliance, where specific criteria are met.

The EPA initiated a study to examine the time necessary to install the potential controls identified in the final rule’s cost analysis for all of the non-EGU industries subject to the final rule, including SNCR, low NO_x burners, layered combustion, NSCR, SCR, fluid gas recirculation, and SNCR/advanced selective noncatalytic reduction

²⁷⁹ 86 FR 23102.

(ASNCR). The resulting report, which we refer to as the “Non-EGU Control Installation Timing Report,” identified a range of estimated installation times with minimum estimated installation times ranging from 6–27 months without any supply chain delays and 6–40 months with potential supply chain delays depending on the industry.²⁸⁰ The Non-EGU Control Installation Timing Report also identified maximum estimated installation times ranging from 12–28 months without any supply chain delays and 12–72 months with potential supply chain delays depending on the industry. As indicated in the Non-EGU Control Installation Timing Report, the installation of layered combustion and NSCR control technology, in particular, could take between 9 and 72 months depending on supply chain delays.²⁸¹ The report also indicated that permitting processes may take 6 to 12 months but noted that these processes typically can proceed concurrent with other steps of the installation process.²⁸²

We find that the potential time needed for permitting processes is generally unlikely to significantly affect installation timeframes of at least three years given that a source that has three or more years to comply is expected, in most cases, to have adequate time to apply for and secure the necessary permits during that time. Permitting processes may, however, impact shorter installation times ranging from 12–28 months. Given the 12–28 month estimate for minimum and maximum installation times without supply chain delays and permitting timeframes typically ranging from 6–12 months, the EPA finds that the controls for non-EGU sources needed to comply with this final rule are generally not expected to be installed significantly before the 2026 ozone season.

Generally, the Non-EGU Control Installation Timing Report indicated that all non-EGU unit types subject to the final rule could install controls within 28 months if there are no supply chain delays. Thus, the Non-EGU Control Installation Timing Report confirms that for any individual facility, meeting the emissions limitations of this final rule through installation of controls can be completed by the start of the 2026 ozone season. It is only when the number of units in the U.S. potentially affected by the rule is taken

into account, coupled with broader considerations of economic capacity including current information on supply-chain delays, that the potential need for additional time beyond 2026 becomes a possibility. Under ideal economic conditions (*i.e.*, no supply-chain delays or other constraints), affected units are estimated to be capable to install both combustion and post-combustion controls before the 2026 ozone season. Many commenters, however, provided information on installation timing estimates based on current supply chain delays and labor constraints. These commenters generally stated that installation of the necessary controls for some units would take longer than three years if supply chain delays similar to those that have occurred over the past few years continue. The Non-EGU Control Installation Timing Report reflected this information, together with additional information gathered from pollution control vendors, to develop ranges of estimates of possible installation times given current (*i.e.*, 2022) labor market conditions and material supplies. The Non-EGU Control Installation Timing Report also discussed how the installation and optimization of post-combustion controls over a similar timeframe at both EGUs and non-EGUs subject to this final rule would, considered cumulatively, potentially affect the installation timing needs of the covered non-EGU sources.

Based on information provided by commenters and vendors, the Non-EGU Control Installation Timing Report indicated that if current supply chain delays continue, control installations could take as long as 61 months for most non-EGU industries and possibly as long as 64–112 months in difficult cases. Notably, however, the conclusions in the Non-EGU Control Installation Timing Report reflect three key assumptions that could result in the relatively lengthy timing estimates at the outer end of this range: (1) the current state of supply chain delays and disruptions would continue without any increase in labor supply, materials, or reduction in fabrication timing; (2) the labor and materials markets would not adjust in response to this rule in the timeframe needed to meet the increased demand for control installations; and (3) the Report was unable to account for some of the flexibilities built into the final rule that will allow owners and operators to install controls on the most cost-effective units with shorter installation times.

As presented in the Non-EGU Control Installation Timing Report, supply chain delays and disruptions have

generally been lessening since they peaked in 2020 during the COVID–19 pandemic, and many economic indicators have shown some improvement towards pre-pandemic levels, including freight transportation, inventory to sales ratios, interstate miles traveled, U.S. goods imports, and supply chain indices.²⁸³ If these economic indicators continue to improve and the availability of fabricators and materials continues to trend upward, the control timing estimates identified in the Non-EGU Control Installation Timing Report could prove to be overstated for some industries and control technologies. In addition, the Non-EGU Control Installation Timing Report did not account for the labor and supply market adjustments that would be anticipated to occur to meet increased demand for control technologies and related materials and labor over the next several years in response to the rule. *Cf. Wisconsin*, 938 F.3d at 330 (“[A]ll those anecdotes [of elongated control installation times] show is that installation can drag on when companies are unconstrained by the ticking clock of the law.”). For example, some of the longer installation timeframes identified in the Non-EGU Control Installation Timing Report are based on assumed limits on the current availability of skilled labor needed to install combustion controls and post combustion controls. If the market adjusts in response to increasing demand for this type of skilled labor in the timeframe needed for compliance (*e.g.*, there is an increase in boilermaker and engine controls labor), the installation timing estimates in the Non-EGU Control Installation Timing Report again could be overstated.

The Non-EGU Control Installation Timing Report also did not account for flexibilities provided in this final rule that will enable owners and operators of certain affected units to identify the most cost-effective and efficient means for installing any necessary controls. For example, one concern highlighted by commenters was the amount of time necessary to install controls on engines that have been in operation for 50 or more years. The requirements that we are finalizing for engines in the Pipeline Transportation of Natural Gas industry include an exemption for emergency engines and provisions allowing source owner/operators to request the EPA approval of facility-wide emissions averaging plans, both of which enable owners and operators of affected units to take costs, installation timing needs,

²⁸⁰ See generally SC&A, *NO_x Emission Control Technology Installation Timing for Non-EGU Sources* (March 14, 2023) (“Non-EGU Control Installation Timing Report”).

²⁸¹ See Non-EGU Control Installation Timing Report, Executive Summary (March 14, 2023).

²⁸² *Id.* at Section 5.6.

²⁸³ *Id.* at Section 6.1.

and other considerations into account in deciding which engines to control.

In response to industry concern about the number and size of units captured by the proposed applicability criteria, the EPA has made several changes to the applicability criteria in the final rule to focus the control requirements on impactful non-EGU units. As explained further in section VI.C of this document, the EPA is establishing exemptions for low-use boilers and engines where it would not be cost-effective to require controls at this time. Finally, as discussed in section VI.C.3 of this document, the EPA is not finalizing the proposed requirements for most emissions unit types in the Iron and Steel Mills and Ferroalloy Manufacturing industry given the EPA does not currently have a sufficient technical basis for finalizing those proposed requirements. These changes reduce the number of non-EGU units that will actually need to install controls and should reduce the strain on the labor and supply chain and permitting processes. For example, for engines, the EPA estimates that the facility-wide emissions averaging provision would, in many cases, allow facilities to install controls on only one-third of their engines, on average (see section VI.C.1 of this document for further discussion).

Taking all of these considerations into account, the EPA finds that the outer range of timing estimates presented in the Non-EGU Control Installation Timing Report generally reflects a conservative set of installation timing estimates and that the factors described previously could result in installation timeframes that fall toward the shorter end of the ranges of time that factor in supply-chain delays or could obviate those supply-chain delay issues entirely.

Based on all of these considerations, the EPA has concluded that three years is generally an adequate amount of time for the non-EGU sources covered by this final rule to install the controls in the 20 states that remain linked in 2026. The EPA also recognizes, however, that some sources may not be able to install controls by the 2026 ozone season despite making good faith efforts to do so, due to the aforementioned supply chain delays or other circumstances entirely beyond the owner or operator's control. Therefore, the final FIPs require compliance with the emissions control requirements for non-EGUs by the beginning of the 2026 ozone season, with limited exceptions based on a showing of necessity for individual sources that meet specific criteria. Where an individual owner or operator submits a satisfactory demonstration

that an extension of time to comply is necessary, due to circumstances entirely beyond the owner or operator's control and despite all good faith efforts to install the necessary controls by May 1, 2026, the EPA may determine that installation by 2026 is not possible and thereby grant an extension of up to one year for that source to fully implement the required controls. If, after the EPA has granted a request for an initial compliance extension, the source remains unable to comply by the extended compliance date due to circumstances entirely beyond the owner or operator's control and despite all good faith efforts to install the necessary controls by the extended compliance date, the owner or operator may request and the EPA may grant a second extension of up to two additional years for full compliance, where specific criteria are met. This application process is generally in accordance with the concept on which the Agency requested comment in the proposal, *see* 87 FR 20104–05, and is modeled on a similar process provided for industrial sources subject to CAA section 112 NESHAPs, found at 40 CFR 63.6(i)(3).

The EPA intends to grant a request for an initial compliance extension only where a source demonstrates that it has taken all steps possible to install the necessary controls by the applicable compliance date and still cannot comply by the 2026 ozone season, due to circumstances entirely beyond its control. Any request for a compliance extension must be received by the EPA at least 180 days before the May 1, 2026, compliance date. The request must include all information obtained from control technology vendors demonstrating that the necessary controls cannot be installed by the applicable compliance date, any permit(s) secured for the installation of controls or information from the permitting authority on the timeline for issuance of such permit(s) if the source has not yet obtained the required permit(s); and any contracts entered into by the source for the installation of the control technology or an explanation as to why no contract is necessary. The EPA may also consider documentation of a source owner's/operator's plans to shut down a source by the 2027 ozone season in determining whether a source is eligible for a compliance extension. The owner or operator of an affected unit remains subject to the May 1, 2026 compliance date unless and until the Administrator grants a compliance extension.

The EPA intends to grant a request for a second compliance extension beyond

2027 only where a source owner/operator submits updated documentation showing that it is not possible to install and operate controls by the 2027 ozone season, despite all good faith efforts to comply and due to circumstances entirely beyond its control. The request must be received by the EPA at least 180 days before the extended compliance date and must include, at minimum, the same types of information as that required for the initial extension request. The owner or operator of an affected unit remains subject to the initial extended compliance date unless and until the Administrator grants a second compliance extension. A denial will be effective on the date of denial.

As discussed earlier in section VI.A, in *Wisconsin* the court held that some deviation from the CAA's mandate to eliminate prohibited transport by downwind attainment deadlines may be allowed only "under particular circumstances and upon a sufficient showing of necessity."²⁸⁴ This standard is met when, in the EPA's judgment, compliance by the attainment date amounts to an impossibility. The EPA cannot allow a covered industrial source to avoid timely compliance with the emissions control requirements established in this final rule unless the source owner/operator can demonstrate that compliance by the 2026 ozone season is not possible due to circumstances entirely beyond their control. The criteria that must be met to qualify for limited extensions of time to comply are designed to meet this statutory mandate. The EPA anticipates that the majority of the industrial sources covered by this final rule will not qualify for a compliance extension.

B. Regulatory Requirements for EGUs

To implement the required emissions reductions from EGUs, the EPA is revising the existing CSAPR NO_x Ozone Season Group 3 Trading Program (the "Group 3 trading program") established in the Revised CSAPR Update both to expand the program's geographic scope and to enhance the program's ability to ensure favorable environmental outcomes. The EPA is using a trading program for EGUs because of the inherently greater flexibility that a trading program can provide relative to more prescriptive, "command-and-control" forms of regulation of sufficient stringency to achieve the necessary emissions reductions. In the electric

²⁸⁴ *Wisconsin*, 938 F.3d at 316 and 319–320 (noting that any such deviation must be "rooted in Title I's framework" and "provide a sufficient level of protection to downwind States").

power sector, EGUs' extensive interconnectedness and coordination create the ability to shift both electricity production and emissions among units, providing a closely related ability to achieve emissions reductions in part by shifting electricity production from higher-emitting units to lower-emitting or non-emitting units. Thus, while the Step 3 control-stringency determination for EGUs to eliminate significant contribution is based on strategies that do not require generation shifting or reduced utilization of EGUs, the sector's unusual flexibility with respect to how emissions reductions can be achieved makes the flexibility of a trading program particularly useful as a means of lowering the overall costs of obtaining such reductions. In addition, it is essential for the electric power sector to retain short-term operational flexibility sufficient to allow electricity to be produced at all times in the quantities needed to meet demand simultaneously, and the flexibility of a trading program can be helpful in supporting this aspect of the industry as well.

To ensure emissions reductions necessary to eliminate significant contribution are maintained, in this rulemaking, the EPA is making certain enhancements to the current provisions of the Group 3 trading program addressing emissions-control performance by some kinds of individual units that will necessarily reduce the flexibility of the program to some extent for those units. In analyzing significant contribution at Step 3, once a linkage has been established between an upwind state and a downwind receptor, we identify an appropriate set of emissions control strategies, considering cost and other factors, that would eliminate significant contribution from the upwind state without leading to undercontrol or overcontrol at the downwind linked receptors. At Step 4, for EGUs, we develop emissions budgets based on consistent application of the identified strategies to the sources. This level of emission control at each source identified in Step 3 is what the EPA deems to eliminate significant contribution, while the design of emission budgets that successfully implement that level of emission control is determined at Step 4. See section III.B and V.

The trading program enhancements discussed in this section are designed to ensure that sources actually achieve that level of emission control and thereby eliminate significant contribution on a permanent basis at Step 4. The enhancements ensure that the emissions budgets for EGUs continue to secure the

level of emission control identified at Step 3 at the sources active in the trading program on a more consistent basis throughout each ozone season than prior transport trading programs (including those that did not provide complete remedies for interstate pollution transport) have required. An alternative form of implementation at Step 4 would be to implement source-specific emissions limitations (*e.g.*, rate-based standards expressed as mass per unit of heat input) reflecting the control strategies identified at Step 3. This is a very common form of implementation for many other CAA requirements and is indeed the manner of implementation selected in this very rulemaking for other affected industrial sources. See sections III.B, V.D.4, and VI.C. But doing so would require loss of the flexibilities inherent in a trading program, inclusive of these enhancements, that facilitate orderly and timely achievement of the required emission reductions in the power sector.

Prior to this rule, the Group 3 trading program has applied to EGUs meeting the program's applicability criteria within the borders of twelve states: Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Affected EGUs in these twelve states will continue to participate in the Group 3 trading program as revised in this rulemaking, with some revised provisions taking effect in the 2023 control period and other revised provisions taking effect later as discussed elsewhere in this document. The EPA is expanding the Group 3 trading program's geographic scope to include all of the additional states for which EGU emissions reduction requirements are being established in this rulemaking. Affected EGUs within the borders of seven states currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program (the "Group 2 trading program")—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin—will transition from the Group 2 trading program to the revised Group 3 trading program at the beginning of the 2023 control period,²⁸⁵ and affected EGUs within the borders of the three states not currently covered by any CSAPR trading program for seasonal NO_x emissions—Minnesota, Nevada, and Utah—will enter the Group 3 trading program in the 2023 control period on the effective date of this rule.

²⁸⁵ Affected EGUs in the three other states currently covered by the Group 2 trading program—Iowa, Kansas, and Tennessee—will continue to participate in that program.

As discussed in section VI.B.12.a of this document, because the effective date of the rule will likely be sometime during the 2023 ozone season, special transitional provisions have been developed to allow for efficient administration of the rule's EGU requirements through the Group 3 trading program while not imposing any new substantive obligations on parties prior to the rule's effective date, similar to the transitional provisions implemented under the Revised CSAPR Update.

As is the case for the states already in the Group 3 trading program, for each state added to the program, the set of affected EGUs will include new units as well as existing units and will also include units located in Indian country within the state's borders. Sections VI.B.2 and VI.B.3 of this rule provide additional discussion of the geographic expansion of the Group 3 trading program and the units in the expanded geography that will become subject to the program under the program's existing applicability provisions.

In addition to expanding the Group 3 trading program's geographic scope, the EPA is modifying the program's regulations prospectively to include certain enhancements to improve environmental outcomes. Two of the proposed enhancements will adjust the overall quantities of allowances available for compliance in the trading program in each control period so as to maintain the rule's selected control stringency and related EGU effective emissions rate performance level as the EGU fleet evolves. First, instead of establishing emissions budgets for all future years under the program at the time of the rulemaking, which cannot reflect future changes in the EGU fleet unknown at the time of the rulemaking, the EPA is revising the trading program regulations to include a dynamic budgeting procedure. Under this procedure, the EPA will calculate emissions budgets for control periods in 2026 and later years based on more current information about the composition and utilization of the EGU fleet, specifically data available from the 2024 ozone season and following (*e.g.*, for 2026, data from periods through 2024; for 2027, data from periods through 2025; etc.). Through the 2029 control period, the dynamically determined budgets will apply only if they are higher than preset budgets established in the rule. (Associated revisions to the program's variability limits and unit-level allowance allocation procedures will coordinate these provisions with the revised budget-setting procedures.) Second,

starting with the 2024 control period, the EPA will annually recalibrate the quantity of accumulated banked allowances under the program to prevent the quantity of allowances carried over from each control period to the next from exceeding the target bank level, which would be revised to represent a preset percentage of the sum of the state emissions budgets for each control period. The preset percentage will be 21 percent for control periods through 2029 and 10.5 percent for control periods in 2030 and later years. Together, these enhancements will protect the intended stringency of the trading program against potential erosion caused by EGU fleet turnover and will better sustain over time the incentives created by the trading program to achieve the degree of emissions control for EGUs that the EPA has determined is necessary to address states' good neighbor obligations.

Two further enhancements to the Group 3 trading program establish provisions designed to promote more consistent emissions control by individual EGUs within the context of the trading program. First, starting with the 2024 control period for coal-fired EGUs with existing SCR controls and the earlier of the 2030 control period or the control period after which an SCR is installed for other large coal-fired EGUs, a daily NO_x emissions rate of 0.14 lb/mmBtu will apply as a backstop to the seasonal emissions budgets (which are based on an assumed seasonal average emissions rate of 0.08 lb/mmBtu for EGUs with existing SCR controls). Each ton of emissions exceeding a unit's backstop daily emissions rate, after the first 50 such tons, in a given control period will incur a 3-for-1 allowance surrender ratio instead of the usual 1-for-1 allowance surrender ratio. Second, also starting with the 2024 control period, the trading program's existing assurance provisions, which require extra allowance surrenders from sources that are found responsible for contributing to an exceedance of the relevant state's "assurance level" (*i.e.*, typically 121 percent of the state's emissions budget), will be strengthened by the addition of another backstop requirement. Specifically, for any unit equipped with post-combustion controls that is found responsible for contributing to an exceedance of the state's assurance level, the revised regulations will prohibit the unit's seasonal emissions from exceeding by more than 50 tons the emissions that would have resulted if the unit had achieved a seasonal average emissions rate equal to the

higher of 0.10 lb/mmBtu or 125 percent of the unit's lowest previous seasonal average emissions rate under any CSAPR seasonal NO_x trading program.²⁸⁶

These two enhancements are designed to ensure that all individual units with SCR controls have strong incentives to continuously operate and optimize their controls, and also to ensure that all units with post-combustion controls have strong incentives to optimize their emissions performance when a state's assurance level might otherwise be exceeded. These enhancements are generally designed to ensure consistency with the EPA's determination regarding the emissions control stringency needed from EGUs to eliminate significant contribution under the Step 3 multifactor analysis as discussed in section V of this document. Further, these enhancements are designed to provide greater assurance that emissions controls will be operated on all days of the ozone season and therefore necessarily on the days that turn out to be most critical for downwind ozone levels. The EPA expects that promoting more consistently good emissions performance by individual EGUs will better ensure that each state's significant contribution is fully eliminated by this action, *see North Carolina*, 531 F.3d at 919–21. In addition to addressing the statutory requirements of eliminating significant contribution, the EPA anticipates that these enhancements will also deliver public health and environmental benefits to underserved and overburdened communities.

The revisions to the Group 3 trading program being finalized in this rule are very similar to the proposed revisions. The changes from proposal to the set of states covered are driven largely by updates to the air quality modeling performed for the final rule, as described in section IV of this document. The changes from proposal to the trading program enhancements are generally being made in response to comments on the proposal, as discussed in more detail in the remainder of section VI.B of this document.

²⁸⁶ The requirement would not apply for control periods during which the unit operated for less than 10 percent of the hours, and emissions rates achieved in such previous control periods would be excluded from the comparison.

1. Trading Program Background and Overview of Revisions

a. Current CSAPR Trading Program Design Elements and Identified Concerns

The use of allowance trading programs to achieve required emissions reductions from the electric power sector has a long history, rooted in the Clean Air Act Amendments of 1990. In Title IV of those amendments, Congress specified the design elements for a 48-state allowance trading program to reduce SO₂ emissions and the resulting acid precipitation. Building on the success of that first allowance trading program as a tool for addressing multi-state air pollution issues, since 1998 EPA has promulgated and implemented multiple allowance trading programs for SO₂ or NO_x emissions to address the requirements of the CAA's good neighbor provision with respect to successively more protective NAAQS for fine particulate matter and ozone. Most of these trading programs have applied either exclusively or primarily to EGUs.

The EPA currently administers six CSAPR trading programs for EGUs (promulgated in CSAPR, the CSAPR Update, and the Revised CSAPR Update) that differ in the pollutants, geographic regions, and time periods covered and in the levels of stringency, but that otherwise have been nearly identical in their core design elements and their regulatory text.²⁸⁷ The principal common design elements currently reflected in all of the programs are as follows:

- An "emissions budget" is established for each state for each control period, representing the EPA's quantification of the emissions that would remain under certain projected conditions after elimination of the emissions prohibited by the good neighbor provision under those projected conditions. For each control period of program operation, a quantity of newly issued "allowances" equal to the amount of each state's emissions budget is allocated among the state's sources. (States have options to replace the EPA's default allocations or to institute an auction process.) Total emissions in a given control period from all sources in the program are effectively

²⁸⁷ The six current CSAPR trading programs are the CSAPR NO_x Annual Trading Program, CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR SO₂ Group 1 Trading Program, CSAPR SO₂ Group 2 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, and CSAPR NO_x Ozone Season Group 3 Trading Program. The regulations for the six programs are set forth at subparts AAAAA, BBBB, CCCC, DDDD, EEEE, and GGGG, respectively, of 40 CFR part 97.

capped at a level no higher than the total quantity of allowances available for use in the control period, consisting of the sum of all states' emissions budgets for the control period plus any unused allowances carried over from previous control periods as "banked" allowances.

- "Assurance provisions" in each program establish an "assurance level" for each state for each control period, defined as the sum of the state's emissions budget plus a specified "variability limit." The purpose of the assurance provisions is to limit the total emissions from each state's sources in each control period to an amount close to the state's emissions budget for the control period, consistent with the good neighbor provision's mandate that required emissions reductions must be achieved within the state, while allowing some flexibility beyond the emissions budget to accommodate year-to-year operational variability. In the event a state's assurance level is exceeded, responsibility for the exceedance is apportioned among the state's sources through a procedure that accounts for the sources' shares of the state's total emissions for the control period as well as the sources' shares of the state's assurance level for the control period.

- At the program's compliance deadlines after each control period, sources are required to hold for surrender specified quantities of allowances. The minimum quantities of allowances that must be surrendered are based on the sources' reported emissions for the control period at a 1-for-1 ratio of allowances to tons of emissions (or 2-for-1 in instances of late compliance). In addition, two more allowances must be surrendered for each ton of emissions exceeding a state's assurance level for a control period, yielding an overall 3-for-1 surrender ratio for those emissions (or 4-for-1 in instances of late compliance). Failure to timely surrender all required allowances is potentially subject to penalties under the CAA's enforcement provisions.

- To continuously incentivize sources to reduce their emissions even when they already hold sufficient allowances to cover their expected emissions for a control period, and to promote compliance cost minimization, operational flexibility, and allowance market liquidity, the programs allow trading of allowances—both among sources in the program and with non-source entities—and also let allowances that are unused in one control period be carried over for use in future control periods as banked allowances. Although the CSAPR programs do not limit trading of allowances, and prior to this

rule have not limited banking of allowances within a given trading program, the 3-for-1 surrender ratio imposed by the assurance provisions on any emissions exceeding a state's assurance level disincentivizes sources from relying on either in-state banked allowances or net out-of-state purchased allowances to emit over the assurance level.²⁸⁸

- Finally, other common design elements ensure program integrity, source accountability, and administrative transparency. Most notably, each unit must monitor and report emissions and operational data in accordance with the provisions of 40 CFR part 75; all allowance allocations or auction results, transfers, and deductions must be properly recorded in the EPA's Allowance Management System; each source must have a designated representative who is authorized to represent all of the source's owners and operators and is responsible for certifying the accuracy of the source's reports to the EPA and overseeing the source's Allowance Management System account; and comprehensive data on emissions and allowances are made publicly available.

The EPA continues to believe that the historical CSAPR trading program structure established by the common design elements just described has important positive attributes, particularly with respect to the exceptional degree of compliance flexibility it can provide to a sector such as the electric power sector where such flexibility is especially useful and valuable. However, the EPA also shares many stakeholders' concerns about whether the historical structure, without enhancements, is capable of adequately addressing states' good neighbor obligations with respect to the 2015 ozone NAAQS in light of the rapidly evolving EGU fleet and the protectiveness and short-term form of the ozone standard. One set of concerns relates to the historically observed tendency under the trading programs for the supply of allowances to grow over time while the demand for allowances falls, reducing allowance prices and eroding the consequent incentives for sources to effectively control their emissions. A second, overlapping set of concerns relates to the general absence of source- or unit-specific emissions reduction requirements, allowing some

²⁸⁸ As discussed in section VLB.6 of this document, while allowance banking has not previously been limited under any of the CSAPR trading programs, limits on the use of banked allowances were included in the earlier NO_x Budget Trading Program in the form of "flow control" provisions.

individual sources to idle or run less optimally existing emissions controls even when a linkage between the sources' state and a receptor persists. For example, certain units in Ohio and Pennsylvania have been found to have operated their controls below target emissions performance levels used for budget setting under the CSAPR Update in the 2019–2021 period, even though the Revised CSAPR Update found that these states remained linked through at least 2021 to receptors for the 2008 ozone NAAQS, and the CSAPR Update itself was only a partial remedy. See 86 FR 23071, 23083. While this unit-level behavior may have been permissible under the prior program, emissions from these individual sources can contribute to increased pollution concentrations downwind on the particular days that matter for downwind exceedances of the relevant air quality standard. This indicates that the prior program design was not effectively ensuring the elimination of significant contribution.²⁸⁹

The EPA has analyzed hourly emissions data reported in prior cap-and-trade programs and identified instances of sources that did not operate SCR controls for substantial portions of recent ozone seasons. In an effort to ensure emissions control on critically important highest ozone days, guard against non-operation of emissions controls under a more protective NAAQS, and provide assurance of elimination of significant contribution to downwind areas, while also maintaining appropriate compliance and operational flexibility for EGUs, the EPA in this rule is implementing a suite of enhancements to the trading program. These will help to ensure reductions occur on the highest ozone days commensurate with our Step 3 determinations, in addition to maintaining a mass-based seasonal requirement. To meet the statutory mandate to eliminate significant contribution and interference with

²⁸⁹ We also observe that these sources' emissions have the potential to impact downwind overburdened communities. See Ozone Transport Policy Analysis Final Rule TSD, Section E. The EPA conducted a screening-level analysis to determine whether there may be impacts on overburdened communities resulting from those EGUs receiving backstop emissions rates under this rule. This analysis identified a greater potential for these sources to affect areas of potential concern than the national coal-fired EGU fleet on average. However, this analysis is distinct from the more comprehensive exposure analysis conducted as discussed in section VII of this document and the RIA. In addition, we note that our conclusions regarding the EGU trading program enhancements in this final rule are wholly supportable and justified under the good neighbor provision, even in the absence of any potential benefits to overburdened communities.

maintenance on the critically important days, this combination of provisions will strongly incentivize sources to plan to run controls all season, including on the highest ozone days, while giving reasonable flexibility for occasional operational needs.²⁹⁰

In this rulemaking, the EPA is revising the Group 3 trading program to include enhancements designed to address both sets of concerns described previously. The principles guiding the various revisions and the relationships of the revisions to one another are discussed in sections VI.B.1.b and VI.B.1.c of this document. The individual revisions are discussed in more detail in sections VI.B.4 through VI.B.9 of this document.

b. Enhancements To Maintain Selected Control Stringency Over Time

The first set of concerns noted about the current CSAPR trading program structure relates to the programs' ability to maintain the rule's selected control stringency and related EGU effective emissions performance level as the EGU fleet evolves over time. Under the historical structure of the CSAPR trading programs, the effectiveness of the programs at maintaining the rule's selected control stringency depends entirely on how allowance prices over time compare to the costs of sources' various emissions reduction opportunities, which in turn depends on the relationship between the supply for allowances and the demand for allowances. In considering possible ways to address concerns about the ability to enhance the historical trading program structure to better sustain incentives to control emissions over time, the EPA has focused on the trading program design elements that determine the supply of allowances, specifically the approach for setting state emissions budgets and the rules concerning the carryover of unused allowances for use in future control periods as banked allowances.

i. Revised Emissions Budget-Setting Process

In each of the previous rulemakings establishing CSAPR trading programs, the EPA has evaluated the emissions that could be eliminated through implementation of certain types of emissions control strategies available at various cost thresholds to achieve

²⁹⁰ Deferral of the backstop daily emissions rate for certain EGUs, for reasons discussed in section VI.B.7 of this document, does not alter this finding that this trading program enhancement is an important part of the solution to eliminating significant contribution from EGUs under CAA section 110(a)(2)(D)(i)(I).

certain rates of emissions per unit of heat input (*i.e.*, the amount of fuel consumed) and the effects of the resulting emissions reductions on downwind air quality. After determining the emissions control strategies and associated emissions reductions that should be required under the good neighbor provision by considering these factors in a multifactor test at Step 3, the EPA has then for purposes of Step 4 implementation program design projected the amounts of emissions that would remain after the assumed implementation of the selected emissions control strategies at various points in the future and has established the projected remaining amounts of emissions as the state emissions budgets in trading programs.

Projecting the amounts of emissions remaining after implementation of selected emissions controls necessarily requires projections not only for sources' future emissions rates but also for other factors that influence total emissions, notably the composition of the future EGU fleet (*i.e.*, the capacity amounts of different types of sources with different emissions rates) and their future utilization levels (*i.e.*, their heat input). To the extent conditions unfold in practice that differ from the projections made at the time of a rulemaking for these other factors, over time the emissions budgets may not reflect the intended stringency of the emissions control strategies identified in the rulemaking as consistent with addressing states' good neighbor obligations. Further, projecting EGU fleet composition and utilization beyond the relatively near-term analytic years of 2023 and 2026 given particular attention in this rulemaking has become increasingly challenging in light of the anticipated continued evolution of the electric power sector toward more efficient and cleaner sources of generation, including as driven by incentives provided by the Infrastructure Investment and Jobs Act as well as the Inflation Reduction Act.

A consequence of using a trading program approach with preset emissions budgets that do not keep pace with the trends in EGU fleet composition and heat input is that the preset emissions budgets maintain the supply of allowances at levels that increasingly exceed the emissions that would occur even without implementation of the emissions control strategies used as the basis for determining the emissions budgets, causing decreases in allowance prices and hence the incentives to implement the control strategies. As an example, although the emissions

budgets in the CSAPR Update established in 2016 reflected implementation of the emissions control strategy of operating and optimizing existing SCR controls, within four years the EPA found that EGU retirements and changes in utilization not anticipated in EPA's previous budget-setting computations had made it economically attractive for at least some sources to idle or reduce the effectiveness of their existing controls (relying on purchased allowances instead).²⁹¹ While the EPA has provided analysis indicating that, on average, sources operate their controls more effectively on high electric demand days, it has also identified cases where units fail to optimize their controls on these days. Downwind states have suggested this type of reduced pollution control performance has occurred on the day and preceding day of an ozone exceedance.^{292 293} While the EPA had previously provided analysis focusing on the year of initial program implementation, when allowance prices were high (*i.e.*, 2017 for the CSAPR Update), to demonstrate that on average, sources operate their controls more effectively on high electric demand days, even in that case it had identified situations where particular units failed to optimize their controls on these days. In later years, when allowance prices had fallen, more sources, including some identified by commenters, had idled or reduced the effectiveness of their controls. Such an outcome undermined the ongoing achievement of emissions rate performance consistent with the control strategies identified in the CSAPR Update to eliminate significant contribution to nonattainment and interference with maintenance, despite the fact that the mass-based budgets were being met.

In the Revised CSAPR Update, the EPA took steps to better address the rapid evolution of the EGU fleet, specifically by setting updated emissions budgets for individual future

²⁹¹ The price of allowances in CSAPR Update states started at levels near \$800 per ton in 2017 but declined to less than \$100 per ton by 2019 and were less than \$70 per ton in July 2020 (data from S&P Global Market Intelligence).

²⁹² 86 FR 23117.

²⁹³ See EPA-HQ-OAR-2020-0272-0094 ("[This] is demonstrated through examination of Maryland's ozone design value days for June 26th–28th, 2019. On those days, Maryland recorded 8-hour ozone levels of 75, 85 and 83 ppb at the Edgewood monitor. Maryland Department of the Environment evaluated the daily NO_x emission rate for units in Pennsylvania that were found to influence the design values on the 3 exceedance days (and 1 day prior to the exceedance) against the past-best ozone season 30-day rolling average optimized NO_x rate (which tends to be higher than the absolute lowest seasonal average rate).")

years though 2024 that reflect future EGU fleet changes known with reasonable certainty at the time of the rulemaking. Some commenters in that rulemaking requested that the EPA also update the year-by-year emissions budgets to reflect future fleet changes that might become known after the time of the rulemaking, but the EPA declined to do so, in part because no methodology for making future emissions budget adjustments in response to post-rulemaking data had been included in the proposal for the rulemaking.

Based on information available as of December 2022, it appears that the emissions budgets set for the first two control periods covered by the Revised CSAPR Update generally succeeded at creating incentives to operate emissions controls under the Group 3 trading program for those control periods. However, the EPA recognizes that the lack of emissions budget adjustments after 2024 in conjunction with industry trends toward more efficient and cleaner resources will likely lead to a surplus of allowances after the adjustments end. This prospect for the existing Group 3 trading program should be avoided by the changes being made in this rulemaking. In this rulemaking, besides establishing new preset emissions budgets for the 2023 through 2029 control periods, the EPA is also extending the Group 3 trading program budget-setting methodology used in the Revised CSAPR Update to routinely calculate dynamic emissions budgets for each future control period from 2026 on, to be published in the year before that control period, with each dynamic emissions budget generally reflecting the latest available information on the composition and utilization of the EGU fleet at the time that dynamic emissions budget is determined. For the control periods in 2026 through 2029, each state's final emissions budget will be the preset budget determined for the state in this rulemaking except in instances when the dynamic budget determined for the state (and published approximately one year before the control period using the dynamic budget-setting methodology) is higher. For control periods in 2030 and thereafter, the emissions budgets will be the amounts determined for each state in the year before the control period using the dynamic budget-setting methodology.

The current budget-setting methodology established in the Revised CSAPR Update and the revisions being made to that methodology are discussed in detail in section VI.B.4 of this document and the Ozone Transport

Policy Analysis Final Rule TSD. To summarize here, the methodology used to determine the preset budgets largely follows the Revised CSAPR Update's emissions budget-setting methodology, which included three primary steps: (1) establishment of a baseline inventory of EGUs adjusted for known retirements and new units, with heat input and emissions rate data for each EGU in the inventory based on recent historical data; (2) adjustment of the baseline data to reflect assumed emissions rate changes resulting from known new controls, known gas conversions, and implementation of the emissions control strategies used to determine states' good neighbor obligations; and (3) application of an increment or decrement to reflect the effect on emissions from projected generation shifting among the units in a state at the emissions reduction cost associated with the selected emissions control strategies. In this rulemaking, the EPA has determined the preset state emissions budgets for the control periods from 2023 through 2029 by using the Revised CSAPR Update's budget-setting methodology, except that the step of that methodology intended to reflect the effects of generation shifting has been eliminated.

The dynamic budget-setting methodology used to determine dynamic state emissions budgets in the year before each control period starting with the 2026 control period is set forth in the revised Group 3 trading program regulations at 40 CFR 97.1010(a). This methodology modifies the Revised CSAPR Update's budget-setting methodology in two ways. First, the baseline EGU inventory and heat input data, but not the emissions rate data, will be updated for each control period using the most recent available reported data in combination with reported data from the four immediately preceding years. For example, in early 2025, using the final data reported for 2020 through 2024, the EPA will update the baseline inventory and heat input data used to determine dynamic state emissions budgets for the 2026 control period.²⁹⁴ Second, the EPA will not apply an increment or decrement to any state emissions budget for projected

²⁹⁴ As discussed in section VI.B.4 of this document, the state-level data used to determine the overall state-level heat input for computing a state's dynamic budget will be a three-year average (e.g., 2022–2024 state-level data will be used in 2025 to set the 2026 dynamic budgets). The unit-level data used to determine individual units' shares of the state-level heat input in the computations will be the average of the three highest non-zero heat input amounts for the respective units over the most recent five years (e.g., 2020–2024 unit-level data will be used in 2025 to set the 2026 dynamic budgets).

generation shifting associated with implementation of the selected control strategies, because any such shifting should already be reflected in the reported heat input data used to update the baseline.

The EPA believes that the revisions to the emissions budget-setting process will substantially improve the ability of the emissions budgets to keep pace with changes in the composition and utilization of the EGU fleet. The dynamic budget-setting methodology will account for the electric power sector's overall trends toward more efficient and cleaner resources, both of which tend to decrease total heat input at affected EGUs, and through 2029 the preset budgets established in the rule will also account for these factors to the extent known. The dynamic budget-setting methodology will also account for other factors that could lead to increased heat input in some states, such as generation shifting from other states or increases in electricity demand caused by rising electrification. The dynamic budget-setting procedure is specified in this final rule's trading program regulations and the computations, which are straightforward, can be performed in a spreadsheet to deliver reliable results. The EPA will provide public notice of the preliminary calculations and the data used by March 1 of the year preceding the control period and will provide an opportunity for submission of any objections to the data and preliminary calculations before finalizing the dynamic budgets for each control period by May 1 of the year before the control period to which those dynamic budgets apply. Thus, for example, sources and other stakeholders will have certainty by May 1, 2025, of the dynamic emissions budgets that will be calculated for the 2026 control period that starts May 1, 2026. Moreover, as of the issuance of this final rule, stakeholders will know the state-level preset emissions budgets for the 2026–2029 control periods, which serve as floors that will only be supplanted by dynamic budgets calculated for those control periods if such a dynamic budget yields a higher amount of tons than the corresponding preset budget established in this action.

It bears emphasis that the annually updated information used in the dynamic budget-setting computations will concern only the composition and utilization of the EGU fleet and not the emissions rate data also used in those computations. The dynamically determined emissions budget computations for all years will reflect only the specific emissions control

strategies used to determine states' good neighbor obligations as determined in this rulemaking, along with fixed historical emissions rates for units that are not assumed to implement additional control strategies, thereby ensuring that the annual updates will eliminate emissions as determined to be required under the good neighbor provision. The stringency of the emissions budgets will simply reflect the stringency of the emissions control strategies determined in the Step 3 multifactor analysis and will do so more consistently over time than the EPA's previous approach of computing emissions budgets for all future control periods at the time of the rulemaking.

The rule's revisions relating to state emissions budgets and the budget-setting process generally follow the proposal except for two changes we are making in response to comments, specifically: we will use historical data from multiple years rather than a single year in the dynamic budget-setting process, and we are establishing preset emissions budgets for the 2026–2029 control periods such that the dynamic budgets for those control periods will only be imposed where they exceed the corresponding preset budgets finalized in this rule. The rationale for these changes is discussed later in this section as part of the responses to the relevant comments. Details of the final budget-setting methodology and responses to additional comments are discussed further in section VI.B.4 of this document.

The final rule's provisions relating to the determination of state-level variability limits and assurance levels and unit-level allowance allocations are coordinated with the budget-setting methodology. These provisions generally follow the proposal except that the change to the methodology for determining variability limits is implemented starting with the 2023 control period instead of the 2025 control period and the final methodology for determining unit-level allocations of allowances to coal-fired units considers the controlled emissions rate assumptions applicable to the same units in the budget-setting process. Details of these provisions, including the rationales for the changes from proposal, are discussed in sections VI.B.5 and VI.B.9, respectively.

ii. Allowance Bank Recalibration

Besides the levels of the emissions budgets, the second design element of the trading program structure that affects the supply of allowances in each control period, and that consequently also affects the ability of a trading

program to maintain the rule's selected control stringency as the EGU fleet evolves over time, is the set of rules concerning the carryover of unused allowances for use in future control periods as banked allowances. As noted previously, trading and banking of allowances in the CSAPR trading programs can serve a variety of purposes: continuously incentivizing sources to reduce their emissions even when they already hold sufficient allowances to cover their expected emissions for a control period, facilitating compliance cost minimization, accommodating necessary operational flexibility, and promoting allowance market liquidity. All of these purposes are advanced by rules that allow sources to trade allowances freely (both with other sources and with non-source entities such as brokers). All of these purposes are also advanced by rules that allow unused allowances to be carried over for possible use in future control periods, thereby preserving a value for the unused allowances. However, while the EPA considers it generally advantageous to place as few restrictions on the trading of allowances as possible,²⁹⁵ unrestricted banking of allowances has a potentially significant disadvantage offsetting its advantages, namely that it allows what might otherwise be temporary surpluses of allowances in some individual control periods to accumulate into a long-term allowance surplus that reduces allowance prices and weakens the trading program's incentives to control emissions. With weakened incentives, some operators would be more likely to choose not to continuously operate and optimize their emissions controls, imperiling the ongoing achievement of emissions rate performance consistent with the control

²⁹⁵ The advantages of trading programs discussed earlier in this section—providing continuous emissions reduction incentives, facilitating compliance cost minimization, and supporting operational flexibility—depend on the existence of a marketplace for purchasing and selling allowances. Broader marketplaces generally provide greater market liquidity and therefore make trading programs better at providing these advantages. The EPA recognizes that unrestricted use of net purchased allowances—meaning quantities of purchased allowances that exceed the quantities of allowances sold—by a source or group of sources as an alternative to making emissions reductions can interfere with the achievement of the desired environmental outcome. Therefore, section VI.B.1.c of this document discusses the enhancements to the Group 3 trading program that the EPA is making in this rulemaking to reduce reliance on net purchased allowances by incentivizing or requiring better environmental performance at individual EGUs. However, the concern arises from the use of an excessive quantity of net purchased allowances for a particular purpose, not from the existence of a marketplace where allowances may be freely bought and sold.

strategies defined as eliminating significant contribution to nonattainment and interference with maintenance.

As discussed in detail in section VI.B.6 of this rule, the EPA is revising the Group 3 trading program by adding provisions that establish a routine recalibration process for banked allowances that will be carried out in August 2024 and each subsequent August, after the compliance deadline for the control period in the previous year. In each recalibration, the EPA will reset the total quantity of banked allowances for the Group 3 trading program ("Group 3 allowances") held in all Allowance Management System accounts to a level computed as a target percentage of the sum of the state emissions budgets for the current control period. The target percentage will be 21 percent for the 2024–2029 control periods and 10.5 percent for control periods in 2030 and later years. The recalibration procedure entails identifying the ratio of the target bank amount to the total quantity of banked allowances held in all accounts before the recalibration and then, if the ratio is less than 1.0, multiplying the quantity of banked allowances held in each account by the ratio to identify the appropriate recalibrated amount for the account (rounded to the nearest allowance), and deducting any allowances in the account exceeding the recalibrated amount.

As noted previously, recalibration of the bank for each control period will be carried out in August of that control period. This timing will accommodate the process of deducting allowances for compliance for the previous control period, which cannot be completed before sources' June 1 compliance deadline for the previous control period, and will then provide approximately two additional months for sources to engage in any desired allowance transactions before recalibration occurs. However, data that can be used to estimate the bank recalibration ratio for each control period will be available shortly after the end of the previous control period, and the EPA will use these data to make information on the estimated bank recalibration ratio for each control period publicly available no later than March 1 of the year of that control period, thereby facilitating the ability of affected EGUs to anticipate their ultimate holdings of recalibrated banked allowances to inform their compliance planning for that control season. Affected EGUs will also have several months following the completed bank recalibration in August to transact allowances with other parties as needed

before the allowance transfer deadline of June 1 of the following year.

The EPA believes this revision to the Group 3 trading program's banking provisions establishing an annual bank recalibration process will complement the revisions to the budget-setting process by preventing any surplus of allowances created in one control period from diminishing the intended stringency and resulting emissions reductions of the emissions budgets for subsequent control periods.

The calibration procedure will not erase the value of unused allowances for the holder, because the larger the quantity of banked allowances that is held in a given account before each recalibration, the larger the quantity of banked allowances that will be left in the account after the recalibration for possible sale or use in meeting future compliance requirements. Because the banked allowances will always have value, the opportunity to bank allowances will continue to advance the purposes served by otherwise unrestricted banking as described previously. Opportunities to bank unused allowances can serve all these same purposes whether a banked allowance is of partial value (if the bank needs recalibrating to its target level) or is of full value compared to a newly issued allowance for the next control period.

The final rule's provisions relating to bank recalibration generally follow the proposal except that, in response to comments, the target percentage used to determine the recalibrated bank levels for the 2024–2029 control periods is being set at 21 percent instead of 10.5 percent. The rationale for this change is discussed later in this section as part of the responses to the relevant comments. Details of the bank recalibration provisions are discussed further in section VI.B.6 of this rule.

c. Enhancements To Improve Emissions Performance at Individual Units

The second set of concerns about the structure of the current CSAPR trading programs relates to the general absence of source- or unit-specific emissions reduction requirements. Without such requirements, the programs affect individual sources' emissions performance only to the extent that the incentives created by allowance prices are high enough relative to the costs of the sources' various emissions control opportunities. In circumstances where the incentives to control emissions are insufficient, some individual sources even idle existing emissions controls. Emissions from these individual sources can contribute to increased pollution

concentrations downwind on the particular days that matter for downwind exceedances of the relevant air quality standard.

This EPA intends that the trading program enhancements described in section VI.B.1.b of this rule will improve the Group 3 trading program's ability to sustain emissions control incentives over time such that needed emissions performance will be achieved by all participating units without the need for additional requirements to be imposed at the level of individual units. However, because obtaining needed emissions performance at individual units is also important to the elimination of significant contribution in keeping with the EPA's Step 3 determinations, the EPA is supplementing the previously discussed enhancements with two other new sets of provisions that will apply to certain individual units within the larger context of the Group 3 trading program. The allowance price will continue to be the most important driver of good environmental performance for most units, but the proposed unit-level requirements will be important supplemental drivers of performance and will offer additional assurance that significant contribution is eliminated on a daily basis during the ozone season by more continuous operation of existing pollution controls.

i. Unit-Specific Backstop Daily Emissions Rates

The first of the trading program enhancements intended to improve emissions performance at the level of individual units is the addition of backstop daily NO_x emissions rate provisions that will apply to large coal-fired EGUs, defined for this purpose as units serving electricity generators with nameplate capacities equal to or greater than 100 MW and combusting any coal during the control period in question. Starting with the 2024 control period, a 3-for-1 allowance surrender ratio (instead of the usual 1-for-1 surrender ratio) will apply to emissions during the ozone season from any large coal-fired EGU with existing SCR controls exceeding by more than 50 tons a daily average NO_x emissions rate of 0.14 lb/mmBtu. The additional allowance surrender requirement will be integrated into the trading program as a new component in the calculation of each unit's primary emissions limitation, such that the additional allowances will have to be surrendered by the same compliance deadline of June 1 after each control period. The amount of additional allowances to be surrendered will be determined by computing, for

each day of the control period, any excess of the unit's reported emissions (in pounds) over the emissions that would have resulted from combusting that day's actual heat input at an average daily emissions rate of 0.14 lb/mmBtu, summing the daily amounts, converting from pounds to tons, computing the amount of any excess over 50 tons, and multiplying by two. Starting with the second control period in which newly installed SCR controls are operational, but not later than the 2030 control period, the 3-for-1 surrender ratio will apply in the same way to all large coal-fired EGUs except circulating fluidized bed units, consistent with EPA's determination that a control stringency reflecting installation and operation of SCR controls on all such large coal-fired EGUs is appropriate to address states' good neighbor obligations with respect to the 2015 ozone NAAQS.

In prior rules addressing interstate transport of air pollution, stakeholders have noted that while seasonal cap-and-trade programs are effective at lowering ozone and ozone-forming precursors across the ozone season, attainment of the standard is measured on key days and therefore it is necessary to ensure that the rule requires emissions reductions not just seasonally, but also on those key days.²⁹⁶ They have noted that while the trading programs established under the NO_x SIP Call, CAIR, and CSAPR have all been successful in ensuring seasonal reductions, states must remain below daily peak levels, not just seasonal levels, to reach attainment. These downwind stakeholder communities have suggested that operating pollution controls on the highest ozone days (and immediately preceding days) during the ozone season is of critical importance. The EPA has analyzed hourly emissions data reported in prior cap-and-trade programs and has identified instances of sources that did not operate SCR controls for substantial portions of recent ozone seasons. These instances are discussed in section V.B.1.a of this document and in the EGU NO_x Mitigation Strategies Final Rule TSD in the docket. While the EPA has in prior ozone transport actions not found sufficient evidence of emissions control idling or non-optimization to take the step of building in enhancements to the trading program to ensure unit-level control operation, our review of subsequent-year data for prior programs suggests that the non-optimization

²⁹⁶ E.g., comments of Maryland Department of the Environment on the proposed Revised CSAPR Update at 3, EPA-HQ-OAR-2020-0272-0094.

behavior increases in the latter years of a program. Applied to this context (e.g., a rule providing a full remedy to interstate transport for the more protective 2015 ozone NAAQS and an extended period of expected persistence of receptors), this data suggests this deterioration in performance could become prevalent and problematic in future years if not addressed. Rather than allow for the potential of continued deterioration in the environmental performance of our trading programs, the EPA finds the evidence of declining SCR performance in later years of trading programs sufficient to justify prophylactic measures in this rule to ensure the emissions control strategy selected at Step 3 is indeed implemented at Step 4. Thus, particularly in the context of the more protective 2015 ozone NAAQS combined with the full remedy nature of this action and the extended timeframe for which upwind contribution to downwind nonattainment is projected to persist, the EPA agrees with these stakeholders that the set of measures promulgated in this rulemaking to implement the control stringency levels found necessary to address states' good neighbor obligations should include measures designed to more effectively ensure that individual units operate their emissions controls routinely throughout the ozone season, thereby also ensuring that the controls are planned to be in operation on the particular days that turn out to be most critical for ozone formation and for attainment of the NAAQS. Routine operation of emissions controls will also provide relief to overburdened communities downwind of any units that might otherwise have chosen not to operate their controls. In the Ozone Transport Policy Analysis Final Rule TSD, the EPA conducted a screening analysis that found nearly all of the EGUs included in this analysis are located within a 24-hour transport distance of many areas with potential EJ concerns. Thus, the EPA is adopting backstop daily rate limits at the individual unit level because it is appropriate and justified in the context of eliminating significant contribution under CAA section 110(a)(2)(D)(i)(I). While the former justification is sufficient to finalize this enhancement to the trading program, we also anticipate that this measure will deliver public health and environmental benefits to overburdened communities (as well as the rest of the population).²⁹⁷

²⁹⁷ Nonetheless, the environmental justice exposure analysis indicates that preexisting disparities among demographic groups are likely to

We considered whether, as some commenters suggested, it would be appropriate to simply implement unit-specific daily emissions limitation at all of the large, coal-fired EGUs, and forego an emissions trading approach altogether. While this is within the EPA's statutory authority, *see* CAA section 110(a)(2)(A) and 302(y), and merits careful consideration, we are declining to do so in this action but intend to closely monitor EGU emissions performance in response to the trading program finalized here. The purpose of establishing a backstop daily NO_x emissions rate and implementing it through additional allowance surrender requirements instead of as an enforceable emissions limitation is to incentivize improved emissions performance at the individual unit level while continuing to preserve, to the extent possible, the advantages that the flexibility of a trading program brings to the electric power sector. As discussed in section VI.B.7 of this document, under the EPA's historical trading programs without the enhancements made in this rulemaking, some individual coal-fired units with SCR controls have chosen to operate the controls at lower removal efficiencies than in past ozone seasons or even to idle the controls for entire ozone seasons. In addition, some SCR-equipped units have chosen to routinely cycle their emissions controls off at lower load levels, such as while operating overnight, instead of operating the controls, upgrading the units to enable the controls to be operated under those conditions, or not operating the units under those conditions. Collectively, this non-optimization of existing controls has a detrimental impact on problematic receptors. Table V.D.1-1 shows the expected air quality benefit from control optimization (totaling nearly 1.6 ppb change across all receptors).²⁹⁸

The EPA has identified sources of interstate ozone pollution such as the New Madrid and Conemaugh plants (in Missouri and Pennsylvania, respectively) whose SCR controls were not operating for substantial portions of recent ozone seasons. The data included in Appendix G of the Ozone Transport Policy Analysis Final Rule TSD, available in the docket for this rulemaking, demonstrate that these units have operated their SCRs better and more consistently during years with

persist even under this final rule. *See* section VII of this document.

²⁹⁸ As illustrated in the table and underlying data, a small portion of this ppb impact is attributable to combustion control upgrade potential.

higher NO_x allowance prices. Downwind stakeholders have noted that some of the higher emissions rates (specifically in the case of Conemaugh Unit 2 in 2019) have occurred on the day of and the preceding day of an ozone exceedance in bordering states.²⁹⁹

The EPA believes that the design of the daily emissions rate provisions will be effective in addressing these types of high-emitting behavior by significantly raising the cost of planned operator decisions that substantially compromise environmental performance. At the same time, the provision will not unduly penalize an occasional unplanned exceedance, because the amount of additional allowances that would have to be surrendered to address a single day's exceedance would be much smaller than the amount that would have to be surrendered to address planned poor performance sustained over longer time periods. Moreover, the EPA believes that the inclusion of a 50-ton threshold before the increased surrender requirements would apply is sufficient to address virtually all instances where a unit's emissions would exceed the 0.14 lb/mmBtu daily rate because of unavoidable startup or shutdown conditions during which SCR equipment cannot be operated, thereby ensuring that the provision will not penalize units for emissions that are beyond their reasonable control.

The EPA is applying the daily emissions rate provisions to large coal-fired EGUs, and not to other types of units, for reasons that are consistent with EPA's determinations regarding the appropriate control stringency for EGUs to address states' good neighbor obligations with respect to the 2015 ozone NAAQS. Installation and operation of SCR controls is well-established as a common practice for the best control of NO_x emissions from coal-fired EGUs, as evidenced by the fact that the technology is already installed on more than 60 percent of the sector's total coal-fired capacity and installed on nearly 100 percent of the coal fired boilers in the top quartile of emissions rate performance. In the context of addressing good neighbor obligations with respect to the 2015 ozone NAAQS, the EPA is determining that a control stringency reflecting universal installation and operation of SCR technology at large coal-fired EGUs (other than circulating fluidized bed units) is appropriate at Step 3. Finally, where SCR controls are installed on such units, optimized operation of those controls is an extremely cost-effective method of achieving NO_x emissions

²⁹⁹ EPA-HQ-OAR-2020-0272-0094.

reductions. The EPA believes these considerations support establishment of the daily emissions rate provisions on a universal basis for large coal-fired EGUs, with near-term application of the provisions for units that already have the controls installed and deferred application for other units, as discussed later.

With regard to gas-fired steam EGUs, SCR controls are nowhere near as prevalent, and while the EPA is including some SCR controls at gas-fired steam units in the selected control stringency at Step 3, the EPA is not including universal SCR controls at gas-fired steam units. Because the EPA is not determining that universal installation and operation of SCR controls at gas-fired steam EGUs is part of the selected control stringency, in order not to constrain the power sector's flexibility to choose which particular gas-fired steam EGUs are the preferred candidates for achieving the required emissions reductions, the EPA is not applying the daily emissions rate provisions to large gas-fired steam EGUs. Focusing the backstop daily emissions rates on coal-fired units is also consistent with stakeholder input which has emphasized the need for short-term rate limits at coal units given their relatively higher emissions rates.

The EPA developed the level of the daily average NO_x emissions rate—0.14 lb/mmBtu—through analysis of historical data, as described in section VI.B.7 of this document. A rate of 0.14 lb/mmBtu represents the daily average NO_x emissions rate that has been demonstrated to be achievable on approximately 95 percent of days covering more than 99 percent of total ozone-season NO_x emissions by coal-fired units with SCR controls that are achieving a seasonal NO_x average emissions rate of 0.08 lb/mmBtu (or less), which is the seasonal NO_x emissions rate that the EPA has determined is indicative of optimized SCR performance by units with existing SCR controls.

As noted previously, the daily average emissions rate provisions will apply beginning in the 2024 control period for large coal-fired units with installed SCR controls, one control period later than optimization of those controls will be reflected in the state emissions budgets under this rule. For these units, not applying the daily average rate provisions until 2024 serves three purposes. First, it provides all the units with a preparatory interval to focus attention on improving not only the average performance of their SCR controls but also the day-to-day consistency of performance before they

will be held to increased allowance-surrender consequences for exceeding the daily rate. Second, it provides the subset of units that exhaust to common stacks with other units that currently lack SCR controls an opportunity to exercise the option to install and certify any additional monitoring systems needed to monitor the individual units' NO_x emissions rates separately; otherwise, the daily emissions rate provisions will apply to the SCR-equipped units based on the combined NO_x emissions rates measured in the common stacks. Third, it provides all units sufficient time to update the data handling software in their existing monitoring systems as needed to compute and report the additional hourly and daily data values needed for implementation of the provisions.³⁰⁰

With respect to the units without existing SCR controls, the daily average emissions rate provisions will apply starting with the second control period in which newly installed SCR controls are operational at the unit, but not later than the 2030 control period. This implementation timing represents a change from the proposal, under which the daily average emissions rate provisions would have applied to units without existing SCR starting in the 2027 control period. Commenters noted that for many units without SCR, replacement of the unit within a few years, and shifting of some generation to cleaner units in the interim, would be a more economic compliance strategy than installation of new SCR controls. The commenters further noted that implementation of the daily average emissions rate for these units starting in 2027 would strongly disadvantage such an alternative strategy if the capacity replacement and any associated transmission improvements could not be implemented by 2027. In light of these comments, the EPA has determined that as long as the emissions budgets determined in this rule to eliminate significant contribution are still being implemented as expeditiously as practicable—which in this instance the EPA has determined requires phasing in the required emissions reductions by 2027—it is reasonable to defer implementation of the daily average emissions rate provisions to 2030 for units without SCR to allow temporarily greater flexibility to pursue compliance strategies other than installation of new

controls. This lag is permissible consistent with the obligation to eliminate significant contribution for reasons that are further discussed in response to comments in section VI.B.1.d of this document. However, for any units that choose a compliance strategy of installing new SCR controls before 2030, the daily average emissions rate provisions would apply in the second control period of operation. Specification of the second control period rather than the first control period provides the unit operators with an opportunity to gain operational experience with the new equipment before the units will be held to increased allowance-surrender consequences for exceeding the daily rate.

The unit-specific daily emissions rate provisions are being finalized as proposed except for two changes noted in the previous summary: the exclusion from extra allowance surrender requirements of a unit's first 50 tons of emissions in a control period exceeding the backstop daily rate, and the revision of the starting date for implementation of the requirement for units without existing SCR controls to 2030 or the second control period of SCR operation, if earlier. The rationale for these changes is further discussed in the responses to comments later in this section. Additional details of the unit-specific daily emissions rate provisions are discussed in section VI.B.7 of this document.

ii. Unit-Specific Emissions Limitations Contingent on Assurance Level Exceedances

The second of the trading program enhancements intended to improve emissions performance at the level of individual units is the addition of unit-specific secondary emissions limitations for units with post-combustion controls starting with the 2024 control period. The secondary emissions limitations will be determined on a unit-specific basis according to each unit's individual performance but will apply to a given unit only under the circumstance where a state's assurance level for a control period has been exceeded, the unit is included in a group of units to which responsibility for the exceedance has been apportioned under the program's assurance provisions, and the unit operated during at least 10 percent of the hours in the control period. Where these conditions for application of a secondary emissions limitation to a given unit for a given control period are met, the unit's secondary emissions limitation consists of a prohibition on NO_x emissions during the control

³⁰⁰ For further discussion of emissions monitoring and reporting requirements under the rule, including the options available to plants where SCR-equipped and non-SCR-equipped coal-fired units exhaust to common stacks, see section VI.B.10 of this document.

period that exceed by more than 50 tons the NO_x emissions that would have resulted if the unit had achieved an average emissions rate for the control period equal to the higher of 0.10 lb/mmBtu or 125 percent of the unit's lowest average emissions rate for any previous control period under any CSAPR seasonal NO_x trading program during which the unit operated for at least 10 percent of the hours.

The secondary emissions limitation is in addition to, not in lieu of, the primary emissions limitation applicable to each source, which continues to take the form of a requirement to surrender a quantity of allowances based on the source's emissions, and also in addition to the existing assurance provisions, which similarly continue to take the form of a requirement for the owners and operators of some sources to surrender additional allowances when a state's assurance level is exceeded. In contrast to these other requirements, the unit-specific secondary emissions limitation takes the form of a prohibition on emissions over a specified level, such that any emissions by a unit exceeding its secondary emissions limitation would be subject to potential administrative or judicial action and subject to penalties and other forms of relief under the CAA's enforcement authorities. The reason for establishing this form of limitation is that experience under the existing CSAPR trading programs has shown that, in some circumstances, the existing assurance provisions have been insufficient to prevent exceedances of a state's assurance level for a control period even when the likelihood of an exceedance has been foreseeable and the exceedance could have been readily avoided if certain units had operated with emissions rates closer to the lower emissions rates achieved in past control periods. The assurance levels exist to ensure that emissions from each state that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in another state are prohibited. *North Carolina v. EPA*, 531 F.3d 896, 906–08 (D.C. Cir. 2008). The EPA's programs to eliminate significant contribution must therefore achieve this prohibition, and the evidence of foreseeable and avoidable exceedances of the assurance levels demonstrates that EPA's existing approach has not been sufficient to accomplish this.

The purpose of including assurance levels higher than the state emissions budgets in the CSAPR trading programs is to provide flexibility to accommodate operational variability attributable to factors that are largely outside of an

individual owner's or operator's control, not to allow owners and operators to plan to emit at emissions rates that could be anticipated to cause a state's total emissions to exceed the state's emissions budget or assurance level. Conduct leading to a foreseeable, readily avoidable exceedance of a state's assurance level cannot be reconciled with the statutory mandate of the CAA's good neighbor provision that emissions "within the state" significantly contributing to nonattainment or interfering with maintenance of a NAAQS in another state must be prohibited. Because the current CSAPR regulations do not expressly prohibit such conduct and have proven insufficient to deter it in some circumstances, the EPA is correcting the regulatory deficiency in the Group 3 trading program by adding secondary emissions limitations that cannot be complied with through the use of allowances.

The EPA notes that although the purpose of the secondary emissions limitations is to strengthen the assurance provisions, which apply on a statewide, seasonal basis, the unit-specific structure of the new limitations will strengthen the incentives for individual units with post-combustion controls to maintain their emissions performance at levels consistent with their previously demonstrated capabilities. The new limitations will strengthen the incentives to operate and optimize the controls continuously, which can be expected to reduce some individual units' emissions rates throughout the ozone season, including on the days that turn out to be most critical for downwind ozone levels. Better emissions performance on average across the ozone season by individual units likely will also help address impacts of pollution on overburdened communities downwind from some such units. *See Ozone Transport Policy Analysis Final Rule TSD*, Section E.

The unit-specific secondary emissions limitations are being finalized as proposed except that the limitations will apply only to units with post-combustion controls. The rationale for this change, and additional details regarding the provisions, are discussed in section VI.B.8 of this document.

d. Responses to General Comments on the Revisions to the Group 3 Trading Program

This section summarizes and provides the EPA's responses to overarching comments received on the EPA's proposal to implement the emissions reductions required from EGUs under

this rule through expansion and enhancement of the Group 3 trading program originally established in the Revised CSAPR Update, particularly comments on electric system reliability. Responses to comments about individual aspects of the enhanced trading program are addressed in the respective subsections of this section in which those aspects are discussed. Responses to comments concerning alleged overcontrol and the EPA's legal authority are in sections V.D. and III. Comments not addressed in this document are addressed in the separate *RTC* document available in the docket for this action.

Comment: Some commenters, including EGU owners, states, and several RTOs, expressed concern that the requirements for EGUs as formulated in the proposal could lead to a degradation in the reliability of the electric system. As background, some of these commenters noted that the power sector is currently undergoing rapid change, with older and less economic fossil-fuel-fired steam generating units retiring while the majority of the new capacity being added consists of wind and solar capacity. They noted that fossil-fuel-fired generating capacity provides reliability benefits not necessarily provided by other types of generating capacity, including not only the ability to generate electricity in the absence of wind or sunlight, but also inertia, ramping capability, voltage support, and frequency response. Commenters stated that past EGU retirements and the pace of change in the generating capacity mix have already been stressing the electric system in some regions, and that the forecasted risk of events where the electric system would be unable to fully meet load is rising.

For purposes of their comments, these commenters generally assumed that the rule would lead to additional retirements of fossil-fuel-fired generating capacity beyond the retirements that EGU owners have already planned and announced. Some of the commenters also suggested that remaining fossil-fuel-fired generators would be unwilling to operate when needed because allowances might be unavailable for purchase or too costly. In the context of an already-stressed electric system, the commenters predicted that these assumed consequences of the rule would threaten resource adequacy and result in degraded electric reliability. To support their assumptions concerning additional retirements, some of the commenters pointed to projections of incremental generating capacity retirements

included in the results of modeling performed by the EPA to analyze the costs and benefits of the proposed rule. Some commenters indicated that they expected EGU owners to be interested in retiring and replacing uncontrolled units as of the date of implementation of the backstop daily rate requirement on uncontrolled units, and expressed concern that the proposal to implement that requirement as of the 2027 control period did not allow sufficient time for planning and implementation of all the necessary generation and transmission investments to make this a viable compliance strategy; for these commenters, 2027 and the immediately following years were the period of greatest concern. Some commenters appear simply to have assumed that owners of units not already equipped with SCR controls would choose to retire the units as of the ozone season in which the units would otherwise become subject to the backstop daily emissions rate provisions, regardless of whether replacement investments had been completed.

Some of the commenters raising concerns about electric system reliability suggested potential modifications to the proposed rule that the commenters believed could help address their concerns. The suggestions included various mechanisms for suspending some or all of the trading program's requirements for certain EGUs at times when an RTO or other entity responsible for overseeing a region of the interconnected electrical grid determines that generation from those EGUs is needed and the EGUs might not otherwise agree to operate. Other suggestions focused on ways of providing EGUs with greater confidence that allowances would be available to cover their incremental emissions during particular events. A number of commenters used the term "reliability safety valve," in some cases with reference to the types of suggestions just mentioned and in other cases without details. Some commenters pointed to the "safety valve" provision included in the Group 2 trading program regulations under the Revised CSAPR Update. Another commenter pointed to provisions for a "reliability safety valve" included in the Clean Power Plan (80 FR 64662, Oct. 23, 2015).

In addition to offering critiques and recommendations concerning the proposed rule's contents, some commenters claimed that the EPA had failed to conduct sufficient analysis of the potential implications of the proposed rule on electrical system reliability. These commenters called on the EPA to consult with RTOs and other

entities with responsibilities relating to electric system reliability and to perform additional analysis. Some commenters advocated for renewed consultations and analysis before each planned adjustment to emissions budgets under the dynamic budget-setting process. Commenters cited the consultation processes followed during implementation of other EPA rules, such as the Mercury and Air Toxics Standards (MATS) (77 FR 9304, Feb. 16, 2012).

Response: The EPA disagrees with the comments asserting that this rule would threaten resource adequacy or otherwise degrade electric system reliability. The emissions reduction requirements for EGUs under this rule are being implemented through the mechanism of an allowance trading program. Under the trading program, no EGU is required to cease operation. The core trading program requirements for a participating EGU are to monitor and report the unit's NO_x emissions for each ozone season period and to surrender a quantity of allowances after the end of the ozone season based on the reported emissions. To address states' obligations under the good neighbor provision, some units of course will have to take some type of action to reduce emissions, the actions taken to reduce emissions will generally have costs, and some EGU owners will conclude that, all else being equal, retiring a particular EGU and replacing it with cleaner generating capacity is likely to be a more economic option from the perspective of the unit's customers and/or owners than making substantial investments in new emissions controls at the unit. However, the EPA also understands that before implementing such a retirement decision, the unit's owner will follow the processes put in place by the relevant RTO, balancing authority, or state regulator to protect electric system reliability. These processes typically include analysis of the potential impacts of the proposed EGU retirement on electrical system reliability, identification of options for mitigating any identified adverse impacts, and, in some cases, temporary provision of additional revenues to support the EGU's continued operation until longer-term mitigation measures can be put in place. No commenter stated that this rule would somehow authorize any EGU owner to unilaterally retire a unit without following these processes, yet some comments nevertheless assume that is how multiple EGU owners would proceed, in violation of their obligations to RTOs, balancing authorities, or state regulators relating to the provision of

reliable electric service. Assumptions of this nature are simply not reasonable. Like many commenters, the EPA does expect that retirement will be viewed as a more economic compliance strategy for some EGUs than installing new controls, but the Agency also expects that any resulting unit retirements will be carried out through an orderly process in which RTOs, balancing authorities, and state regulators use their powers to ensure that electric system reliability is protected. The trading program inherently provides ample flexibility to allow such an orderly transition to take place. In addition, as discussed later in this section, the EPA has adopted several changes in the final rule to increase flexibility specifically for the early years of the trading program for which commenters have indicated the greatest concerns about electric system reliability.

As an initial matter, the EPA notes two fundamental aspects of this rulemaking which together provide a strong foundation for the Agency's conclusion that the emissions reductions required from EGUs can be achieved with no adverse impacts on electric system reliability. First, there is ample evidence indicating that the required emissions reductions are feasible. As discussed in section V of this document, the magnitude and timing of the EGU emissions reductions required by this action reflect application of technologies that are already in widespread use, on schedules that are supported by industry experience. Second, the required emissions reductions are being implemented through the mechanism of a trading program. The enhanced trading program under this rule, like the trading programs established by the EPA under prior rules, provides EGU owners with opportunities to substitute emissions reductions from sources where achieving reductions is cheaper and easier for emissions reductions from other sources where achieving reductions is more costly or difficult. In general, an EGU owner has options to operate the emissions controls identified by the EPA for that type of unit (including installation or upgrade of controls where necessary), operate other types of emissions controls, or adapt the unit's levels of operation to produce less generation if the unit is a higher-emitting EGU or more generation if the unit is a lower-emitting EGU. The backstop daily emissions rate provisions in this rule reduce the degree of available flexibility relative to the degree of flexibility in the Agency's

previous trading programs under CAIR and CSAPR but by no means eliminate it. Moreover, even the backstop rate provisions are structured as requirements to surrender additional allowances rather than as hard limits, providing a further element of flexibility. No EGU is required to retire or is prohibited from operating at any time under this rule. EGUs only need to surrender of the appropriate quantities of allowances after the end of the control period.³⁰¹

Further, in the large number of comments submitted in this rulemaking that assert concerns over electric system reliability, no commenter has cited a single instance where implementation of an EPA trading program has actually caused an adverse reliability impact. Indeed, similar claims made in the context of the EPA's prior trading program rulemakings have shown a considerable gap between rhetoric and reality. For example, in the litigation over the industry's multiple motions to stay implementation of CSAPR, claims were made that allowing the rule to go into effect would compromise reliability. Yet in the 2012 ozone season starting just over 4 months after the rule was stayed, EGUs covered by CSAPR collectively emitted below the overall program budgets that the rule would have imposed in that year if the rule had been allowed to take effect, with most individual states emitting below their respective state budgets despite CSAPR not being in effect.³⁰² Similarly, in the litigation over the 2015 Clean Power Plan, assertions that the rule would threaten electric system reliability were made by some utilities or their representatives, yet even though the Supreme Court stayed the rule in 2016, the industry achieved the rule's emissions reduction targets without the rule ever going into effect. See *West Virginia v. EPA*, 142 S. Ct. 2587, 2638 (2022) (Kagan, J., dissenting) (“[T]he industry didn’t fall short of the [Clean Power] Plan’s goal; rather, the industry exceeded that target, all on its own. . . . At the time of the repeal . . . there [was] likely to be no difference between a world where the [Clean Power Plan] was implemented and one where it [was] not.”) (quoting 84 FR 32561). The claims that these rules

would have had adverse reliability impacts were proved to be groundless.

Notwithstanding the long experience confirming the ability of the EPA's trading programs to obtain emissions reductions from EGUs without impairing the sector's ability to provide reliable electric service, the Agency of course does not rely here solely on its experience, but has carefully reviewed the comments on this topic for any information that might indicate the appropriateness of modifications to the enhanced trading program as proposed. In recognition of the important role that RTOs play in ensuring electric system reliability, and consistent with the requests of some commenters, the EPA has engaged in outreach to the RTOs that commented on the proposal to better understand their comments specifically and the reliability-related comments of other commenters more generally.³⁰³ Through these meetings, the central reliability-related concern was identified as one of timing. In order for retirement to be a viable compliance strategy for a unit that cannot be entirely spared until replacement investments in generation or transmission are completed, it must be possible for the unit to operate at critical times for a transition period. Like other stakeholders, the RTOs perceived implementation of the backstop daily emissions rate provisions on uncontrolled units as materially strengthening incentives for such units to either install controls or retire. The RTOs were concerned that the option for a coal-fired unit without SCR controls to maintain limited operation while surrendering allowances at a 3-for-1 ratio for all emissions exceeding the backstop daily rate was one that EGU owners would be reluctant to pursue. Accordingly, the RTOs expected considerable interest from EGU owners in retiring and replacing uncontrolled units as of the date of implementation of the backstop daily rate requirement on uncontrolled units, and they were concerned that the proposal to implement that requirement as of the 2027 control period did not allow sufficient time for planning and implementation of all the necessary generation and transmission investments to make this a viable compliance strategy. The RTOs described their concerns as greatest

through approximately the 2029 control period.

The RTOs also described a concern about potentially illiquid allowance markets. They believed it was possible that some EGUs might claim an inability to operate at particular times when needed unless they had confidence that they would be able to obtain additional allowances. The RTOs were particularly concerned that introduction of dynamic budgeting as proposed would create uncertainty for some EGUs regarding the quantities of allowances they would have available for use, particularly given the potentially large year-to-year swings if budgets were based on historical data from a single year. Some of the RTOs suggested potential solutions for these issues, principally in the form of auctions or RTO-administered allocations of allowances from pools of supplemental allowances, with access to the supplemental allowances triggered by certain indications of temporary stress on the electric system.

In the final rule, the EPA is adopting several changes from the proposal to help address the reliability-related concerns that were identified in comments and brought into greater focus by the consultations with the RTOs. The first change adopted in response to these comments is that application of the backstop daily NO_x emissions rate to units without existing SCR controls is being deferred until the 2030 control period, or the second control period in which a unit operates new SCR controls, if earlier. The purpose of this change is to address the concerns that application of the backstop daily NO_x emissions rate to EGUs without existing SCR starting in 2027 would provide insufficient time for planning and investments needed to facilitate unit retirement as a compliance pathway, which some commenters noted they prefer or have already planned. In particular, where an EGU owner would prefer to retire and replace an uncontrolled EGU rather than to install new controls, and in recognition that reliability-related needs may require some degree of operation from such units in the period before the investments needed to replace the unit can be completed, deferral of the backstop daily emissions rate provisions ensures that the necessary generation can be provided without being made subject to a 3-for-1 allowance surrender ratio that might render that compliance strategy uneconomic compared to the faster but less environmentally beneficial compliance strategy of installing new controls. The EPA has considered the statutory mandate that states' good neighbor obligations—

³⁰¹ The EPA has prepared a resource adequacy assessment of the projected impacts of the final rule showing that the projected impacts of the final rule on power system operations, under conditions preserving resource adequacy, are modest and manageable. See *Resource Adequacy and Reliability Analysis Final Rule TSD*, available in the docket.

³⁰² For a state-by-state comparison, see Appendix G of the Ozone Transport Policy Analysis Final Rule TSD.

³⁰³ The EPA also met with non-RTO balancing authorities that submitted comments. Memoranda identifying the dates, attendees, and topics of discussion of these meetings with RTOs and non-RTO balancing authorities are available in the docket.

including this action's requirement for large coal-fired EGUs to make emissions reductions commensurate with good SCR operation—be addressed as expeditiously as practicable. The EPA has also considered the fact that in this rule, the backstop daily emissions rate serves as a supplement to the broader requirement for emissions reductions commensurate with application of several control technologies at several types of EGUs, encompassing the extent of emissions reductions that would be incentivized by the backstop emissions rate requirement. The EPA views the backstop daily emissions rate as part of the solution to eliminating significant contribution in that it strongly incentivizes emissions-control operation throughout each day of the ozone season. See sections III.B.1.d, VI.B.1.b, VI.B.1.c.i. For that reason, in general we are finalizing the daily backstop emissions rate for units that have SCR installed or that install it in the future. It is only as an exception to that general rule that we defer the backstop daily emissions rate given the transition period and reliability concerns identified by commenters. The EPA finds that in this circumstance, as long as state emissions budgets continue to reflect the required degree of emissions reductions, deferral of the backstop rate requirement for uncontrolled units for a transition period can be justified on the basis of the greater long-term environmental benefits obtained through facilitating the replacement of these affected EGUs with cleaner sources of generation. Beginning in the 2030 ozone season, all coal-fired EGUs identified for SCR retrofit potential in this action will be subject to the backstop daily emissions rate. Any such units that remain in operation in that year can and should meet the backstop daily emissions rate or be subject to the heightened allowance surrender ratio.

The second change from the proposal adopted in response to the reliability-related comments is that the target percentage of the states' emissions budgets used to recalibrate the target bank level will be set at the proposed 10.5 percent starting in the 2030 control period, and for the control periods from 2024 through 2029, a target percentage of 21 percent will be used instead. The adoption of the higher target percentage for use through the 2029 control period is intended to promote greater allowance market liquidity during a period of relatively rapid fleet transition about which commenters expressed more focused reliability-related needs. As discussed later in this section, the EPA expects the introduction of the

bank recalibration process in 2024 generally to boost market liquidity (by discouraging allowance hoarding) and also considers the target percentage of 10.5 percent set forth in the proposal well supported. Nevertheless, the Agency agrees with suggestions by commenters that, at least in the early years of the enhanced trading program, a larger bank would provide further liquidity and would give program participants greater confidence that allowances would be available for purchase when needed. Greater confidence by sources would help address RTOs' concern about the possibility that some sources could be reluctant to operate if they were unsure of their ability to procure allowances to cover their emissions. In finding that this modification from proposal is appropriate, the EPA has considered the fact that use of a higher target percentage will not result in the creation of any additional allowances in any control period, because under the recalibration provisions, when the total quantity of allowances banked from the previous control period is less than the bank target level, the consequence is not that additional allowances are created to raise the bank to the target level, but simply that no bank adjustment is carried out. We also note that while including an annual bank recalibration of any percentage is an enhancement in the trading program from prior trading programs under the good neighbor provision established in the CAIR, CSAPR, CSAPR Update, and Revised CSAPR Update rulemakings, it is not unprecedented; the trading program established under the NO_x SIP Call included "progressive flow control" provisions that were designed differently from the bank recalibration provisions in this rule but had the same purpose and general effect.

The third change from the proposal adopted in response to the reliability-related comments is that the EPA is determining preset state emissions budgets not only for the control periods in 2023 and 2024 as proposed, but also for the control periods in 2025 through 2029. Finalizing preset state emissions budgets through 2029 will establish predictable amounts for the minimum quantities of allowances available during the period when commenters have expressed concern that the reliability-related need for such predictability is greatest. Moreover, the EPA will also determine state emissions budgets using the final dynamic budget-setting methodology for the control periods in 2026 through 2029, and for each state and control period, the

dynamic budget to be published in the future will only supplant the preset budget finalized in this rule for a control period in which that dynamic budget is higher than the corresponding preset budget. The reason for using dynamic budgets when they are higher than the corresponding preset budgets is that the EPA recognizes that evolution of the EGU fleet will not follow the exact path projected at the time of the rulemaking, and that by not accounting for certain events, the preset methodology could result in issuance of smaller quantities of allowances than the EPA would find consistent with the quantities of emissions from a well-controlled EGU fleet using the dynamic budget-setting methodology. Events that could cause preset budgets to underpredict a state's well-controlled emissions, which are more likely in years farther in the future from the time of the rulemaking, include deferral of a large EGU's previously planned retirement date or increases in electricity demand that outpace the general trend of lower-emitting or non-emitting generation replacing higher-emitting generation. After considering the commenters' interest in greater predictability during the early years of the amended trading program as well as the need to protect against instances where the preset budgets could underpredict a state's well-controlled emissions in years farther from the year of the rulemaking, the EPA finds that the combination of these factors justifies the approach of using the higher of the two budgets for the control periods from 2026 through 2029.

In addition to the changes made in response to reliability-related comments, several other changes to the proposal being adopted primarily for other reasons will also help address the factors identified as reliability-related concerns. Most notably, the EPA is adopting changes to the dynamic budget computation procedure to incorporate multiple years of heat input data, which will reduce year-to-year variability in the budgets determined under that procedure and should to some extent reduce uncertainty about the quantities of allowances available for use in instances where a dynamic budget is being used instead of preset budget. In addition, the adoption of a 50-ton threshold before application of the 3-for-1 surrender ratio to emissions exceeding the backstop daily NO_x emissions rate should ensure that no unit incurs the higher surrender ratio solely because of unavoidable emissions during startup and should help address concerns that some units might be reluctant to operate because of the associated emissions-

related costs. Also, the 2026–2027 phase-in of emissions reductions commensurate with installation of new SCR controls will increase the quantities of allowances available in the 2026 state emissions budgets for most states in the trading program.

To summarize: in light of the strong record supporting the feasibility of the emissions reductions required from EGUs; the use of a trading program as the mechanism for achieving those emissions reductions, with multiple options for achieving compliance and no requirements to cease operation of any individual EGU at any time; the established processes of RTOs, other balancing authorities, and state regulators for managing any EGU retirement requests that do occur in an orderly manner with evaluation of potential reliability impacts and implementation of mitigation measures where needed; the unbroken, decades-long historical success of the EPA's trading programs at achieving emissions reductions without any adverse reliability impacts; the views expressed by commenters that facilitating EGU retirement and replacement as a possible compliance strategy through 2029 would be particularly helpful; the changes made in the final rule for control periods through 2029 specifically to increase flexibility during this transitional period, including deferring application of the backstop daily emissions rate provisions for EGUs without existing SCR controls, increasing the target percentage used to determine the target allowance bank level for purposes of the bank recalibration provisions, and establishing preset state emissions budgets which serve as floors against potential dynamic budget imposition in those control periods; and the changes made in the final rule incorporating multiple years of heat input data into the dynamic budget-setting procedure, adding a 50-ton threshold before application of the 3-for-1 surrender ratio to emissions exceeding the backstop daily NO_x emissions rate, and phasing in emissions reductions requirements commensurate with new SCR installations through 2027; the EPA concludes that this action does not pose any material risk of adverse impact to electric system reliability.

The EPA has also considered the other suggestions offered by commenters for addressing reliability-related issues. With respect to suggestions that the rule should include provisions allowing some or all of the trading program's requirements to be suspended at times when an RTO or other entity with grid management

responsibilities determines there is a reliability-related need, the EPA again observes that the rule's emissions reduction requirements are being implemented through a trading program mechanism which makes exceptions of this nature unnecessary. Trading programs inherently offer the flexibility to accommodate variability in the utilization of individual units. The "reliability safety valve" provisions in the Clean Power Plan, which one commenter cited as a precedent to support some form of temporary exemption under this rule, in fact was available only in situations where a state plan did not allow emissions trading and instead imposed unit-specific emissions constraints. *See* 80 FR 64877–879. Even the 3-for-1 allowance surrender ratio under the backstop daily NO_x emissions rate provisions can be met through the surrender of additional allowances. The rule does not bar any EGU from operating at any time as long as all allowance surrender requirements are met.

With respect to suggestions that the EPA must undertake recurring modeling of the evolving electrical system and consult with RTOs before each planned adjustment to emissions budgets, which start from the premise that the rule poses risk to electric system reliability that must be continuously monitored, the EPA disagrees with the premise and therefore also disagrees with the suggestions. As discussed in section V of this document, the EPA has taken care to ensure that the emissions reduction requirements applicable to EGUs under this rule are feasible through application of the control technologies selected as the basis of the emissions reductions. The EPA has also performed modeling in this rulemaking to assess the benefits and costs of the rule when all required emissions reductions are achieved. That modeling, which incorporates a representation of electrical grid regions and interregional constraints on energy and capacity exchange, affirms the feasibility of the overall emissions reduction requirements and is illustrative of a control strategy where some units retire and are replaced instead of installing new controls. The EPA has also consulted with the RTOs (as well as other balancing authorities) in the course of this rulemaking to ensure that the EPA understood the concerns expressed in their comments such that we could address those comments in this final rule. The EPA does not agree that further modeling or ongoing consultations with RTOs are needed in

advance of the recurring dynamic budget adjustments, which do not increase the stringency of the rule's emissions reduction requirements established in the final rule. The extensive consultation processes adopted by the Agency in conjunction with the MATS rulemaking are not a relevant precedent; the MATS rule, which was promulgated to address a different statutory mandate, was structured in the form of unit-specific emissions constraints, fundamentally different from the requirements of this rule. The EPA notes that other entities responsible for maintaining reliability and managing entry and exit of resources, including the North American Electric Reliability Corporation (NERC) and RTOs and other balancing authorities, already routinely assess resource adequacy and reliability inclusive of meeting all regulatory requirements, including environmental requirements.

While the EPA does not agree that such consultations are a necessary precondition for successful implementation of this rule, the Agency remains available to engage with any affected EGU or reliability authority requesting to meet and discuss the intersection of its power sector regulatory programs with electric reliability planning and operations. The EPA is also continuing its practice of meeting with the U.S. Department of Energy and the Federal Energy Regulatory Commission to maintain mutual awareness of how Federal actions and programs intersect with the industry's responsibility to maintain electric reliability.³⁰⁴

The EPA is not adopting the suggestion to replicate the so-called "safety valve" mechanism created under the Revised CSAPR Update. That mechanism, cited by some commenters as potential precedent for an unspecified form of "reliability safety valve" in this action, gave owners of covered EGUs a one-time opportunity to voluntarily convert allowances banked under the Group 2 trading program to allowances useable in the Group 3 trading program at an 18-for-1 ratio for use in the trading program's initial control period in 2021. *See* 82 FR 23137–138. EGU owners chose to use the voluntary mechanism to acquire a total of 382 allowances, representing only 0.36 percent of the sum of the state emissions budgets and only 0.26 percent

³⁰⁴ *See, e.g.*, U.S. Department of Energy and U.S. Environmental Protection Agency, Joint Memorandum on Interagency Communication and Consultation on Electric Reliability (March 8, 2023), available at <https://www.epa.gov/power-sector/electric-reliability-mou>.

of the total quantity of allowances available for compliance in that control period.³⁰⁵ For the 2023 control period, the bank of allowances carried over from the 2022 control period plus the incremental starting bank that will be created by conversion of additional allowances banked under the Group 2 trading program (see section VI.B.12.b of this document) will total over 30 percent of the full-season emissions budgets.³⁰⁶ Given the larger starting bank and this rule's bank recalibration provisions (which will be implemented starting with the 2024 control period, but which the EPA expects will increase allowance market liquidity starting with the 2023 control period), the Agency views establishment of a one-time voluntary conversion opportunity for the 2023 control period analogous to the Revised CSAPR Update's "safety valve" provision as unnecessary.

Finally, in the final rule the EPA is not adopting any of the other suggestions concerning additional allowances available through auctions or RTO-administered allowance pools. For the reasons discussed throughout this section, the EPA concludes that the trading program as established in this action provides a flexible compliance mechanism that will allow the required emissions reductions to be achieved without the need for creation of additional allowances. However, the EPA also recognizes the potential for allowance market liquidity to be further increased through some form of auction mechanism. For instance, it may be appropriate to pair the introduction of an auction with a reduction in the bank recalibration percentage that begins earlier than 2030. Through a supplemental rulemaking, the Agency intends to propose and take comment on potential amendments to the Group 3 trading program that would add such an auction mechanism to the regulations and make other appropriate adjustments

³⁰⁵ Additional allowances available for compliance under the Group 3 trading program in the 2021 control period included a starting allowance bank created through mandatory conversion of a portion of the allowances banked under the Group 2 trading program as well as supplemental allowances issued to ensure that no provisions of the Revised CSAPR Update increasing regulatory stringency would take effect before that rule's effective date. See 86 FR 23133–137.

³⁰⁶ The full-season emissions budgets for the 2023 control period under the Group 3 trading program and the incremental starting bank created in this action through conversion of additional Group 2 allowances (but not the bank of allowances carried over from the 2022 control period under the Group 3 trading program) will be prorated to reflect the portion of the 2023 ozone season occurring after the effective date of this rule. See sections VI.B.12.a. and VI.B.12.b.

in the implementation framework at Step 4.³⁰⁷

2. Expansion of Geographic Scope

In light of the findings at Steps 1, 2, and 3 of the 4-step interstate transport framework, the EPA is expanding the geographic scope of the existing CSAPR NO_x Ozone Season Group 3 Trading Program to encompass additional states (and Indian country within the borders of such states) with EGU emissions that significantly contribute for purposes of the 2015 ozone NAAQS. Specifically, the EPA is expanding the Group 3 trading program to include the following states and Indian country within the borders of the states: Alabama, Arkansas, Minnesota, Mississippi, Missouri, Nevada, Oklahoma, Texas, Utah, and Wisconsin. Any unit located in a newly added jurisdiction that meets the applicability criteria for the Group 3 trading program will become an affected unit under the program, as discussed in section VI.B.3 of this document.

CSAPR, the CSAPR Update, and the Revised CSAPR Update also applied to sources in Indian country, although, when those rules were issued, no existing EGUs within the regions covered by the rules were located on lands that the EPA understood at the time to be Indian country.³⁰⁸ In contrast, within the geographic scope of this rulemaking, the EPA is aware of areas of Indian country within the borders of both Utah and Oklahoma with existing EGUs that meet the program's applicability criteria. Issues related to state, tribal, and Federal CAA implementation planning authority with

³⁰⁷ Such a rulemaking would not reopen any determinations which the Agency has made at Steps 1, 2, or 3 of the interstate transport framework in this action. Nor would it reopen any aspects of implementation of the program at Step 4 except for those in relation to establishing an auction and associated adjustments to ensure program stringency is maintained. In this respect, such a rulemaking would constitute a discretionary action that is not necessary to resolution of good neighbor obligations. Rather, these adjustments, if finalized, would reflect a shift from one acceptable form of implementation at Step 4 to a slightly modified but also acceptable form of implementation at Step 4, as related to EGUs. No legal or technical justification for this action as set forth in the record here depends on or would be undermined by the development of an alternative approach that includes an auction, and if the EPA for any reason determines not to propose or finalize such a rulemaking, no aspect of this rule would thereby be rendered infeasible or incomplete.

³⁰⁸ CSAPR and the CSAPR Update both applied to EGUs located in areas within Oklahoma's borders that are now understood to be Indian country, consistent with the U.S. Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) (and subsequent case law), clarifying the extent of certain Indian country within Oklahoma's borders. However, those rules were issued before the *McGirt* decision. See section III.C.2.a.

respect to sources in Indian country in general and in these areas in particular are discussed in section III.C.2 of this document. EPA's approach for determining a portion of each state's budget for each control period that will be set aside for allocation to any units in areas of Indian country within the state not subject to the state's CAA implementation planning authority is discussed in section VI.B.9 of this document.

Units within the borders of each newly added state will join the Group 3 trading program on one of two possible dates during the program's 2023 control period (that is, the period from May 1, 2023, through September 30, 2023). The reason that two entry dates are necessary is that, as discussed in section VI.B.12.a of this document, the effective date is expected to fall after May 1, 2023. In the case of states (and Indian country within the states' borders) whose sources do not currently participate in the CSAPR NO_x Ozone Season Group 2 trading program—Minnesota, Nevada, and Utah—the sources will begin participating in the Group 3 trading program on the rule's effective date. However, in the case of the states (and Indian country within the states' borders) whose sources do currently participate in the Group 2 trading program—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin—the sources will begin participating in the Group 3 trading program on May 1, 2023, regardless of the rule's effective date, subject to transitional provisions designed to ensure that the increased stringency of the Group 3 trading program as revised in this rulemaking will not substantively affect the sources' requirements prior to the rule's effective date. This approach provides a simpler transition for the sources historically covered by the Group 2 trading program than the alternative approach of being required to switch from the Group 2 trading program to the Group 3 trading program in the middle of a control period, and it is the same approach that was followed for sources that transitioned from the Group 2 trading program to the Group 3 trading program in 2021 under the Revised CSAPR Update. Section VI.B.12.a of this document contains further discussion of the rationale for this approach and the specific transitional provisions.

The EPA notes that under the rule, the expanded Group 3 trading program will include not only 19 states for which the EPA is determining that the required control stringency includes, among other measures, installation of new post-combustion controls, but also three

states—Alabama, Minnesota, and Wisconsin—for which the EPA is determining that the required control stringency does not include such measures. In previous rulemakings, the EPA has chosen to combine states in a single multi-state trading program only where the selected control stringencies were comparable, to ensure that states did not effectively shift their emissions reduction requirements to other states with less stringent emissions reduction requirements by using net out-of-state purchased allowances. Although the assurance provisions in the CSAPR trading programs were designed to address the same general concern about excessive shifting of emissions reduction activities between states, EPA chose not to rely on the assurance provisions as sufficient to allow for interstate trading in situations where the states were assigned differing emissions control stringencies.

In this rulemaking, the EPA believes the previous concern about the possibility that certain states might not make the required emissions reductions is sufficiently addressed through the various enhancements to the design of the trading program, even where states have been assigned differing emissions control stringencies. First, the existing assurance provisions are being substantially strengthened through the addition of the unit-specific secondary emissions limitations discussed in sections VI.B.1.c.ii and VI.B.8. Second, by ensuring that individual units operate their emissions controls effectively, the unit-specific backstop daily emissions rate provisions discussed in sections VI.B.1.c.i and VI.B.7 will necessarily also ensure that required emissions reductions occur within the state. With these enhancements to the design of the trading program, the EPA does not believe it is necessary for sources in Alabama, Minnesota, and Wisconsin to be excluded from the revised Group 3 trading program simply because their emissions budgets reflect a different selected emissions control stringency than the other states in the program.

The EPA's legal and analytic bases for expansion of the Group 3 trading program to each of the additional covered states, as well as responses to the principal related comments, are discussed in sections III, IV, and V of this document, respectively, and responses to additional comments are contained in the *RTC* document. With respect to the proposed approach of including all states covered by the rule in a single trading program even where the assigned control stringencies differ, the only comments received by the EPA

supported the approach, which is finalized as proposed.

3. Applicability and Tentative Identification of Newly Affected Units

The Group 3 trading program generally applies to any stationary, fossil-fuel-fired boiler or stationary, fossil fuel-fired combustion turbine located in a covered state (or Indian country within the borders of a covered state) and serving at any time on or after January 1, 2005, a generator with nameplate capacity exceeding 25 MW and producing electricity for sale, with exemptions for certain cogeneration units and certain solid waste incineration units. To qualify for an exemption as a cogeneration unit, an otherwise-affected unit generally (1) must be designed to produce electricity and useful thermal energy through the sequential use of energy, (2) must convert energy inputs to energy outputs with efficiency exceeding specified minimum levels, and (3) may not produce electricity for sale in amounts above specified thresholds. To qualify for an exemption as a solid waste incineration unit, an otherwise-affected unit generally (1) must meet the CAA section 129(g)(1) definition of a “solid waste incineration unit” and (2) may not consume fossil fuel in amounts above specified thresholds. The complete text of the Group 3 trading program's applicability provisions and the associated definitions can be found at 40 CFR 97.1004 and 97.1002, respectively. The applicability of this rule to MWCs and cogeneration units outside the Group 3 trading program is discussed in sections V.B.3.a and V.B.3.c of this document, respectively, and MWC applicability criteria are further discussed in section VI.C.6 of this document.

In this rulemaking, the EPA did not propose and is not finalizing any revisions to the existing applicability provisions for the Group 3 trading program. Thus, any unit that is located in a newly added state and that meets the existing applicability criteria for the Group 3 trading program will become an affected unit under the program. The fact that the applicability criteria for all of the CSAPR trading programs are identical therefore is sufficient to establish that any units that are currently required to participate in another CSAPR trading program in any of the additional states where such other programs currently are in effect—Alabama, Arkansas, Minnesota, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin (including Indian country within the borders of such

states)—will also become subject to the Group 3 trading program.

In the additional states where other CSAPR trading programs are not currently in effect—Nevada and Utah (including Indian country within the borders of such states)—units already subject to the Acid Rain Program under that program's applicability criteria (see 40 CFR 72.6) generally also meet the applicability criteria for the Group 3 trading program. Based on a preliminary screening analysis of the units in these states that currently report emissions and operating data to the EPA under the Acid Rain Program, the Agency believes that all such units are likely to meet the applicability criteria for the Group 3 trading program.

Because the applicability criteria for the Acid Rain Program and the Group 3 trading program are not identical, it is possible that some units could meet the applicability criteria for the Group 3 trading program even if they are not subject to the Acid Rain Program. Using data reported to the U.S. Energy Information Administration, in the proposal the EPA identified six sources in Nevada and Utah (and Indian country within the borders of the states) with a total of 15 units that appear to meet the general applicability criteria for the Group 3 trading program and that do not currently report NO_x emissions and operating data to the EPA under the Acid Rain Program. These units were listed in a table in the proposed rule, and the data from that table for these units are reproduced as Table VI.B.3–1 of this document. For each of these units, the table shows the estimated historical heat input and emissions data that the EPA proposed to use for the unit when determining state emissions budgets if the unit was ultimately treated as subject to the Group 3 trading program.³⁰⁹ The EPA requested comment on whether each listed unit would or would not meet all relevant criteria set forth in 40 CFR 97.1004 and the associated definitions in 97.1002 to qualify for an exemption from the trading program and whether the estimated historical heat input and emissions data identified for each unit

³⁰⁹ As discussed in section VI.B.10, any unit that becomes subject to the Group 3 trading program pursuant to this rule and that does not already report emissions data to the EPA in accordance with 40 CFR part 75 will not be required to report emissions data or be subject to allowance holding requirements under the Group 3 trading program until May 1, 2024, in order to provide time for installation and certification of the required monitoring systems. Such a unit will not be taken into account for purposes of determining state emissions budgets and unit-level allocations under the Group 3 trading program until the 2024 control period.

were representative. With respect to the listed units within the borders of Nevada or Utah, the EPA received no comments asserting either that the units qualified for applicability exemptions or that the estimated data identified by the

EPA were unrepresentative.³¹⁰ For purposes of this rule, the EPA is therefore presuming that the units listed in Table VI.B.3–1 do not qualify for applicability exemptions and that the estimated data shown in the table for

each unit are representative. However, the owners and operators of the sources retain the option to seek applicability determinations under the trading program regulations at 40 CFR 97.1004(c).

TABLE VI.B.3–1—ESTIMATED DATA TO BE USED FOR PRESUMPTIVELY AFFECTED UNITS WITHIN THE BORDERS OF NEVADA AND UTAH THAT DO NOT REPORT UNDER THE ACID RAIN PROGRAM

State	Facility ID	Facility name	Unit ID	Unit type	Estimated ozone season heat input (mmBtu)	Estimated ozone season average NO _x emissions rate (lb/mmBtu)	Notes
Nevada	2322	Clark	GT4	CT	190,985	0.0475	
Nevada	2322	Clark	GT5	CT	1,455,741	0.0191	
Nevada	2322	Clark	GT6	CT	1,455,741	0.0187	
Nevada	2322	Clark	GT7	CT	1,455,741	0.0178	
Nevada	2322	Clark	GT8	CT	1,455,741	0.0204	
Nevada	54350	Nev. Cogen. Assoc. 1—Garnet Val	GTA	CT	660,100	0.0377	1
Nevada	54350	Nev. Cogen. Assoc. 1—Garnet Val	GTB	CT	660,100	0.0387	1
Nevada	54350	Nev. Cogen. Assoc. 1—Garnet Val	GTC	CT	660,100	0.0387	1
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn ..	GTA	CT	749,778	0.0323	1
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn ..	GTB	CT	749,778	0.0370	1
Nevada	54349	Nev. Cogen. Assoc. 2—Black Mtn ..	GTC	CT	749,778	0.0364	1
Nevada	56405	Nevada Solar One	HI	Boiler	479,452	0.1667	
Nevada	54271	Saguaro	CTG1	CT	1,383,149	0.0314	1
Nevada	54271	Saguaro	CTG2	CT	1,383,149	0.0301	1
Utah	50951	Sunnyside	1	Boiler	1,888,174	0.1715	

Table notes:

¹ Unit reports capability of producing both electricity and useful thermal energy.

4. State Emissions Budgets

In this final rule, the EPA is using a combination of a “preset” budget calculation methodology and a “dynamic” budget calculation methodology to establish state emissions budgets for the Group 3 trading program. A “preset” budget is one for which the absolute amount expressed as tons per ozone season control period is established in this final rule. It uses the latest data currently available on EGU fleet composition at the time of this final action. A “dynamic” budget is one for which the formula and emissions-rate information is finalized in this rule, but updated EGU heat input and inventory information is used on a rolling basis to set the total tons per ozone season for each control period. Both methods of budget calculation are designed to set budgets reflective of the emissions control strategies and associated stringency levels (expressed as an emissions rate of pounds of NO_x per mmBtu) identified for relevant EGU types at Step 3—which we will refer to in this section as the “Step 3 emissions

control stringency.” Preset budgets provide greater certainty for planning purposes and can be reliably established in the short-term based on known, upcoming changes in the EGU fleet. Due to build time for new units and planning and approval processes for plant retirements, these major fleet alterations are often known several years in advance. This information facilitates presetting budgets that appropriately calibrate the identified control stringency to the fleet. Dynamic budgets better assure that the budgets remain commensurate with the Step 3 emissions control stringency over the longer term, as currently unknown changes in the EGU fleet occur. In this final rule, in response to comments, we have adjusted the proposal to give a greater role for preset budgets through 2029, while dynamic budgeting will be phased in to provide greater certainty in the short term and allow for a transition period to an exclusively “dynamic” approach beginning in 2030.

For the control periods from 2023 through 2025, the preset budgets established in the rule will serve as the state emissions budgets for the control

periods in those years, with no role for dynamic budgeting. For the control periods from 2026 through 2029, the EPA is determining preset emissions budgets for each control period in the rule and will also calculate and publish dynamic budgets for each state in the year before each control period using the dynamic budget-setting methodology finalized in this rule, applied to data available at the time of the calculations. For these four control periods, each state’s preset budget serves as a floor and may be supplanted by the dynamic emissions budget EPA calculates for the state for that control period only if the dynamic budget is higher than the preset budget. For control periods in 2030 and thereafter, the state emissions budgets will be the dynamic budgets calculated and published in the year before each control period.

In the dynamic budget calculation methodology, it is the fleet composition (reflected by heat input patterns across the fleet in service, inclusive of EGU entry and exit) that is dynamic, while the emissions stringency finalized in this rule is constant, as reflected in

³¹⁰ One commenter expressed the view that eight of the listed units within Nevada’s borders appear to meet the CSAPR applicability criteria but provided no comments on the specific proposed data. See comments of Berkshire Hathaway Energy,

EPA-HQ-OAR-2021-0668-0554, at 58–59. The EPA also received comments concerning sources within Delaware’s borders that were included in the proposal’s request for comment; these comments are moot because Delaware is not being added to

the Group 3 trading program in the final rule. See comments of Calpine, EPA-HQ-OAR-2021-0668-0515; comments of Delaware City Refining, EPA-HQ-OAR-2021-0668-0309.

emissions rates for various types of units. Multiplying the assumed emissions rate for each unit (as finalized in this rule) by the identified recent historical heat input for each unit and summing the results to the state level would provide a given year's state dynamic emissions budgets. Dynamic budgets are a product of the formula promulgated in this action applied to a rolling three-year average of reported heat input data at the state level and a rolling highest-three-of-five-year average of reported heat input data at the unit level. As such, the EPA is confident that dynamic budgets will more accurately reflect power sector composition, particularly in later years, and certainly from 2030 and beyond, than preset budgets could and will therefore better implement the Step 3 emissions control stringency over long time horizons.

Starting in 2025 (for the 2026 control period), the dynamic budgets, along with the underlying data and calculations will be publicly announced, and this will occur approximately one year before the relevant control period begins. These will be published in the **Federal Register** through notices of data availability (NODAs), similar to how other periodic actions that are ministerial in nature to implement the trading programs are currently handled. And as with such other actions, interested parties will have the opportunity to seek corrections or administrative adjudication under 40 CFR part 78 if they believe any data used in making these calculations, or the calculations themselves, are in error.

To illustrate how dynamic budgeting will work after the transition from preset budgets, the dynamic budgets for the 2030 ozone season control period will be identified by May 1, 2029, using the latest available average of three years of reported operational data at that time (*i.e.*, the average of 2026–2028 heat input data at the state level and 2024–2028 years of rolling data at the unit level) applied in a simple mathematical formula finalized in this rule, which multiplies this heat input data by the emissions rates quantified in this rule. Therefore, if a unit retires before the start of the 2028 ozone season but had not announced its upcoming retirement at the time of this rule's finalization, the dynamic budget approach ensures that the dynamic budgets for 2030 and subsequent control periods would represent the identified control stringency applied to a fleet reflecting that retirement.

The two examples discussed next illustrate the implementation of the dynamic budget during the 2026–2029

time period. During this period, the state emissions budget for each state for a given control period will be the preset state emissions budget unless the dynamic budget is higher. This approach accommodates scenarios where baseline fossil heat input may exceed levels anticipated by EPA in the preset budgets (*e.g.*, this could result from greater electric vehicle penetration rates). Table VI.B.4–1 illustrates this scenario. In the preset budget approach for 2028, the 2028 heat input is estimated based on the latest available heat input data at the time of rule proposal (*i.e.*, 2021; see the subsection on preset budget methodology later in this section), which cannot reflect a subsequent change in fleet heat input values (column 2) due to, *e.g.*, increased utilization to meet increased electric load. However, the dynamic budget would use 2022–2026 heat input values at the unit level and 2024–2026 heat input values at the state level—as opposed to 2021 heat input values—as the latest representative values to inform the 2028 state emissions budget. Therefore, the heat input values in column 2 under the dynamic scenario reflect the change in fleet utilization levels, and when multiplied by the emissions rates reflecting the Step 3 emissions control stringency in this final rule, the corresponding emissions (18,700 tons) summed in column 4 constitute a state budget that more accurately reflects the Step 3 emissions control stringency applied to the fleet composition for that year, as opposed to the 17,000 tons identified in the preset budget approach. As illustrated in the example, the dynamic variable is the heat input variable, which changes over time. In this instance, the dynamic budget value of 18,700 tons would be implemented for 2028 instead of the preset value, and thus accommodate the unforeseen utilization changes in response to higher demand.

In the second table, Table VI.B.4–2, the dynamic budget is lower than the preset budget due to retirements that were not foreseen at the time the preset budgets were determined. In the preset budget approach for 2028, the 2028 heat input is still estimated based on the latest available heat input data at the time of rule proposal (*i.e.*, 2021), which cannot reflect a subsequent fleet change in heat input values due to an unanticipated retirement of one of the state's coal-fired units before the start of the 2028 ozone season. However, the dynamic budget again would use 2022–2026 heat input values at the unit level and 2024–2026 heat input values at the state level—as opposed to 2021 heat

input values—as the latest representative values to inform the 2028 state emissions budget, which would reflect the decline in coal heat input and replacement with natural gas heat input (capturing the coal unit's retirement). Therefore, the heat input values under the dynamic budget scenario reflect the change in fleet composition, and when multiplied by the relevant emissions rates reflecting the Step 3 emissions control stringency identified in this final rule, the corresponding emissions (15,000 tons) constitute a state budget that reflects the identified control stringency applied to the fleet composition for that year as opposed to the 17,000 tons in summed in the first table. However, for the 2026–2029 period, in which the EPA implements an approach that utilizes the higher of the dynamic budget or preset budget, the budget implemented for 2028 in this scenario would be the 17,000 ton preset amount.

During the 2026–2029 transition period—during which substantial, publicly announced utility commitments exist for higher emitting units to exit the fleet—it is still possible that yet-to-be known, unit-specific retirements (such as illustrated in this second scenario) may result in dynamic budgets that are lower than the preset budgets finalized in this rule. However, during this transition period EPA believes that having the preset budgets serve as floors for the state emissions budgets is appropriate for two primary reasons identified by commenters. First, commenters repeatedly emphasized the need for certainty and flexibility to successfully carryout plans for significant fleet transition through the end of the decade. The 2026–2029 period is expected to have substantial fleet turnover. Current Form EIA–860 data, in which utilities report their retirement plans, identify 2028 as the year with the most planned coal capacity retirements during the 2023–2029 timeframe. Using preset budgets as state emissions budget floors provides states and utilities with information on minimum quantities of allowances that can be used for planning purposes. In turn, this fosters the operational flexibility needed while putting generation and transmission solutions into place to accommodate such elevated levels of retirements. Second, the latter part of the decade has a significant amount of unit-level firm retirements already planned and announced for purposes of compliance with other power sector regulations or fulfillment of utility commitments. These known retirements are already

captured in the preset state budgets, with the result that the likelihood and magnitude of instances where a state's dynamic budget for a given control period would be lower than its preset budget for the control period is reduced in this 2026–2029 period relative to control periods further in the future for which retirement plans have not yet been announced. After 2029, the dynamic budgets from 2030 forward

will fully capture all prior retirements and new builds when the fleet is entering this period where unit-specific data on such plans is less frequently available. For instance, through the remaining portion of the decade, the amount of coal steam retirements identified and reported through Form EIA–860 is nearly 7 GW each year. However, for the decade beginning in 2030—the amount of capacity currently

reported with a planned retirement is less than 2 GW each year.³¹¹ This yet-to-be available data and relative lack of currently known firm retirement plans for 2030 and beyond make dynamic budget implementation for those years essential for state emissions budgets to maintain the Step 3 control stringency required under this rule.

TABLE VI.B.4–1—EXAMPLE OF PRESET AND DYNAMIC BUDGET CALCULATION IN SCENARIO OF INCREASED FOSSIL HEAT INPUT

	Preset budget approach (2028)			Dynamic budget approach (2028)		
	Preset heat input (tBtu)	Preset emissions rate (lb/mmBtu)	Preset tons (heat input × emissions rate)/2000	Heat input (tBtu)	Emissions rate (lb/mmBtu)	Tons (heat input × emissions rate)/2000
Coal Units	600	0.05	15,000	660	0.05	16,500
Gas Units	400	0.01	2,000	440	0.01	2,200
State Budget (tons) .....	.....	.....	17,000	.....	.....	18,700

TABLE VI.B.4–2—EXAMPLE OF PRESET AND DYNAMIC BUDGET CALCULATION IN SCENARIO OF UNANTICIPATED RETIREMENT

	Preset budget approach (2028)			Dynamic budget approach (2028)		
	Preset heat input (tBtu)	Preset emissions rate (lb/mmBtu)	Preset tons (heat input × emissions rate)/2000	Heat input (tBtu)	Emissions rate (lb/mmBtu)	Tons (heat input × emissions rate)/2000
Coal Units	600	0.05	15,000	500	0.05	12,500
Gas Units	400	0.01	2,000	500	0.01	2,500
State Budget (tons) .....	.....	.....	17,000	.....	.....	15,000

In summary, for the control periods in 2023 through 2025, EPA is providing only preset budgets in this final rule because those control periods are in the immediate future and would not substantially benefit from the use of future reported data. For these years, the certainty around new builds and retirements is higher than ensuing years. For the ozone season control periods of 2026 through 2029, EPA is providing both preset budgets in this final rule and dynamic budgets via future ministerial actions. For those control periods from 2026 through 2029, the preset budgets finalized in this rule serve as floors, such that a given state's dynamic budget ultimately calculated and published for that control period will apply to that state's affected EGUs only if it is higher than the corresponding preset budget finalized in this rulemaking. This approach is in response to stakeholder comments requesting more advance

notice regarding the total quantities of allowances available to accommodate compliance planning through the latter half of the decade, during a period of particularly high fleet transition expected with or without this rulemaking.

EPA's emissions budget methodology and formula for establishing Group 3 budgets are described in detail in the Ozone Transport Policy Analysis Final Rule TSD and summarized later in this section.

a. Methodology for Determining Preset State Emissions Budgets for the 2023 Through 2029 Control Periods

To compose preset state emissions budgets, the EPA is using the best available data at the time of developing this final rule regarding retirements and new builds. The EPA relies on a compilation of data from Form EIA–860 (where facilities report their future

retirement plans), the PJM Retirement Tracker, utilities' integrated resource plans, notification of compliance plans with other EPA power sector regulatory requirements, and other information sources that EPA routinely canvasses to populate the data fields included in the Agency's NEEDS database. The EPA has updated this data on retirements and new builds using the latest information available from these sources at the time of final rule development as well as input provided by commenters.

For determining preset state emissions budgets, the EPA generally uses historical ozone season data from the 2021 ozone season, the most recent data available to EPA and to commenters responding to this rulemaking's proposal and providing a reasonable representation of near-term fleet conditions. This is similar to the approach taken in the CSAPR Update and the Revised CSAPR Update, where

³¹¹ See 2021 Form EIA Form 860—Schedule 3, Generator Data. Department of Energy, Energy Information Administration.

the EPA likewise began with data for the most recent ozone season at the time of proposal (2015 and 2019, respectively).

By using historical unit-level NO_x emissions rates, heat input, and emissions data in the first stage of determining preset emissions budgets, the EPA is grounding its budgets in the most recent representative historical operation for the covered units at the time EPA began its final rulemaking. This data set is a reasonable starting point for the budget-setting process as it reflects recent publicly available and quality assured data reported by affected facilities under 40 CFR part 75, largely using CEMS. The reporting requirements include quality control measures, verification measures, and instrumentation to best record and report the data. In addition, the designated representatives of EGU sources are required to attest to the accuracy and completeness of the data.

The first step in deriving the future year state emissions budget is to calibrate historical data to planned future fleet conditions. EPA does this by adjusting this historical baseline information to reflect the known changes (e.g., when deriving the 2023 state emissions budget, EPA starts by

adjusting 2021 unit-level data to reflect changes announced and planned to occur by 2023). The EPA adjusted the 2021 ozone-season data to reflect committed fleet changes expected to occur in the baseline. This includes announced and confirmed retirements, new builds, and retrofits that occur after 2021 but prior to 2023. For example, if a unit emitted in 2021, but retired prior to May 1, 2022, its 2021 emissions would not be included in the 2023 baseline estimate. For units that had no known changes, the EPA uses the actual emissions, heat input, and emissions rates reported for 2021 as the baseline starting point for calculating the 2023 state emissions budgets. Using this method, the EPA arrived at a baseline emission, heat input, and emissions rate estimate for each unit for a future year (e.g., 2023).

The second step in deriving the preset state emissions budgets is for EPA to take the adjusted historical data from Step 1, and adjust the emissions rates and mass emissions to reflect the control stringencies identified as appropriate for EGUs of that type. For instance, if an SCR-equipped unit was not operating its SCR so as to achieve a seasonal average emissions rate of 0.08

lb/mmBtu or less in the historical baseline, the EPA lowered that unit's assumed emissions rate to 0.08 lb/mmBtu and calculated the impact on the unit's mass emissions. Note that the heat input is held constant for the unit in the process, reflecting the same level of unit operation compared to historical 2021 data. The improved emissions rate of 0.08 lb/mmBtu is applied to this constant heat input, reflecting control optimization. In this manner, the unit-level totals from Step 1 are adjusted to reflect the additional application of the assumed control technology at a given control stringency. This is illustrated in Table VI.B.4.a–1. Row 1 reflects the 2021 historical data for this SCR-controlled unit. Row 2 reflects no change (as there are no known changes such as planned retirement or coal-to-gas conversion). Row 3 reflects application of the Step 3 stringency (i.e., a 0.08 lb/mmBtu emissions rate from SCR optimization). The resulting impact on emissions is a reduction from the historical 4,700 tons to an expected future level of 615 tons. A state's preset budget for a given control period is the sum of the amounts computed in this manner for each unit in the state for the control period.

TABLE VI.B.4.a–1—EXAMPLE OF UNIT-LEVEL DATA CALCULATIONS FOR DERIVING STATE EMISSIONS BUDGETS

	Heat input (tBtu)	Emission rate (lb/mmBtu)	Emissions (tons)
Historical Data (2021)	15.384	0.61	4,700
Step 1 (Baseline)—Historical data adjusted for planned changes	15.384	0.61	4,700
Step 2—Baseline further adjusted for Step 3 stringency	15.384	0.08	615

For each control period from 2026 onward, the unit-specific emissions rates assumed for all affected states except Alabama, Minnesota, and Wisconsin will reflect the selected control stringency that incorporates post-combustion control retrofit opportunities for the relevant units identified in the state emissions budgets and calculations appendix to the Ozone Transport Policy Analysis Final Rule TSD. The emissions rates assigned to large coal-fired EGUs for 2026 state emissions budget computations only reflect 50 percent of the SCR retrofit emissions reduction potential at each of those units, to capture the phase-in approach EPA is taking for this control as described in section VI.A of this document. The EPA calculates these unit-level emissions rates in 2026 as the sum of the unit's baseline emissions rate and its controlled emissions rate divided by two (i.e., 50 percent of the emissions reduction potential of that

pollution control measure). The emissions rates assigned to these large coal-fired EGUs for 2027 state emissions budget computations reflect the full assumed SCR retrofit emissions potential at those units, by applying the controlled emissions rate only. For example, a coal steam unit greater than or equal to 100 MW currently lacking a SCR and emitting at 0.20 lb/mmBtu would be assumed to reduce its emissions rate to 0.125 lb/mmBtu rate in 2026 and 0.050 lb/mmBtu rate in 2027 for purposes of deriving its preset state emissions budgets in those years.

Comment: Some commenters suggested that EPA should not reflect planned retirements in its preset budgets. The suggestion stems from commenters' observation that those retirement decisions may yet change.

Response: The effectiveness of EPA's future year preset state emissions budgets depends on how well they are calibrated to the expected future fleet.

Therefore, EPA believes it is important to incorporate expected new builds, retirements, and unit changes already slated to occur. Ignoring these factors would dilute, rather than strengthen, the ability of preset budgets to capture the most representative fleet of EGUs to which they will be applied. Omitting scheduled retirements and new builds from state emissions budgets would reflect units that power sector operators and planning authorities do not expect to exist, while failing to reflect units that are expected to exist.

EPA notes it is using the best available data at the time of the final rule. EPA relies on a compilation of data from Form EIA–860 where facilities report their future retirement plans. In addition, EPA is using data from regional transmission organizations who are cataloging, evaluating, and approving such retirement plans and data; data from notifications submitted directly to EPA by the utility themselves

through comments; and retirement notifications submitted to permitting authorities. This information is highly reliable, real-world information that provides EPA with the high confidence that such retirements will in fact occur.

If a unit's future retirement does not occur on the currently scheduled date, EPA observes that such an unexpected departure from the currently available evidence would still not undermine the ability of affected EGUs to comply with their applicable state budgets. EPA's approach of using historical data and incorporation only of announced fleet changes in estimating its future engineering analytics baseline means that its future year baseline generation and retirement outlook for higher emitting sources is more likely to understate future retirements (rather than overstate as suggested by commenter), as EPA does not assume for the purpose of preset budget quantification any retirements beyond those that are already planned. In other words, in the 2023 through 2029 timeframe for which EPA is establishing preset state emissions budgets in this rulemaking, there are more likely to be additional future EGU retirements beyond those scheduled prior to the finalization of this rule than there are to be reversed or substantially delayed changes to already announced EGU retirement plans. For instance, subsequent to the EPA's finalization of the Revised CSAPR Update Rule budgets for 2023 (rule finalized in March 2021), the owners of Sammis Units 5–7 and Zimmer Unit 1 in Ohio (totaling nearly 3 GW of coal capacity) announced that the units would retire by 2023—nearly 5 years earlier than previously planned.^{312 313} These coal retirements were not captured in Ohio's 2023 or 2024 state emissions budgets established under the Revised CSAPR Update. Meanwhile, there have been no announcements of previously announced retirement plans being rescinded or delayed for other Ohio units. Similarly, the Joppa Power Plant in Illinois accelerated its retirement from 2025 to 2022 shortly after the Revised CSAPR Update Rule was signed.³¹⁴

³¹² Available at <https://www.prnewswire.com/news-releases/energy-harbor-transitions-to-100-carbon-free-energy-infrastructure-company-in-2023-301501879.html>.

³¹³ Available at <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/coal/071921-vistra-plans-to-retire-13-gw-zimmer-coal-plant-in-ohio-five-years-early>.

³¹⁴ Available at <https://www.prnewswire.com/news-releases/joppa-power-plant-to-close-in-2022-as-company-transitions-to-a-cleaner-future-301263013.html>.

We further observe that the commenters' concern is only materially meaningful for the 2023 through 2025 preset budget periods, where the currently known information is generally the most reliable. For the 2026–2029 control periods, if an anticipated fleet change such as an EGU retirement does not actually occur, the dynamic budget setting methodology would, all else being equal, generate a budget reflective of that unit's continued operation (as the budget would be based on the preceding years of historical data), and that dynamic budget will supplant the preset budget for that state (if it represents a total quantity of emissions higher than the preset budget).

Because the future is inherently uncertain, all analytic tools and information resources used in any estimation of future EGU emissions will yield some differences between the projected future and the realized future. Such potential differences may either increase or decrease future emissions in practice, and the unavoidable existence of such differences does not, on its own, render the EPA's inclusion of currently announced retirements an unreasonable feature of the methodology for determining future year preset emissions budgets. To the contrary, if the EPA failed to include these announced retirements, the rule would knowingly authorize amounts of additional, sustained pollution that are not currently expected to occur. If those retirements largely or entirely occur as currently scheduled, the overestimated state budgets would allow other EGUs to emit additional pollution in place of the emissions from the retired EGUs instead of maintaining or improving their emissions performance to eliminate significant contribution with nonattainment and interference with maintenance of the NAAQS.³¹⁵

Additionally, as noted elsewhere, EPA's use of a market-based program, a starting bank of converted allowances, and variability limits are all features that will readily accommodate whatever relatively limited differences in emissions may occur if a currently scheduled EGU retirement is ultimately postponed during the preset budget years of 2023 through 2025. Therefore, EPA's resulting preset state emissions budgets—inclusive of expected fleet turnover—are robust to the inherent uncertainty in future year baseline

³¹⁵ Some of these announced retirements reflect the operator's reported intention to EPA to retire the affected capacity by that time as part of their compliance with effluent limitation guidelines or with the coal combustion residuals rule.

conditions for the period in which they are applied.

Comment: Some commenters suggested that EPA should use a multi-year baseline for all of its state budget derivations, including preset budgets, to control for outlier years that may not be representative of future years due to major weather events or other fleet disruptions (such as a large nuclear unit outage).

Response: For preset state emissions budget derivation, EPA is finalizing use of the same single-year³¹⁶ historical baseline approach it used in the proposed rule. This approach is similar to the Revised CSAPR Update, where EPA also relied on a single-year historical baseline to inform its Step 3 approach. EPA's interest in a historical data set to inform this part of the analysis is to capture the most representative view of the power sector. For estimating preset state budgets, EPA finds that, particularly at the state level, more recent data is a better representation and basis for future year baselines rather than incorporating older data. Taking as an example preset budget estimation for the 2023 through 2025 ozone seasons, the EPA is able to compare its single-year baseline to an alternative multi-year baseline (e.g., a 3-year baseline encompassing 2020–2022) and determine that the single year baseline better reflects future fleet operation expectation than a multi-year baseline that incorporates units which have since retired as well as outlier patterns in load during pandemic-related shutdowns.

EPA recognizes that 2021 is the latest available historical data as of the preparation of this rulemaking, and therefore the most up-to-date picture of the fleet at the time EPA began its analysis. EPA then further evaluates the 2021 historical data at the state level to determine whether it was a representative starting point for estimating future year baseline levels and subsequently deriving the preset state emissions budgets. If the Agency finds any state-level anomalies, it makes necessary adjustments to the data. While unit-level variation may occur from year-to-year, those variations are often offset by substitute generation from other units within the state. Therefore, EPA conducts its first screening at the state level by identifying any states where 2021 heat

³¹⁶ For the purposes of this rulemaking, when describing a "year" or "years" of data utilized in state emission budget computations, the EPA is actually utilizing the relevant data from May 1 through September 30 of the referenced year(s), consistent with the control period duration of this rule's EGU trading program.

input and 2021 emissions were the lowest year for heat input and emissions relative to the past several years (2018–2022, excluding 2020 due to shut downs and corresponding reduced utilization related to the pandemic onset).^{317 318} Then, for that limited number of states (AL, LA, MS, and TX) in which 2021 reflects the minimum fossil fuel heat input and minimum emissions over the baseline evaluation period, EPA—similar to prior rules—evaluated whether any unit-level anomalies in operation were driving this lower heat input at the state level. EPA examined unit-level 2021 outages to determine where an individual unit-level outage might yield a significant difference in state heat input, corresponding emissions baseline and resulting state emissions budgets. When applying this test to all of the units in the previously identified states (and even when applying to EGUs in all states for whom Federal implementation plans are finalized in this rulemaking), the EPA determined that the only unit with a 2021 outage that (1) decreased its output relative to preceding or subsequent years by 75 percent or more (signifying an outage), and (2) could potentially impact the state’s emissions budget substantially as it constituted more than 5 percent of the state’s heat input in a non-outage year was Daniel Unit 2 in Mississippi. EPA therefore adjusted this state’s baseline heat input and NO_x emissions to reflect the operation of this unit based on its 2019 data—which was the second most recent year of data available at the time of proposal (excluding 2020 given atypical impacts from pandemic-related shutdowns) for which this unit operated. The EPA then applied the Step 3 mitigation strategies as appropriate to this unit (*i.e.*, combustion controls upgrade in 2024, SCR retrofit in 2026/2027) to derive this portion of Mississippi’s budget. This test, and subsequent adjustment as necessary, enables EPA to utilize the

latest, most representative data in a manner that is robust to any substantial state-level or region-level outlier events within that dataset and further validates EPA’s comprehensive approach to using the most recent single year of data for preset budgets.

b. Methodology for Determining Dynamic State Emissions Budgets for Control Periods in 2026 onwards

In this final rule, the EPA is finalizing an approach of using multi-year baseline data for purposes of dynamic budget computation. The aforementioned testing of the representative nature of a single year of baseline data for purposes of preset budget setting is not possible in the dynamic budget process as that data will not be available until a later date. Further, the EPA generally agrees with commenters that use of a multi-year period will be more robust to any unrepresentative outlier years in fleet operation and thus better suited for purposes of dynamic budgets. The methodology for determining dynamic state emissions budgets for later control periods (2026 and beyond) relies on a nearly identical methodology for applying unit-level emissions rate assumptions as the preset budget methodology. But it uses more recent heat input data that will become available by that future time, employing a multi-year approach for identifying the heat input data so as to ensure representativeness.

For dynamic budgets, EPA uses more years of baseline data to control for any state-level and unit-level variation that may occur in a future single year that is not possible to identify at present. First, for each unit operating in the most recent ozone season for which data have been reported, EPA identifies the average of the three highest unit-level heat input values from the five ozone seasons ending with that ozone season to get a representative unit-level heat

input. Ozone seasons for which a unit reported zero heat input are excluded from the averaging of the three highest heat input values for that unit. These representative unit-level heat input values established for each unit individually are then summed for all units in each state. Each unit’s representative unit-level heat input is then divided into this state-level sum to get that unit’s representative percent of the aggregated average heat input values for all affected EGUs in that state.

Next, EPA calculates a representative state-level heat input by taking the average state-level total heat input across affected EGUs from the most recent three ozone seasons for which data have been reported, to which the above-derived representative unit-level percentages of heat input are applied. The EPA uses a three-year baseline period for state-level heat input versus the five-year baseline period noted previously for unit-level heat input because there is less variation from year to year at the state level compared to the unit level. Multiplying the representative unit-level percentages of heat input by the representative state-level heat input yields a normalized unit-level heat input value for each affected EGU. This step assures that the total heat input being reflected in a dynamic state budget does not exceed the average total heat input reported by affected EGUs in that state from the three most recent years. Finally, each normalized unit-level heat input value is multiplied by the emissions rate reflecting the assumed unit-specific control stringency for each particular year (determined at Step 3) to get a unit-level emissions estimate. These unit-level emissions estimates are then summed to the state level to identify the dynamic budget for that year. This procedure to derive normalized unit-level heat input is captured in the following table:

TABLE VI.B.4.b–1—DERIVATION OF NORMALIZED UNIT-LEVEL HEAT INPUT
[Illustrative]

	2022 Heat input	2023 Heat input	2024 Heat input	2025 Heat input	2026 Heat input	Representative unit-level heat input (avg of 3 highest of past 5)	Representative unit-level percent	Representative state level heat input (avg 3 most recent state totals)	Normalized unit-level heat input
Unit A	100	200	150	200	300	233	41%	483	199
Unit B	50	100	200	50	100	133	24	483	114
Unit C	250	150	150	200	100	200	35	483	170

³¹⁷ EPA identified states for which 2021 both heat input and emissions were the low year among the examined baseline period as a preliminary screen to identify potential instances where reduced utilization may lead to an understated emissions baseline value.

³¹⁸ EPA also conducted a similar test to identify states in which 2021 heat input and emissions were the high year among the examined baseline period and found that it was for both Utah and Pennsylvania. However, for both states the elevated heat input trend persisted into 2022 (at slightly

lower levels and was correlated with retirements elsewhere in the region—indicating that some of this heat input increase may be representative of the future fleet and that planned retirements factored into preset budget will remove any unrepresentative heat input from 2021.

TABLE VI.B.4.b-1—DERIVATION OF NORMALIZED UNIT-LEVEL HEAT INPUT—Continued
[Illustrative]

	2022 Heat input	2023 Heat input	2024 Heat input	2025 Heat input	2026 Heat input	Representative unit-level heat input (avg of 3 highest of past 5)	Representative unit-level percent	Representative state level heat input (avg 3 most recent state totals)	Normalized unit-level heat input
State Total	400	450	500	450	500	567	.....	.....	.....

The EPA will issue these dynamic budget quantifications approximately 1 year before the relevant control period. We view such actions as ministerial in nature in that no exercise of agency discretion is required. For instance, starting in early 2025, the EPA would take the most recent three years of state-level heat input data and the most recent five years of unit-level heat input data and calculate 2026 state emissions budgets using the methodology described previously. For 2026–2029, EPA is establishing the preset state emissions budgets finalized in this rulemaking and will only supplant those preset emissions budgets with the to-be-published dynamic emissions budgets if, for a given state and a given control period, that dynamic budget yields a higher level of emissions than the corresponding preset budget finalized in this rulemaking. For 2030 and beyond, the EPA solely uses the dynamic budget process.

By March 1 of 2025, and each year thereafter, the EPA will make publicly available through a NODA the preliminary state emissions budgets for the subsequent control period and will provide stakeholders with a 30-day opportunity to submit any objections to the updated data and computations. (This process will be similar to the releases of data and preliminary computations for allocations from new unit set-asides that is already used in existing CSAPR trading programs.) By May 1 of 2025, and each year thereafter, the EPA will publish the dynamic budgets for the ozone-season control period in the following calendar year. Through the 2029 ozone season control period, these budgets will only be imposed if the applicable dynamic state budget is higher than the corresponding preset state budget finalized in this rulemaking. Preliminary and final unit-level allowance allocations for the units in each state in each control period will be published on the same schedule as the dynamic budgets for the control period. For the control periods from 2026 through 2029, the allocations will reflect the higher of the preset or dynamic budget for each state, and after 2030, the allocations will reflect the dynamic budgets. Additional details,

corresponding data and formulas, and examples for the dynamic budget are described in the Ozone Transport Policy Analysis Final Rule TSD.

Comment: Multiple commenters claimed that designing a dynamic budget process that relies on a single year of yet-to-be known heat input data may produce an unrepresentative view of fleet operations for the immediate ensuing years. Commenters pointed to the hypothetical of another pandemic-like year (e.g., 2020) occurring in the future, noting that 2020 would have been a poor choice for estimating 2022 fleet operation and the same would likely hold true if a similar event occurred, for example, in 2025—that would consequently make that year a poor choice as a representative of 2027 baseline. They further pointed out that severe weather events and operating disruptions (a large nuclear plant outage) can similarly render a single year baseline a risky choice to inform future expectations.

Response: Insofar as the commenters are addressing the reference period for dynamic budget computation regarding years of data that have not yet occurred and therefore not currently available for evaluating their representative nature, EPA agrees and is incorporating a rolling 3-year baseline at the state level and a rolling 5-year baseline at the unit level for determining dynamic budgets in this final rule. These multi-year rolling baseline (or reference periods) will minimize any otherwise undue impact from individual years where fleet-level or unit-level heat input was uncharacteristically high or low. EPA determined that such an approach, while not needed for preset budgets, is necessary in the case of dynamic budgets because the baseline in that instance is occurring in a future year and therefore is not knowable and available to test for representativeness at the time of the final rule. To control for this type of uncertainty, the EPA finds it appropriate to use a multi-year baseline in this instance per commenter suggestion. While a multi-year baseline may have a slight drawback of using a slightly more dated past fleet performance (including emissions from higher emitting EGUs that may have

subsequently reduced utilization by the target year for which the dynamic budget is being calculated) to estimate the expected future fleet performance at the emissions performance levels determined by the Step 3 result in this rulemaking, that drawback is worth the advantage of protecting against instances where atypical circumstances in the most recent single year may occur and not be representative of the subsequent year for which the dynamic budget is being estimated. This singular drawback of moving to a multi-year baseline is most pronounced in the early years of dynamic budgeting. Therefore, EPA is able to lessen the impact of this drawback of the multi-year baseline by extending the earliest start date of dynamic budgets from 2025 (as proposed) to 2026 in the final rule.

Comment: Commenters suggested that the dynamic budget procedure would not provide enough advance notice of state budget and unit level allocation for sources to adequately plan future year operation.

Response: EPA disagrees with the notion that the timing of the dynamic budget determination would occur too close to the control period to allow adequate operations planning for compliance. As described previously, the dynamic budget level would be provided approximately 1 year in advance of the start of the control period (i.e., around May 1), and the allowance allocations would occur on July 1, approximately 10 months prior to the start of the compliance period. Not only is this an adequate amount of time as demonstrated by the successful implementation of past rules that have been finalized and implemented within several months of the beginning of the first affected compliance period (e.g., Revised CSAPR Update), but EPA notes it is maintaining similar trading program flexibility and banking flexibilities of past programs which provide further opportunities for sources to procure allowances and plan for any future operating conditions. Finally, as noted previously, the EPA is providing preset budgets for the years 2023–2029, which serve as an effective floor on the state’s ultimate emissions budget level for years 2026–2029, as

states will receive the higher of the preset or dynamic budget for those years. This provision of certain preset state emissions budgets serving as a floor level for 2026–2029 should further assuage commenters' concerns regarding planning certainty about allowance allocations and state emissions budget levels during this period of power sector transition to cleaner energy sources.

Comment: Commenters raised concerns that there is a two-year lag in the dynamic budgets in that, for example, for the dynamic budget in the 2026 control period, the calculations will be based on heat input and inventory information reflective of data through 2024. Commenters contend that, if there is a much greater need for allowances for compliance due to unavoidable or unforeseen need for a higher amount of heat input than reflected in prior years' data, the budget for that control period will not reflect this need, and the allowances will only become available when the dynamic budget is calculated using that information (*i.e.*, 2025 data would be reflected starting in the 2027 dynamic budget). According to commenters, this lag could present a serious compliance challenge. Other commenters raised a concern in the opposite direction about the potential "slack" created by the lag time—meaning that as high-emitting units retire, their emissions and operation will still inform the state emissions budgets for additional years beyond their retirement due to the lag.

Response: The EPA recognizes there will be a data lag inherent in the computation of future year dynamic emissions budgets, because the dynamic budgets will reflect fleet composition and utilization data from recent previous control periods rather than the control periods for which the dynamic budgets are being calculated. This means that the resulting dynamic budgets will reflect a limited lag behind the actual pace of the EGU fleet's trends. However, on the whole, those trends are clearly toward more efficient and cleaner generating resources. Thus, the data lag on the whole will inure to the compliance benefit of EGUs by resulting in dynamic budgets that are generally calculated at levels likely to be somewhat higher than what a dynamic budget calculation reflecting real-time EGU operations would produce. The EPA believes this data lag is worthwhile to provide more compliance planning certainty and advance notice to affected EGUs of the dynamic budget applicable to an upcoming control period. Furthermore, this data lag in dynamic budget computation is comparable to the data lag of quantifying preset state

budgets for 2023 through 2025 based upon 2021 data, and at no point in the long history of EPA's trading programs has such a data lag in state budget computation yielded any compliance problems for affected EGUs. Without dynamic budgeting, the data lag inherent in calculating preset budgets would grow unabated with the passage of time, as a fixed reference year of heat input levels would continually apply regardless of potentially higher heat input levels farther and farther into the future. By eliminating the increase in the length of the data lag, this new dynamic budgeting approach is a substantial improvement in performance of the program relative to previous approaches that were not capable of capturing changes over time in the fleet and its utilization beyond the scheduled changes known to the EPA at the time of establishing preset budgets.

The EPA disagrees that this lag will in fact pose compliance challenges for EGUs even if the unlikely scenario described by commenters were to occur. Several factors influence this. First, the change in methodology to preset budgets serving as a floor on budgets through 2029 means that the dynamic budget methodology can only produce an increase in the budget from this final rule through that year. Second, the adoption of a multi-year approach for identifying the heat input used to calculate the dynamic budgets will smooth the year-to-year budget changes and effectively eliminate the possibility of greatest concern, which was that a single year of unusually low heat input would be used to set the budget for a subsequent year that turned out to have unusually high heat input. While a year of unusually high heat input for a given state may still occur, the state's budgets for those years will never be based on heat input from an anomalously low year, but instead will always be based on an average of several years' heat input. Third, because the Group 3 trading program is an interstate program implemented over a wide geographic region, and it is unlikely that all regions of the country would uniformly experience a marked increase in fossil fuel heat input necessitating an additional supply of allowances, it is likely that allowances will be available for trade from one area of the country where there is less demand to another area where there is greater demand. Fourth, as explained in section VI.B.5 of this document, each state's assurance level will adjust to reflect actual heat input in that year. Specifically, the EPA will determine each state's variability

limit for a given control period so that the percentage value used will be the higher of 21 percent or the percentage (if any) by which the total reported heat input of the state's affected EGUs in the control period exceeds the total reported heat input of the state's affected EGUs as reflected in the state's emissions budget for the control period. Thus, if in year 2030, for example, a state's actual heat input levels increase to a level that is not reflected in the dynamic budget calculation using earlier years of data, the assurance level (which absent the unusually high heat input would be 121 percent of the state's budget) will be calculated by the EPA following the 2030 ozone season, using that higher reported heat input. This will avoid imposing a three-for-one allowance surrender penalty on sources except where emissions exceed the assurance level even factoring in the increase in heat input in that year. Finally, as some commenters observed, the inherent data lag in dynamic budget quantification means that a state budget for the year 2030 will continue to reflect emissions from any EGU that retires before the 2030 control period but is still operating anytime during the 2026–2028 reference years from which the 2030 dynamic budget will be calculated. Given the likely ongoing trend of relatively high-emitting EGU retirements over time, this method for determining dynamic budgets should further assist the ability of remaining EGUs to obtain sufficient allowances to cover future heat input levels.

With respect to the comments expressing concern that dynamic budgets would create too much slack because of the lag in incorporating retirements, the EPA observes that dynamic budgets will yield a closer representation of Step 3 control stringency across the future fleet than preset budgets for years in which retirement plans are currently relatively unknown. Moreover, any risk that the lag would lead to an unacceptably large surplus of allowances is limited by EPA's finalization of the annual bank recalibration to 21 percent and 10.5 percent of the budget beginning in 2024 and 2030 respectively. The corresponding risk that a lag will lead sources to not operate emissions controls, due to a surplus of allowances, is also limited by the backstop daily emissions rates that start in 2024 (for sources with existing SCR controls) and no later than 2030 for other coal-fired sources.

Comment: Commenters allege that the dynamic budget methodology is effectively a "one-way ratchet" because, if EGUs pursue compliance strategies

such as reduced utilization or generation shifting to comply with the rule rather than install or optimize pollution controls pursuant to the identified Step 3 emissions control strategies, the effect will be that the dynamic budget calculated in a future year will reflect that reduced heat input, but the applied emissions rate assumption will be the same. Thus, the approach according to commenters actually “punishes” sources for achievement of emissions reductions commensurate with EPA’s Step 3 determinations through alternative compliance means, by producing a smaller budget in later years (less heat input multiplied by the same emissions rate). If the source again reduces utilization or shifts generation to comply with this budget, then budgets in later years will again ratchet down, and so on.

Response: First, the claims of dynamic budgeting being a one-way ratchet are incorrect. As pointed out at proposal, the dynamic budget process would allow for increased utilization to result in increased budgets. Moreover, this concern is entirely mooted for the period 2026 through 2029 with the shift to preset budgets serving as a floor; dynamic budgeting can only increase the budget used in any given year in this time period. Additionally, the use of a multi-year average heat input in the budget-setting calculations will, on the

whole, modulate the dynamic budgets such that the budgets over time will only gradually change with changes in the operating profile of the EGU fleet.

For the control periods 2030 and later, this rule is premised on the expectation that all large coal-fired EGU sources identified for SCR-retrofit potential will, if they continue operating in 2030 or later, have installed the requisite post-combustion controls. Thus, the backstop daily emissions rate applies for all such sources beginning in the 2030 ozone season. In this latter period (post-2030), the EPA disagrees that the dynamic budget will punish fleet segments seeking to continue to pursue a strategy of reduced utilization. Rather, the dynamic budget will simply continue to reflect the Step 3 emissions control stringency. For instance, if there are two otherwise high-emitting sources in a state that can reduce emissions by operating SCR, this rule’s control stringency finds it cost effective for both sources to operate their controls. If one source retires and is replaced by new lower-emitting generation, it is not a punishment to have the budgets adjust in a way that still incentivize remaining units to operate their controls. This is simply right-sizing the budget to an evolving fleet. It is a feature of the rule, not a flaw, and is designed to address observed instances in prior rules where market-driven reduced utilization resulted in non-binding (*i.e.*, overly

slack) budgets and corresponding conditions where the incentive to operate a control dissipated over time. In the event that sources reduce utilization whether for compliance purposes or market-driven reasons, that also does not obviate the importance of continuing to incentivize the Step 3 emissions control stringency at identified sources.

c. Final Preset State Emissions Budgets

For affected EGUs in each covered state (and Indian country within the state’s borders), this final rule establishes preset budgets for the control periods 2023 through 2029. For control periods 2026 through 2029, any of those preset budgets may be supplanted by the corresponding dynamic budget that will be tabulated at later date, if and only if that dynamic budget yields a higher amount. For 2030 and beyond, the dynamic budget formula promulgated in this rule will be applied to future year data to quantify state emissions budgets for those control periods. The procedures for allocating the allowances from each state budget among the units in each state (and Indian country within the state’s borders) are described in section VI.B.9 of this document. The amounts of the final preset state emissions budgets for the 2023 through 2029 control periods are shown in Table VI.B.4.c–1.

TABLE VI.B.4.c–1—CSAPR NO_x OZONE SEASON GROUP 3 PRESET STATE EMISSIONS BUDGETS FOR THE 2023 THROUGH 2029 CONTROL PERIODS

[Tons]^{a,b}

State	Final emissions budgets for 2023	Final emissions budgets for 2024	Final emissions budgets for 2025	Preset emissions budgets for 2026	Preset emissions budgets for 2027	Preset emissions budgets for 2028	Preset emissions budgets for 2029
Alabama	6,379	6,489	6,489	6,339	6,236	6,236	5,105
Arkansas	8,927	8,927	8,927	6,365	4,031	4,031	3,582
Illinois	7,474	7,325	7,325	5,889	5,363	4,555	4,050
Indiana	12,440	11,413	11,413	8,410	8,135	7,280	5,808
Kentucky	13,601	12,999	12,472	10,190	7,908	7,837	7,392
Louisiana	9,363	9,363	9,107	6,370	3,792	3,792	3,639
Maryland	1,206	1,206	1,206	842	842	842	842
Michigan	10,727	10,275	10,275	6,743	5,691	5,691	4,656
Minnesota	5,504	4,058	4,058	4,058	2,905	2,905	2,578
Mississippi	6,210	5,058	5,037	3,484	2,084	1,752	1,752
Missouri	12,598	11,116	11,116	9,248	7,329	7,329	7,329
Nevada	2,368	2,589	2,545	1,142	1,113	1,113	880
New Jersey	773	773	773	773	773	773	773
New York	3,912	3,912	3,912	3,650	3,388	3,388	3,388
Ohio	9,110	7,929	7,929	7,929	7,929	6,911	6,409
Oklahoma	10,271	9,384	9,376	6,631	3,917	3,917	3,917
Pennsylvania	8,138	8,138	8,138	7,512	7,158	7,158	4,828
Texas	40,134	40,134	38,542	31,123	23,009	21,623	20,635
Utah	15,755	15,917	15,917	6,258	2,593	2,593	2,593
Virginia	3,143	2,756	2,756	2,565	2,373	2,373	1,951
West Virginia	13,791	11,958	11,958	10,818	9,678	9,678	9,678
Wisconsin	6,295	6,295	5,988	4,990	3,416	3,416	3,416

TABLE VI.B.4.c-1—CSAPR NO_x OZONE SEASON GROUP 3 PRESET STATE EMISSIONS BUDGETS FOR THE 2023 THROUGH 2029 CONTROL PERIODS—Continued

[Tons]^{a,b}

State	Final emissions budgets for 2023	Final emissions budgets for 2024	Final emissions budgets for 2025	Preset emissions budgets for 2026	Preset emissions budgets for 2027	Preset emissions budgets for 2028	Preset emissions budgets for 2029
Total	208,119	198,014	195,259	151,329	119,663	115,193	105,201

Table Notes:

^a The state emissions budget calculations pertaining to Table VI.B.4.c-1 are described in greater detail in the Ozone Transport Policy Analysis Final Rule TSD. Budget calculations and underlying data are also available in Appendix A of that TSD.

^b In the event this final rule becomes effective after May 1, 2023, the emissions budgets and assurance levels for the 2023 control period will be adjusted under the rule's transitional provisions to ensure that the increased stringency of the new budgets would apply only after the rule's effective date. The 2023 budget amounts shown in Table VI.B.4.c-1 do not reflect these possible adjustments. The transitional provisions are discussed in section VI.B.12 of this document.

5. Variability Limits and Assurance Levels

Like each of the other CSAPR trading programs, the Group 3 trading program includes assurance provisions designed to limit the total emissions from the sources in each state (and Indian country within the state's borders) in each control period to an amount close to the state's emissions budget for the control period, consistent with the principle that each state's sources must be held to the elimination of significant contribution within that state, while allowing some flexibility beyond the emissions budget to accommodate year-to-year operational variability beyond sources' reasonable ability to control. For each state, the assurance provisions establish an assurance level for each control period, defined as the sum of the state's emissions budget for the control period plus a variability limit, which under the Group 3 trading program regulations in effect before this rulemaking was 21 percent of the relevant state emissions budget. The purpose of the variability limit is to account for year-to-year variability in EGU operations, which can occur for a variety of reasons including changes in weather patterns, changes in electricity demand, and disruptions in electricity supply from other units or from the transmission grid. Because of the need to account for such variability in operations of each state's EGUs, the fact that emissions from the state's EGUs may exceed the state's emissions budget for a given control period is not treated as inconsistent with satisfaction of the state's good neighbor obligations as long as the total emissions from the EGUs remain below the state's assurance level. Emissions from a state's EGUs above the state's emissions budget but below the state's assurance level are treated in the same manner as emissions below the state's emissions budget in that such emissions are subject to the same

requirement to surrender allowances at a ratio of one allowance per ton of emissions. In contrast, emissions above the state's assurance level for a given control period are strongly discouraged as inconsistent with the state's good neighbor obligations and are subject to an overall 3-for-1 allowance surrender ratio. The establishment of assurance levels with associated extra allowance surrender requirements was intended to respond to the D.C. Circuit's holding in *North Carolina* requiring the EPA to ensure within the context of an interstate trading program that sources in each state are required to address their good neighbor obligations within the state and may not simply shift those obligations to other states by failing to reduce their own emissions and instead surrendering surplus allowances purchased from sources in other states.³¹⁹

In this rulemaking, the EPA did not propose and is not making changes to the basic structure of the Group 3 trading program's assurance provisions, which will continue to set an assurance level for each control period equal to the state's emissions budget for the control period plus a variability limit and will continue to apply a 3-for-1 surrender ratio to emissions exceeding the state's assurance level.³²⁰ Each assurance level also will continue to apply to the collective emissions of all units within the state and Indian country within the state's borders.³²¹ However, the EPA is making a change to the methodology for determining the variability limits. Specifically, the EPA will determine

³¹⁹ 531 F.3d at 908.

³²⁰ As discussed in section VI.B.8, the EPA is also establishing a new secondary emissions limitation for individual units that will apply in situations where an exceedance of the relevant state's assurance level has occurred.

³²¹ See 40 CFR 97.1002 (definitions of "common designated representative," "common designated representative's assurance level" and "common designated representative's share"), 97.1006(c)(2), and 97.1025.

each state's variability limit for a given control period so that, instead of always multiplying the state's emissions budget for the control period by a value of 21 percent, the percentage value used will be the higher of 21 percent or the percentage (if any) by which the total reported heat input of the state's affected EGUs in the control period exceeds the total historical heat input of the state's affected EGUs as reflected in the state's emissions budget for the control period. For example, if the total reported heat input of the state's covered sources for the 2025 control period is 130 percent of the historical heat input used in computing the state's 2025 budget, then the state's variability limit for the 2025 control period will be 30 percent of the state's emissions budget instead of 21 percent of the state's emissions budget. The EPA expects that the minimum 21 percent will apply in almost all instances, and that the alternative, higher percentage value will apply only in control periods where operational variability causes an unusually large increase relative to the historical data used in setting the state's emissions budget, which would be a situation meriting a temporarily higher variability limit and assurance level. The revised methodology for determining the variability limits will apply both with respect to control periods when a state's emissions budget is a preset budget established in this final rule and with respect to control periods when a state's emissions budget is a dynamically-determined budget computed using the procedures laid out in the regulations, and it will apply starting with the 2023 control period rather than starting with the 2025 control period as proposed.

The purpose of the revision to the variability limits is to better align the variability limits for successive control periods with the heat input data used in setting the state emissions budgets. Under the final rule, each dynamically

determined emissions budget will be computed using the latest available reported heat input, which for each budget set for a control period in 2026 or a later year will be the average state-level heat input for the control periods two, three, and four years before the control period whose budget is being determined (for example, the dynamic state emissions budgets for the 2026 control period will be computed in early 2025 using the reported state-level heat input for the 2022–2024 control periods). The revised variability limits will be well coordinated with the budgets established using this dynamic budgeting process, because the percentage change in the actual heat input for the control period relative to the earlier multi-year average heat input used in computing the state's emissions budget will be an appropriate measure of the degree of operational variability actually experienced by the state's EGUs in the control period relative to the assumed operating conditions reflected in the state's budget. Setting a variability limit in this manner is thus entirely consistent with the overall purpose of including variability limits in the assurance provisions.

As discussed in sections VI.B.1.b.i and VI.B.4, for the 2023–2025 control periods the state emissions budget for a given control period will be the preset budget determined in this rule, and for the 2026–2029 control periods, the state emissions budget for a given control period will be the preset budget determined in this rule rather than the dynamically determined budget computed in the year before the control period unless the dynamic budget is higher than the preset budget. If the state emissions budget is the preset budget, the historical heat input data reflected in that budget will be the heat input data for the 2021 control period, adjusted to reflect projected changes in fleet composition over time that are known at the time of this rulemaking, but not adjusted to reflect changes in fleet composition that are not known at the time of the rulemaking or changes in the utilization of individual units.³²² In this case, the variability limit for the control period would be the higher of 21 percent or the percentage change in the actual heat input for the control period relative to the heat input for the 2021 control period as adjusted to reflect the projected changes in fleet composition. The EPA believes it is reasonable to

apply the same principle in setting the variability limit in control periods where the preset floor budgets are used as in control periods where the dynamically determined budgets are used, because the preset floor budgets are computed using the same principles as the dynamically determined budgets, with the major difference being that the available heat input data used in computing the preset budgets are necessarily less current. Accordingly, because preset budgets established in this manner are used starting with the 2023 control period, the EPA believes it is also reasonable to begin implementing the revised methodology for determining variability limits starting with the 2023 control period.

The reason the EPA is using the higher of a fixed 21 percent or the percentage change in heat input computed as just described is that the EPA believes that, for operational planning purposes, it can be useful for sources to know in advance of the control period a minimum value for what the variability limit could turn out to be. Because a state's actual total heat input for a control period is not known until after the end of the control period, this revision will have the consequence that the state's final variability limit and assurance level for the control period also will not be known until after the control period. However, because the rule provides that the variability limit will always be at least 21 percent, the sources in a state will be able to rely for planning purposes on the knowledge that the assurance level will always be at least 121 percent of the state's emissions budget for the control period. Advance knowledge of the minimum possible amount of the assurance level can be useful to sources, because one way a fleet owner can be confident that it will never incur the 3-for-1 allowance surrendering ratio owed for emissions exceeding its state's assurance level is to plan its operations so as to never allow the emissions from its fleet to exceed the fleet's aggregated share of the state's assurance level for the control period. Knowing that the variability limit will always be at least 21 percent will provide sources with minimum values they could use for such planning purposes.

The EPA believes that 21 percent is a reasonable value to use as the minimum variability limit. To determine appropriate variability limits for the trading programs established in CSAPR, the EPA analyzed historical state-level heat input variability over the period from 2000 through 2010 as a proxy for emissions variability, assuming constant emissions rates. See 76 FR 48265. Based

on that analysis, the variability limits for ozone season NO_x in both CSAPR and the CSAPR Update were set at 21 percent of each state's budget, and these variability limits for the NO_x ozone season trading programs were then codified in 40 CFR 97.510 and 97.810, along with the respective state budgets.³²³ For the Revised CSAPR Update, the EPA performed an updated variability analysis for the twelve states being moved into the Group 3 trading program in that rulemaking, evaluating historical state-level heat input variability over the period from 2000 through 2019. The updated analysis again resulted in a variability estimate of 21 percent. The EPA also considered shorter time periods for the updated analysis and found that the resulting variability estimates were not especially sensitive to the particular time period analyzed.³²⁴ A further updated analysis for this rulemaking again results in a variability estimate of 21 percent for most states, and although the historical analysis indicates a higher percentage for the covered state with the smallest total heat input figures in this analysis—New Jersey—the EPA does not consider it appropriate to raise the minimum variability limit percentage beyond 21 percent for all other covered states based on the analytic results for one state, where small absolute heat input figures have resulted in a larger variability percentage.³²⁵ (Moreover, because of the provision allowing a state's variability limit for a given control period to be higher than 21 percent if the state's actual heat input exceeds the heat input used to set the state's emissions budget by more than 21 percent, there is no need to set a minimum variability limit higher than 21 percent specifically for New Jersey.) Based on the consistent conclusions of these multiple analyses, the EPA is continuing to use 21 percent as the

³²³ Briefly, the 21 percent variability limit was determined in the analysis by identifying, for all the states in the region covered by the ozone season NO_x trading program, and at a 95 percent confidence level, the maximum expected deviation in any state's total heat input for any single control period in the data sample from that state's trend-adjusted mean total heat input for all the control periods in the data sample. For details on the original variability analysis for 26 states over the 2000–2010 period, including a description of the methodology, see the Power Sector Variability Final Rule TSD from the CSAPR (EPA–HQ–OAR–2009–0491–4454), available in the docket for this rule.

³²⁴ For the updated variability analysis for twelve states for the 2000–2019 period, see the Excel file “Historical Variability in Heat Input 2000 to 2019.xls”, available in the docket for this rule.

³²⁵ See the Excel document, “OS Heat Input—Variability 2000 to 2021.xls” for updated data, application of the CSAPR variability methodology, and results applied to heat input for 2000 through 2021 for all states and for the region collectively.

³²² The total heat input amount used in computing each state's preset emissions budget for each control period from 2023 through 2029 is included in Appendix A of the Ozone Transport Policy Analysis Final Rule TSD at column I of the “State 2023”–“State 2029” worksheets.

minimum value in the revised approach for establishing variability limits for all control periods under this rule.

The provisions of the final rule relating to assurance levels and variability limits are unchanged from proposal, with the exception that the provision establishing a higher variability limit for a state in a given control period where the state's actual heat input exceeds the heat input used in computing the state emissions budget for that control period by more than 21 percent will be implemented starting with the 2023 control period instead of the 2025 control period.

Comment: Some commenters supported the EPA's proposal to raise a state's variability limit above 21 percent for a given control period if the state's actual heat input for the control period was more than 121 percent of the historical heat input used to set the state's budget for that control period. These commenters agreed with the EPA that making this adjustment is consistent with the assurance provisions' purpose of strongly incentivizing each state to achieve its required emissions reductions within the state while also accounting for year-to-year variability in electric system operations.

One commenter stated that the EPA should not finalize the proposed revision to the variability limit provisions, claiming that by allowing sources in some states to increase utilization and heat input so as to exceed the state's budget by more than 21 percent in a given year, the adjustment would then cause the state's subsequent dynamically determined budgets to be higher, allowing greater emissions over time.

Response: The EPA disagrees with the comment advocating against finalization of the proposed change to the variability limit provisions. The Agency continues to view the proposed change as useful for accommodating instances where, because of electrical system operating needs, a state's actual total heat input in a control period exceeds the historical heat input used to set the state emissions budget for the control period, potentially causing increased emissions even when all EGUs in a state are achieving emissions rates consistent with the Step 3 emissions control stringency. Moreover, the EPA does not believe that the provision would lead to higher overall program-wide budgets. No extra allowances would be created by the increase in a state's variability limit, so with or without the adjustment, any allowances to cover the emissions in excess of the state's budget would still need to be obtained through

acquisition of allowances issued to sources in other states or the use of banked allowances. Thus, to the extent that the change in the variability limit provisions facilitates shifting of generation from some states to other states, increased heat input in the first set of states would generally be offset by decreased heat input in the second set of states, such that any increases in future dynamic budgets for the first set of states would be offset by decreases in future dynamic budgets for the second set of states. In addition, the final rule's use of multiple years of historical heat input data to compute the dynamically-determined state budgets will moderate the effect of any single year's heat input on the dynamically-determined budgets for future control periods.

6. Annual Recalibration of Allowance Bank

As discussed in section VI.B.1.b of this document, the EPA is making two revisions to the Group 3 trading program designed to better maintain the Step 3 emissions control stringency over time. The first proposed revision, discussed in section VI.B.4 of this document, is to adopt a dynamic budget-setting methodology that will allow state emissions budgets in future years to reflect more accurate information about the composition and utilization of the EGU fleet. The second, complementary, revision is to recalibrate the bank of unused allowances each control period to prevent allowance surpluses from accumulating and adversely impacting the ability of the trading program in future control periods to maintain the Step 3 emissions control stringency.

As proposed and now finalized in this rule, the bank recalibration process will start with the 2024 control period, after the compliance process for the 2023 control period for all current and newly added states in the Group 3 trading program has been completed. The recalibration process for each control period will be carried out on or shortly after August 1 of that control period, two months after the compliance deadline for the previous control period, making the date of the first recalibration August 1, 2024. The recalibrations take place on August 1 each year because compliance for the previous control period would not be completed until after June 1. However, because data on the amounts of allowances held are publicly available and the total quantity of allowances needed for compliance for the previous control period will be known shortly after the end of that control period, sources and other market participants will be able to ascertain

with reasonable accuracy shortly after the end of each control period what degree of recalibration to expect for the next control period, even if the recalibration would not actually be carried out until the following August. The EPA will make an estimate of the applicable calibration ratio for each control period publicly available no later than March 1 of the year of the control period for which the bank will be recalibrated.

Before undertaking a recalibration process each control period, the EPA will first determine whether the total amount of all banked Group 3 allowances from previous control periods held in all facility accounts and general accounts in the Allowance Management System exceeds the target bank amount. (For this purpose, no distinction will be made between banked Group 3 allowances issued from the state emissions budgets for previous control periods and banked Group 3 allowances issued through the conversion of previously banked Group 2 allowances.) If the total amount of banked Group 3 allowances does not exceed the target bank amount, the EPA will not carry out any recalibration for that control period. If the total amount of unused allowances does exceed the target bank amount, the EPA will determine for each account with holdings of banked Group 3 allowances the account-specific recalibrated amount of allowances, computed as the account's total holdings of banked Group 3 allowances immediately before the recalibration multiplied by the target bank amount and divided by the total amount of banked Group 3 allowances in all accounts, rounded up to the nearest allowance. Finally, the EPA will deduct from each account any banked Group 3 allowances exceeding the account's recalibrated amount of banked allowances.

As the target bank amount used in the recalibration process for each control period, the EPA will use an amount determined as a percentage of the sum of the state emissions budgets for the control period. For the control periods from 2024 through 2029, the target percentage will be 21 percent, which is the sum of the states' minimum variability limits.³²⁶ For control periods in 2030 and later years, the target percentage will be 10.5 percent, or half of the sum of the states' minimum

³²⁶ As discussed in section VI.B.5, an individual state's variability limit can be higher than 21 percent in a given control period if the state's actual heat input for that control period is more than 121 percent of the historical heat input used in computing the state emissions budget for the control period.

variability limits. In the proposal, the EPA cited two reasons for proposing the 10.5 percentage amount. First, in the transition from CSAPR to the CSAPR Update, where the EPA set a target bank amount 1.5 times the sum of the variability limits, and in the transition from the CSAPR Update to the Revised CSAPR Update, where the EPA set a target bank amount of 1.0 times the sum of the variability limits, in each case the initial bank proved larger than necessary, as total emissions of all sources in the program were less than the budgets. Second, an analysis of year-to-year variability of heat input for the region covered by this rule suggests that the regional heat input for an individual year can be expected to vary by up to 10.5 percent above or below the central trend with 95 percent confidence. This variability analysis is an application to the entire region of the variability analysis EPA has performed for individual states to establish the minimum variability limit of 21 percent for the states in the trading program.³²⁷ When the analysis is performed at the regional level, the data show less year-to-year variation than when the analysis is performed at the individual state level. Within the trading program structure, it is reasonable to use variability analyzed at the level of individual states to set the variability limits, which apply at the level of individual states, while using variability analyzed at the level of the overall region to set a target level for a bank, which will apply at the level of the overall program.

In the final rule, in response to comments, the EPA has determined to maintain the 10.5 target percentage for the reasons discussed in previous paragraphs, but to defer application of this target percentage until the 2030 control period. For the control periods from 2024 through 2029, the EPA will instead use a target percentage of 21 percent. The reason for using a higher target percentage for the 2024–2029 control periods is to provide additional support for allowance market liquidity during these years, which both the EPA and commenters view as an important period of generating fleet transition for the power industry.

The annual bank recalibrations, at either ratio, are an important

enhancement to the trading program that will help maintain the control stringency determined to be necessary to address states' good neighbor obligations for the 2015 ozone NAAQS over time. Moreover, the recalibrations are less complex than alternative approaches would be. For example, the NO_x Budget Trading Program established in the NO_x SIP Call also contained provisions designed to prevent excessive accumulations of banked allowances on program stringency, but those provisions—under the name “progressive flow control”—introduced uncertainty as to whether banked allowances would be usable to offset one ton of emissions or less than one ton of emissions in the current control period. As a consequence of this uncertainty, in some control periods, allowances banked from earlier control periods traded at lower prices than allowances issued for the current control period.³²⁸ The EPA considers the recalibration mechanism established in this rule to be simpler with less associated uncertainty. Following each bank recalibration, all allowances usable for compliance in the control period will have known, equal compliance values for the remainder of the control period and until the deadline for surrendering allowances after the control period.

Finally, the EPA observes that the recalibration mechanism is entirely consistent with the Agency's existing authority under 40 CFR 97.1006(c)(6) to “terminate or limit the use and duration” of any Group 3 allowance “to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.” The Administrator is determining that the recalibrations are both necessary and appropriate to ensure that the control stringency selected in this rulemaking is maintained and states' good neighbor obligations with respect to the 2015 ozone NAAQS are addressed. The recalibration process will complement the revised budget-setting process by preventing any surplus of allowances created in one control period from diminishing the intended stringency and resulting emissions reductions of the emissions budgets for subsequent control periods. For further discussion

of the reasons for bank recalibration, see section VI.B.1.b.ii of this document.

The bank recalibration mechanism finalized in this rule is unchanged from the proposal except for the final rule's adoption of a target percentage of 21 percent rather than 10.5 percent for the control periods from 2024 through 2029. The EPA's responses to comments on the bank recalibration mechanism are discussed in the remainder of this section and in section 5 of the *RTC* document. Further discussion of the reasons for adopting a higher target percentage for the 2024–2029 control periods is included in section VI.B.1.d of this document.

Comment: Some commenters acknowledged the EPA's authority to manage the quantities of allowances carried over from one control period to the next as banked allowances, including some commenters who as a policy matter did not support such an approach. Other commenters claimed that any removal from the program of allowances banked in earlier control periods would constitute an unlawful taking of property or would constitute unlawful overcontrol.

Response: The EPA disagrees with comments contending that the proposed bank recalibration provisions would be unlawful, either as asserted takings of property or as over-control for purposes of the Good Neighbor provision. With respect to the claim that removing allowances would constitute takings of property, the commenters misconstrue the nature of an allowance. The allowances used in the Group 3 trading program are created under the program's regulations, which expressly provide that the allowances are not property rights but are limited authorizations to emit NO_x in accordance with the provisions of the Group 3 trading program.³²⁹ These provisions of the Group 3 trading program regulations have been in existence since the Revised CSAPR Update and were not reopened in this action. This approach of creating limited authorizations to engage in particular forms of conduct within a regulatory program extends back to the Acid Rain Program, where the approach was mandated by Congress, and has been followed by EPA in each subsequent allowance trading program for the electric power sector.³³⁰ Moreover, as noted earlier in this section, the Group 3 trading program regulations provide the EPA

³²⁷ See the Power Sector Variability Final Rule TSD from CSAPR, available at <https://www.epa.gov/csapr/power-sector-variability-final-rule-tds> for a description of the methodology. Also see the Excel document “OS Heat Input—Variability 2000 to 2021.xls” for updated data, application of the CSAPR variability methodology, and results applied to heat input for 2000 through 2021 for all states and for the region collectively.

³²⁸ For more discussion of the progressive flow control mechanism, as well as allowance price data showing a discounted value for banked allowances, see “NO_x Budget Trading Program: 2005 Program Compliance and Environmental Results” (September 2006) at 28–30, <https://www.epa.gov/sites/default/files/2015-08/documents/2005-nbp-compliance-report.pdf>.

³²⁹ 40 CFR 97.1006(c)(6)–(7).

³³⁰ See, e.g., 42 U.S.C. 7651b(f) and 40 CFR 72.9(c)(6)–(7) (Acid Rain Program example); 40 CFR 97.6(c)(6)–(7) (Federal NO_x Budget Trading Program example); 40 CFR 97.106(c)(5)–(6) (CAIR NO_x Annual Trading Program example).

Administrator with the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act, and the Administrator is making such a determination in this rule.

The EPA also disagrees that bank recalibration would constitute overcontrol. The emissions that are permissible in a given control period consistent with the Step 3 control stringency are quantified in the state emissions budgets for the control period. Banked allowances from previous control periods are necessarily surplus to the state emissions budgets for the current control period. As noted in section VI.B.1, in an allowance trading program, banking provisions can serve several useful purposes, including continuously incentivizing sources to reduce their emissions even when they already hold sufficient allowances to cover their expected emissions for a control period, facilitating compliance cost minimization, accommodating necessary operational flexibility, and promoting allowance market liquidity. However, these useful purposes do *not* include allowing sources to plan to emit in excess of the Step 3 control stringency as represented by the state emissions budgets for the control period. Accordingly, in the overcontrol analysis discussed in section V.D.4, the EPA analyzed whether the emissions reductions necessary to meet the state emissions budgets without relying for compliance purposes on any allowances banked in earlier control periods would result in overcontrol and determined there would be no overcontrol. (That is, the modeling of the effects of the Group 3 emissions budgets in 2026 did not include an assumption that there would be any banked allowances.) Thus, even if the Agency had finalized regulatory provisions removing *all* banked allowances from the trading program between control periods—in contrast to the actual bank recalibration provisions, which permit substantial quantities of banked allowances to remain in the trading program—the information available to the Agency suggests such provisions would not constitute overcontrol. With respect to some commenters' assertions that bank recalibration would over-control by "writing off" emission reductions that may have gone beyond the reductions necessary to address the Good Neighbor provision or would make it more difficult to create surplus allowances in one control period to offset excess emissions in later control periods, EPA

notes that the NAAQS apply continuously, and the possibility that the sources in a state may have done more than the minimum necessary to meet the state's Good Neighbor obligations in one control period does not create a right for the state to do less than is necessary to meet the state's Good Neighbor obligations in subsequent control periods.

Comment: Some commenters expressed concern that excessive quantities of banked allowances, like excessive quantities of budgeted allowances, can lead to lower allowance prices. The commenters observed that with lower allowance prices, some units would likely operate their controls less effectively, resulting in a greater likelihood that the emissions stringency found necessary in this rule would not be sustained. Other commenters expressed the view that other provisions of the rule, including more stringent state emissions budgets, the backstop daily NO_x emissions rate provisions, and the assurance provisions would be sufficient to incentivize EGUs to operate their controls effectively, making allowance bank recalibration superfluous for this purpose.

Response: The EPA agrees with the comments explaining that without bank recalibration, the quantities of banked allowances can grow, leading to lower allowance prices, diminished incentives for sources to optimize control operation, and greater risk of failure to sustain the Step 3 control stringency, and disagrees with the comments arguing that other rule provisions would make bank recalibration unnecessary. The suggestion that the assurance provisions can maintain program stringency regardless of allowance quantities ignores the fact that the emission levels consistent with the Group 3 control stringency in a given control period are the state emissions budgets, not the higher assurance levels. If the quantities of banked allowances in the program grow to the point where sources collectively can plan to emit above the collective state emissions budgets, then the trading program would be unable to ensure that the Group 3 control stringency is being achieved, even if emissions do not rise further than the assurance levels. Further, there are now examples from the Group 2 trading program of sources emitting in excess of the state-wide assurance levels, because a glut of banked allowances which was not prevented by the regulations for that trading program rendered even the three-to-one surrender ratio ineffective. Suggestions that the backstop emissions rate provisions can maintain program

stringency regardless of the quantities of banked allowances are similarly mistaken, because rather than reducing overall emissions of all sources in the trading program, the backstop rate provisions are designed to ensure that the largest individual sources of potential emissions operate their controls consistently. If the quantities of banked allowances are allowed to grow to the point where sources collectively can plan to emit above the collective state emissions budgets, the backstop rate provisions would do nothing to constrain emissions from the sources not subject to the backstop rate.

With respect to the suggestion that state emissions budgets reflecting sufficient control stringency can avoid the need for bank recalibration, the EPA observes that the budget-setting and bank recalibration provisions in this rule are complements, not substitutes. If in a given year sources collectively emit against the collective state emissions budgets such that the ending allowance bank—that is, the allowances remaining after deduction of the allowances required for compliance—is less than the bank target amount, then the bank will not be recalibrated for the following control period. However, in the event that sources collectively emit against the collective state emissions budgets such that the ending allowance bank is above the bank target amount, then the recalibration provisions will ensure that the recalibrated allowance bank does not introduce an excessive overall quantity of allowances into the trading program for the following control period when combined with the state emissions budgets calculated for that control period. Without the recalibration provisions, the trading program would lack any mechanism for removing excess allowances that are inconsistent with maintaining the Step 3 emissions control stringency which the Step 4 trading program is designed to implement.

Comment: Some commenters claimed that the recalibration process itself would have undesirable consequences. First, some said that because bank recalibration would be executed partway through the control period, it would introduce uncertainty concerning the quantities of allowances each source would have available, impeding efforts to plan. Second, some commenters claimed that the prospect of bank recalibration would create counterproductive incentives for allowance holders. According to the commenters, allowance holders would be incentivized to "use or lose" their allowances (to reduce the number of allowances that would be removed from

their accounts in the recalibration process), thereby causing increased emissions, or alternatively would be incentivized to refuse to sell allowances (to allow the holders to have more allowances after the next recalibration), thereby reducing allowance market liquidity.

Response: The EPA disagrees with these comments. As discussed previously in this section, the recalibration process has been scheduled for August 1 of each control period because compliance for the previous control period (and the associated allowance trading activities) would not be completed until after June 1. However, the information needed to project the degree of recalibration will be available by early November of the previous year, and the EPA will make an estimate publicly available no later than March 1, two months before the start of the control period. Further, at least 80 percent of the allowances for use in a given control period will be the allowances allocated from the state emissions budgets (with the recalibrated banked allowances from the prior control period comprising the remainder), and the emissions budgets and unit-level allocations amounts will be known approximately a year before the start of the control period.

The comments claiming that the introduction of a bank recalibration process would create incentives to “use or lose” allowances or to hoard allowances are not persuasive. By reducing the supply of allowances carried over from previous control periods, bank recalibration would tend to raise the price of allowances in the current control period, making it more cost-effective and therefore in sources’ interest to further reduce their emissions than to increase their emissions. Higher allowance prices would also increase the cost of hoarding allowances just as higher fuel prices raise the cost of maintaining large fuel inventories. Moreover, the EPA expects that the prospect of having banked allowances recalibrated after the end of the control period is much more likely to *discourage* hoarding than to encourage it. Given the choice between holding an allowance which may be removed as part of an upcoming recalibration process or instead selling the allowance for cash, the sale option will become more attractive. By creating a “sell or lose” incentive for holders of surplus allowances, the recalibration process should increase allowance market liquidity. At the same time, by ensuring a banked allowance will always have some value for use in a future control period, the bank

recalibration mechanism in this program will continue to incentivize early emissions reductions.

Comment: Turning to the level of the bank recalibration target, some commenters objected to the target bank percentage of 10.5 percent, saying that a larger bank would be needed to ensure that sufficient allowances would be available to enable sources to run as needed to provide reliable electricity service, particularly with the large year-to-year swings in budgets that the commenters anticipated could occur with dynamic budgets computed using a single rolling historical year and with anticipated growth in renewable generation. Some commenters recommended a target bank percentage of 21 percent. Some commenters stated that even if the overall quantity of allowances available for use was greater than the total amount of emissions, a larger bank of allowances would facilitate trading and promote greater allowance market liquidity, citing reports of high allowance prices in 2022.

Response: As discussed in sections VI.B.1.d and VI.B.4 and earlier in this section, the EPA does not agree with comments suggesting that annual bank recalibration in itself poses a risk to electric grid reliability. Nevertheless, the Agency has made several changes from proposal in the final rule designed to address concerns expressed about reliability by increasing compliance flexibility through the 2029 control period. These changes through the 2029 control period include the use of a target bank percentage of 21 percent and the promulgation of preset budgets that will serve as the state emissions budgets unless the dynamic budgets for the control periods are higher. In addition, to reduce year-to-year variability under the budget-setting methodology, dynamic budgets will be calculated using multiple years of historical heat input data instead of heat input data from a single year. The EPA views these changes as responsive to the principal reasons that commenters gave for their claims that the target bank percentage should be higher than 10.5 percent. Regarding the claim that a higher target bank percentage is needed because increased renewable generation makes the demand for fossil generation more variable, commenters did not provide evidence demonstrating that the overall quantities of fossil generation throughout the multi-state region covered by this rule—as opposed to the operating patterns of some individual units—are becoming more variable, and the Agency declines to make an

adjustment for such a reason at this time.

With respect to the comments advocating for an even higher bank target percentage to facilitate trading and promote market liquidity, the Agency observes that any such advantage of larger allowance banks must be balanced with the disadvantages of excess allowance supply—specifically, reduced allowance prices, diminished incentives for sources to optimize control operation, and greater risk of failure to sustain the Step 3 control stringency. In the final rule, the EPA finds that a reasonable balance between these opposing considerations is struck by temporarily adopting a higher bank target percentage of 21 percent (consistent with the initial bank targets used in this rule and previous rules) and deferring implementation of the 10.5 percent target bank percentage identified by the Agency’s analysis as a sustainable percentage in the longer term until the 2030 control period.

7. Unit-Specific Backstop Daily Emissions Rates

While the identified EGU emissions reductions in section V of this document (*i.e.*, the Step 3 emissions control stringency) are incentivized and secured primarily through the corresponding seasonal state emissions budgets (expressed as a seasonal tonnage limit for all covered EGUs within a state’s borders) described earlier, the EPA is also incorporating a backstop daily emissions rate of 0.14 lb/mmBtu applied to coal-fired steam units serving generators with nameplate capacity greater than or equal to 100 MW in covered states, except circulating fluidized bed units. This is important for ensuring the elimination of significant contribution on a more consistent basis from the relevant sources and over each day of the ozone season.

Starting with the 2024 control period, a 3-for-1 allowance surrender ratio (instead of the usual 1-for-1 surrender ratio) will apply to emissions during the ozone season from any large coal-fired EGU with existing SCR controls exceeding by more than 50 tons a daily average NO_x emissions rate of 0.14 lb/mmBtu. The daily average emissions rate provisions will apply to large coal-fired EGUs without existing SCR controls (except circulating fluidized bed units) starting with the second control period in which newly installed SCR controls are operational at the unit, but not later than the 2030 control period. See Appendix A of the Ozone Transport Policy Analysis Final Rule

TSD for a list of coal-fired steam units serving generators larger than or equal to 100 MW in covered states for which the identified backstop emissions rate will apply.

For each unit subject to the backstop daily emissions rate provisions for a given control period, the amount of emissions subject to the 3-for-1 surrender ratio will be determined as follows, generally on an automated basis using the unit's data acquisition and handling system (DAHS) required under 40 CFR part 75. For each day of the control period where the unit's average emissions rate for that day was higher than 0.14 lb/mmBtu, the owner or operator will compute what the unit's reported emissions on that day would have been (given the unit's reported heat input for the day) at an emissions rate of 0.14 lb/mmBtu. The difference between the unit's emissions for the day as actually reported and the emissions that would have been reported if the unit's emissions rate was 0.14 lb/mmBtu is the unit's daily exceedance. The amount of emissions subject to the 3-for-1 surrender ratio for the control period is the sum of the unit's daily exceedances for all days of the control period minus 50 tons (but not less than zero).³³¹ All calculations will rely on the data monitored and reported for the unit in accordance with 40 CFR part 75.

The EGU NO_x Mitigation Strategies Final Rule TSD describes the methodology for deriving the 0.14 lb/mmBtu daily rate limit in more detail. The methodology is summarized as follows. First, consistent with stakeholders' focus on providing daily assurance of control operation, which is consistent with the 8-hour form of the 2015 ozone NAAQS and the tendency for ozone levels to spike on a diurnal cycle, the EPA determined that daily (as opposed to hourly or monthly) was an appropriate time metric for backstop emissions rate limits instituted to ensure operation of controls on high ozone days. The EPA derived the 0.14 lb/mmBtu daily rate limit by determining the particular level of a daily rate that would be comparable in stringency to the 0.08 lb/mmBtu seasonal emissions rate that the Agency has identified as reflecting SCR optimization at existing units.³³² The

³³¹ In the regulatory text at 40 CFR 97.1024 defining the total quantity of allowances that must be surrendered for a source's emissions in a control period, these amounts of emissions for all the units at the source are subject to a requirement to surrender two extra allowances per ton in addition to the usual 1-for-1 allowance surrender requirement, yielding a total surrender ratio of 3-for-1 for emissions over the 50-ton threshold.

³³² See page 24 of "Guidance for 1-hour SO₂ Nonattainment Area SIP Submission" at https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

EPA first conducted an empirical exercise using reported daily emissions rate data from existing, SCR-controlled coal units that were emitting at or below 0.08 lb/mmBtu on a seasonal average basis. This seasonal rate reflects the average across a unit's range of varying daily rates reflecting different operation conditions. When the EPA examined the daily emissions rate pattern for these units considered to be optimizing their SCRs on a seasonal basis, the EPA observed that over 95 percent of the time, their daily rates were below 0.14 lb/mmBtu. In addition, for these units, less than 1 percent of their seasonal emissions would exceed this daily rate limit.

The EPA conducted this analysis to be consistent with the methodology developed in the 2014 1-hr SO₂ attainment area guidance for identifying "comparably stringent" emissions rates over varying time-periods.³³³ Appendix C of that guidance describes a series of steps that involve: (1) compiling emissions data to reflect a distribution of emissions rates with various averaging times, (2) determining the 99th percentile of the average emissions values compiled in the previous step, and then (3) applying "adjustment factors" or ratios of the 99th percentile values to emissions rates to convert them (usually from a short-term rate to a longer-term rate). In this case, the EPA applied the methodology in reverse to convert a longer-term limit (the seasonal rate of 0.08 lb/mmBtu which was assumed to be equivalent to a 30-day rate of 0.08 lb/mmBtu for purposes of this comparison of rates across averaging times) to a comparably stringent short-term limit (a daily rate of 0.14 lb/mmBtu).

The inclusion of a 50-ton threshold for emissions exceeding the backstop daily emissions rate before the 3-for-1 surrender applies is a change from the proposal. As discussed in section VI.B.1.d of this document, the EPA made this change in response to comments concerning the possibility that the 3-for-1 surrender ratio could otherwise have applied to emissions outside an EGU operator's control, with

www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf. "A limit based on the 30-day average of emissions, for example, at a particular level is likely to be a less stringent limit than a 1-hour limit at the same level 1 since the control level needed to meet a 1-hour limit every hour is likely to be greater than the control level needed to achieve the same limit on a 30-day average basis."

³³³ See Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions available at https://www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.

the most important example being the emissions during unit startup before SCR equipment can be brought into service, and to a lesser extent the emissions during unit shutdown. The analysis used by the EPA to derive the 50-ton threshold is described in detail in the Ozone Transport Policy Analysis Final Rule TSD. Briefly, for a set of 164 SCR-equipped units with seasonal average NO_x emissions rates at or below 0.08 lb/mmBtu in 2021, the EPA evaluated the total amounts of emissions that would have been determined to exceed a daily average emissions rate of 0.14 lb/mmBtu in the 2021 and 2022 ozone seasons. In the 2021 ozone season, only 572 tons out of these units' total emissions of 60,350 tons, or 0.9 percent, would have been considered exceedances, with an average exceedance per unit of less than 4 tons. The highest amount for any of the 164 individual units in either ozone season was 48 tons. Based on this analysis, the EPA concludes that adding a 50-ton threshold to the backstop daily emissions rate provisions will ensure that substantially all emissions outside the control of an SCR-equipped unit's operator will not be subject to the 3-for-1 surrender ratio. Because there is no reason to expect the range of emissions during conditions when SCR controls cannot be operated to differ between SCR-equipped units and units without SCR, inclusion of the 50-ton threshold effectively prevents application of the 3-for-1 ratio to emissions during startup and shutdown by units without SCR as well.

At the same time, the EPA believes the 50-ton threshold is not large enough to eliminate the intended incentive to achieve emissions rates consistent with good SCR performance under conditions other than startup and shutdown. For a set of 124 SCR-equipped units with seasonal average NO_x emissions rates above 0.08 lb/mmBtu, the total amount of emissions exceeding a daily average emissions rate of 0.14 lb/mmBtu in the 2021 ozone season was 18,629 tons. Of this total amount, 15,374 tons would have been in excess of the 50-ton thresholds for the various units, indicating that even after application of the threshold, the 3-for-1 surrender ratio would have applied to over 80 percent of the daily exceedance amounts.

The backstop daily NO_x emissions rate provisions finalized in this rule are unchanged from the proposal except for the inclusion of a 50-ton threshold for emissions exceeding the backstop emissions rate before the 3-for-1 surrender ratio applies and the deferral of the application of the provisions to units without existing SCR controls

until the 2030 control period or, if earlier, the second control period in which new SCR controls are operated at a unit. The EPA's responses to comments on the backstop daily NO_x emissions rate provisions, including the reasons for these changes, are discussed in the remainder of this section and in section 5 of the *RTC* document.

Comment: Some commenters strongly supported the backstop daily emissions rate provisions, noting their benefit to downwind receptors on potential nonattainment days, their benefit to neighboring communities, and evidence of deterioration in SCR performance in the absence of such provisions. Other commenters stated that the backstop daily emissions rate provisions are unnecessary, either because SCR-equipped EGUs would already be sufficiently incentivized to operate and optimize their controls by the stringency of the state emissions budgets and the resulting allowance prices or because most SCR-equipped EGUs are already required to operate and optimize their SCRs by conditions in their operating permits. Some commenters cited previous EPA analyses showing that it is unusual for SCR-equipped units to turn off their SCRs only on high electricity demand days (HEDD).

Commenters suggested diverse possible changes to the types of EGUs that would be covered by the backstop daily emissions rate provisions. Some commenters stated that the provisions should apply to all EGUs or to all SCR-equipped EGUs, including non-coal-fired units. Other commenters stated that exemptions should be provided for units operating at capacity factors below 10 percent or for emissions during emergencies.

Some commenters stated that implementation of the backstop daily emissions rate provisions would cause unintended and counterproductive consequences. Some of these commenters claimed that by requiring the surrender of extra allowances, the backstop emissions rate provisions would create shortages of allowances for the program overall. Other commenters claimed that the disincentives to operate units subject to the backstop emissions rate provisions would cause load to shift to higher-emitting generators not covered by the trading program (such as sources in states outside the program's geographic region, EGUs smaller than 25 MW, and sources considered demand-side resources, including end-user-sited diesel generator units), potentially resulting in higher overall emissions.

Response: The EPA agrees that backstop daily emissions rate provisions should be implemented and disagrees

with comments suggesting that the need for the backstop daily emissions rate provisions is contradicted by previous EPA analyses or is already adequately addressed by other provisions of this rule or other legal requirements. As discussed in sections V.D.1 and VI.B.1.c of this document, the EPA has determined that a control stringency reflecting universal installation and operation of SCR technology at large coal-fired EGUs is appropriate. There are several important differences between this rule and previous actions addressing interstate ozone transport where the Agency did not include such provisions. First, this rule constitutes a full remedy, unlike some prior actions. Second, this rule is the first rule in which the EPA is addressing good neighbor obligations with respect to the more protective 2015 ozone NAAQS. Third, the EPA has examined the most recent data over a broader geographic and temporal footprint specific to the coverage of this rule, and it illustrates a greater degree of SCR performance erosion than in the prior years in which EPA conducted such analysis. Fourth, nonattainment and maintenance for this NAAQS are projected to persist well into the future in EPA's baseline, making enhancements and safeguards such as the backstop daily emissions rate provisions essential for securing elimination of significant contribution in future periods for which fleet configuration is inherently more uncertain.

With respect to claims that inclusion of the backstop daily emissions rate provisions is contradicted by the EPA's earlier analyses concerning SCR operational changes specific to high electricity demand days, the EPA disagrees. Historical data reported to the EPA show that multiple SCR-equipped units across the states covered by this action have chosen not to operate their SCRs, or to operate them at materially less than their full removal capability, for entire ozone seasons. The apparent infrequency of one type of behavior—*i.e.*, instances of units running their controls on most days but turning the controls off specifically on high electricity demand days—does not contradict the evidence concerning another type of behavior—*i.e.*, non-operation or suboptimal operation of controls for entire ozone seasons. The evidence from previous trading programs demonstrates that reliance solely on the incentives created by allowance prices and corresponding static state emissions budgets has been insufficient to cause all SCR-equipped

units to operate and optimize their controls for entire ozone seasons.

The EPA acknowledges that some SCR-equipped units are likely already subject to other legal requirements calling for their SCR controls to be operated and optimized such that their seasonal average NO_x emissions rates will generally not exceed 0.08 lb/mmBtu (the level of seasonal SCR performance that the EPA used to derive the equivalent 0.14 lb/mmBtu level of daily SCR performance for the backstop daily NO_x emissions rate). However, commenters do not claim, and the EPA does not believe, that *all* SCR-equipped units are subject to other legal requirements calling for an equivalent degree of SCR operation and optimization. In the context of a multi-state trading program, it is more efficient and equitable, and far more transparent, for the EPA to establish rule provisions uniformly incentivizing all large coal-fired EGUs to install and operate SCR controls than to attempt to establish differentiated requirements for various units according to the EPA's analysis of the effectiveness of their pre-existing permit conditions. Further, to the extent that a given unit's permits already require SCR performance that would meet the backstop emissions rate established in this rule, or to the extent that allowance prices would incentivize the unit to operate the SCR anyway, the EPA expects that the backstop daily emissions rate provisions (as finalized with a 50-ton threshold to address emissions outside an EGU's control before the 3-for-1 surrender ratio applies) will cause no incremental cost for the unit.

The EPA disagrees with the suggested changes to applicability of the backstop emissions rate provisions. With respect to the comments advocating broader coverage, the EPA discusses its reasons for applying the provisions only to coal-fired EGUs in section VI.B.1.c of this document, including the fact that operation of SCR controls is a well-established practice among the best performing coal-fired boilers but not for non-coal-fired units.³³⁴ The comments indicate a preference for a less flexible trading program design than the EPA has found appropriate but do not demonstrate that EPA's decision to allow greater flexibility is either impermissible or unreasonable; our reasoning in this regard is further explained in section VI.B.1.c.i of this

³³⁴ Nationwide and among operating units in 2021, EPA identified the best performing quartile (*i.e.*, lowest ozone season emissions rate) of coal-fired EGU boilers (excluding CFB units). Nearly 100 percent of these units (159 of 160 units) were equipped with SCR controls.

document. With respect to the comments advocating narrower coverage, the commenters have provided no information indicating that the sources for which exemptions are sought could not comply with the provisions, including through the surrender of additional allowances if necessary. The EPA notes that emissions from coal-fired units operating at low capacity factors may be concentrated around days of high electricity demand when incentives to minimize such emissions may be most helpful in mitigating downwind air quality problems. The EPA also notes that to the extent the comments are intended to support exemptions for units without existing SCR controls, the final rule defers application of the backstop emissions rate provisions to such units until the 2030 control period, providing additional flexibility to develop alternatives to the use of such units if the owners choose not to equip them with SCR controls.

Finally, the EPA also disagrees with the comments asserting that the backstop emissions rate provisions would cause unintended and counterproductive consequences. With respect to units already equipped with SCR controls, the EPA expects that by far the most important effect of the provisions will be to incentivize the units to operate and optimize their controls. The EPA sees no basis for speculation that such units would choose to operate in a manner that would result in large amounts of emissions becoming subject to the 3-for-1 allowance surrender ratio or in generation being shifted to sources outside the trading program. The results of the EPA's modeling of benefits and costs of the rule show little leakage of emissions to non-covered sources, and commenters have presented no analysis to the contrary. For instance, as shown in Table 4.6 of the *RIA*, non-covered state ozone season NO_x emissions increased on average by 1 percent over the 2023–2030 time period between the base and final rule scenarios, while covered state emissions fell by 14 percent on average over the same period. With respect to units without existing SCR controls, the EPA expects the backstop emissions rate provisions, when they would take effect for such units, to provide a strong incentive against extensive operation (unless and until such controls are installed), again not resulting in large amounts of emissions becoming subject to the 3-for-1 allowance surrender ratio.

Comment: For units with existing SCR controls, the aspect of the backstop daily emissions rate provisions that

received the most attention in comments was how emissions outside the operator's control should be treated. Multiple commenters expressed concern that the backstop daily emissions rate would be exceeded on days when the SCR equipment cannot be operated for all or a portion of the day. The most commonly cited example of a situation where SCR equipment cannot be operated was unit startups, although some commenters also mentioned unit shutdowns, boiler or emissions control malfunctions, and unit maintenance or tests. The commenters expressed the view that emissions that cannot be controlled by SCR equipment should be exempted from the backstop emissions rate provisions and suggested a variety of approaches for implementing an exemption.

Some commenters also stated that the backstop emissions rate provisions would not sufficiently accommodate sustained low-load operation, such as where an SCR-equipped unit operates for extended periods at a load level too low to permit SCR operation so that the unit is ready to ramp up to higher load levels in less time than would be required for a startup. The commenters suggested that implementation of a backstop daily rate would reduce the ability to operate the units in this manner, generally reducing system flexibility. Some noted that the need for flexibility of this nature is increasing because of the rapid growth in intermittent renewable generation.

Additional comments on the backstop daily emissions rate provisions for units with existing SCR controls addressed the level of the daily emissions rate and the implementation timing. With respect to the rate level, various commenters suggested rates from 0.08 to 0.20 lb/mmBtu. With respect to implementation timing, some commenters stated that because immediate compliance was possible, the good neighbor provision required implementation as of the 2023 control period rather than the 2024 control period as proposed. Other commenters expressed the view that units with existing SCR controls should not be required to comply with the backstop emissions rate provisions earlier than units without existing SCR controls. Some owners of SCR-equipped EGUs that exhaust to stacks shared with EGUs without SCR suggested that their particular units with existing SCR controls should not be required to comply with the backstop emissions rate provisions earlier than units without existing SCR controls in order to avoid the cost of upgrading their emissions monitoring equipment.

Response: With respect to the topic of emissions outside an operator's control, as a general matter the EPA agrees that the backstop daily emissions rate provisions are intended to incentivize good SCR operation and that it was not the Agency's intent to apply a higher surrender ratio to emissions that are truly unavoidable, such as emissions occurring before an operator could reasonably initialize SCR operation when a unit is started up. As explained elsewhere in this section, the EPA selected the level of the backstop rate based on analysis of 2021 emissions data showing that for SCR-equipped coal-fired units achieving seasonal average NO_x emissions rates at or below 0.08 lb/mmBtu, more than 99 percent of the units' emissions would fall below a backstop daily emissions rate of 0.14 lb/mmBtu. In response to the comments summarized previously, the EPA has further analyzed 2021 and 2022 emissions data to determine what if any modifications to the proposal might be appropriate to limit the imposition of a 3-to-1 allowance surrender requirement for emissions caused by circumstances outside an operator's control while preserving the intended incentive to operate and optimize SCR controls whenever possible. The analysis showed that for the same set of units achieving seasonal average emissions rates at or below 0.08 lb/mmBtu, the highest total amount of emissions exceeding the backstop daily emissions rate in either the 2021 or 2022 control period for any unit was 48 tons. The Agency views this amount as a reasonable upper bound on the quantity of emissions that might contribute to an exceedance of the backstop emissions rate arising from circumstances outside an operator's control for any coal-fired unit, not just the well-controlled units in the data set analyzed, because the amount generally encompasses all of a unit's emissions occurring in hours when an SCR could not be operated over an ozone season.

Based on this analysis, the backstop daily emissions rate provisions in this final rule exclude the first 50 tons of a unit's emissions in a given control period exceeding the backstop daily emissions rate from incremental allowance surrender requirements. The EPA finds that establishing a threshold of this nature will provide an appropriate maximum exclusion to all coal-fired units for unavoidable emissions caused by circumstances outside the operator's control while maintaining the incentives for less well-controlled units to improve their emissions performance on all days of

the ozone season. Well-controlled units will likely have no emissions over the threshold that will be subject to incremental allowance surrender requirements, while for SCR-equipped units not already achieving a seasonal average emissions rates sufficiently low to routinely operate at daily average emissions rates of 0.14 lb/mmBtu or less, the incentive to reduce daily emissions rates will remain in place, because the 50-ton threshold is not expected to encompass all emissions exceeding the backstop daily emissions rate for such units. In contrast to more complicated exceptions suggested by commenters, the 50-ton threshold can be easily integrated into the overall trading program structure with minimal additional recordkeeping and reporting requirements.

With respect to the comments claiming that the inability of some SCR-equipped units to operate their SCR controls at sustained low load levels likewise merits alteration of the backstop daily emissions rate provisions, the EPA disagrees. There is no dispute concerning the technical need for a unit to attain and maintain a certain range of exhaust gas temperatures at the SCR inlet in order to achieve optimal SCR performance and no dispute concerning the general relationship between a unit's load level in a given hour and its ability to attain and maintain that exhaust gas temperature range in that hour. However, the EPA is also aware that at least in some cases, units whose role in the integrated electric system currently calls for them to operate at low load levels for sustained periods (such as overnight) in fact may be able to operate at slightly higher load levels that would accommodate SCR operation during those periods and still meet the needs of the integrated electric system, thereby avoiding operation of the unit for sustained periods with the SCR out of service. Figure B.5 in the EGU NO_x Mitigation Strategies Final Rule TSD illustrates this opportunity using data reported for the 2021 and 2022 ozone seasons by a large SCR-equipped EGU in Pennsylvania. In both ozone seasons, the unit often cycled daily between its maximum load of approximately 900 MW during the daytime and a lower load level overnight, and in both ozone seasons the unit's typical daytime emissions rate was between 0.05 and 0.07 lb/mmBtu. However, while in the 2021 ozone season, the unit cycled down to a load level of approximately 440 MW overnight and did not operate its SCR, in the 2022 ozone season, when allowance prices were considerably

higher, the unit cycled down to a load level of approximately 540 MW overnight and did operate its SCR. Despite the higher nighttime generation levels, the result was a decrease of roughly 50 percent in the unit's seasonal average NO_x emissions rate, from approximately 0.14 lb/mmBtu to approximately 0.07 lb/mmBtu, and a comparable reduction in NO_x mass emissions. This unit is not uniquely situated; operating data for several other large SCR-equipped EGUs in Pennsylvania show the same past pattern of cycling down to low load levels at which the SCR controls cannot be operated, and these other units have similar opportunities to cycle down to somewhat higher load levels (necessarily subject to the needs and constraints of the integrated electric system) at which their SCR controls can be operated.³³⁵ No commenter has submitted data to the contrary. Furthermore, this example demonstrates the need for this rule's backstop emissions rate provision, which (had it been in place) would have motivated this facility to operate its SCR overnight during the 2021 ozone season when the prevailing allowance price provided an insufficient incentive to do so.

The EPA disagrees with the comments advocating for a backstop daily emissions rate lower or higher than 0.14 lb/mmBtu. In general, these comments simply represent disagreements with the EPA's conclusions regarding the identification of required emissions reductions under this rule, as reflected in part by the EPA's conclusion that a seasonal average emissions rate of 0.08 lb/mmBtu reasonably reflects the seasonal average emissions rate achievable through optimization of controls by existing SCR-equipped units that are not already achieving a lower seasonal average emissions rate. Comments concerning the selection of the 0.08 lb/mmBtu seasonal average emissions rate are addressed in section V of this document. Commenters did not challenge the EPA's analysis identifying a daily emissions rate of 0.14 lb/mmBtu as comparable in stringency to a seasonal average emissions rate of 0.08 lb/mmBtu (see further discussion elsewhere in this section).

The EPA also disagrees with the comments stating that the backstop daily emissions rate provisions should apply to units with existing SCR controls starting in a control period earlier or later than the 2024 control period. The EPA does not consider

implementation of the provisions in the 2023 control period feasible because it is currently unknown whether the necessary updates to the emissions recordkeeping and reporting software for all the affected sources could be completed and tested before July 30, 2023, which is the first quarterly reporting deadline for the 2023 control period. Moreover, as discussed in section VI.B.1.c.i of this document, implementing the requirements starting in 2024 will provide a window for EGUs to improve the consistency of SCR operation or in some cases to optionally install additional emissions monitoring equipment. As for the suggestion that implementation timing of the backstop daily emissions rate provisions for units with existing SCR controls should be synchronized with the later implementation timing for units without existing SCR controls, the EPA is not persuaded that there is any inequity in implementing provisions intended to incentivize operation of SCR controls first at sources that already have such controls and later at sources that do not already have such controls, allowing time for the latter sources to install the controls. In any event, in this instance, where some upwind sources have an immediate and highly cost-effective option for controlling their emissions, the statutory requirement for significant contribution to be eliminated as expeditiously as practicable so as to provide downwind states with the protection intended by the Good Neighbor provision overrides these sources' claim of inequity relative to sources whose emissions control options would take longer and have higher cost. We conclude that the backstop daily emissions rate is an important aspect of the elimination of significant contribution and should be applied at the relevant units. It is only out of recognition of unique circumstances associated with facilitating power-sector transition as identified by commenters, that we defer the application of the rate for the minority of units that have not yet installed SCR controls.

Finally, with respect to the SCR-equipped units that share common stacks with units that do not have SCR, the EPA disagrees that monitoring cost considerations merit a later implementation date for the backstop daily emissions rate provisions. As discussed in section VI.B.10 of this document, five plants with this configuration are covered by the rule (one of which has announced plans to retire in 2023). Under this rule, as proposed, the owner of a plant with this

³³⁵ See the spreadsheet "Conemaugh and Keystone unit 2021 to 2022 hourly ozone season data" in the docket.

configuration can choose between either upgrading the plant's monitoring systems so as to obtain unit-specific NO_x emissions rate data for each unit subject to the backstop daily emissions rate or else using the NO_x emissions rate data from the common stack, recognizing that the common stack emissions rate would generally be biased upwards relative to the emissions rate that could be reported for the SCR-equipped unit if that unit's emissions were monitored separately. Commenters have suggested a third option of a temporary exemption from the backstop emissions rate to avoid the cost of upgrading their monitoring systems. With the timing for implementation of the backstop emissions rate provisions for currently uncontrolled units in the proposal, the temporary exemption for the SCR-equipped units would have been in place for three control periods, from 2024 through 2026. With the final rule's deferral of the implementation of the backstop emissions rate provisions for the uncontrolled units for up to three years, the suggested temporary exemption for the SCR-equipped units would be in effect for up to six control periods, from 2024 through 2029. The EPA does not consider it reasonable to allow these SCR-equipped units an exemption from the backstop rate provisions for six years to avoid the cost of upgrading their monitoring systems, particularly given that the additional costs of monitoring at the individual-unit level are already borne by the large majority of other plants and the rule already provides these plants with an alternative to the monitoring system upgrades, if desired, by allowing the plants to use the emissions rate data from the common stack.³³⁶

Comment: With respect to units without existing SCRs, some commenters viewed the backstop daily emissions rate provisions as likely to make units without SCR altogether unwilling or unable to operate and characterized the provisions as a mandate for such units to install such controls or retire as of the control period when the provisions are implemented. Other commenters acknowledged that the provisions are not actually hard limits but stated that the higher allowance surrender ratio for emissions in excess of the backstop daily rate would nevertheless reduce the ability of

such units to operate as needed to back up intermittent renewable generation. Some commenters claimed that inclusion of the backstop daily emissions rate provisions would substantially eliminate the potential benefits of allowance trading, because all units would have to meet the same emissions rate.

Some commenters stated that the proposed application of the daily backstop emissions rate provisions in the 2027 control period in some cases would occur only slightly before the units' otherwise planned retirement dates, and that short-term reliability considerations could create the need to make substantial investments in new controls at the units, which in turn could result in deferral of the units' retirement plans. In the proposal, the EPA requested comment on the possibility of deferring the application of the backstop emissions rate provisions to units without existing SCR controls until the 2029 control period if the owners provided the EPA with information indicating with sufficient certainty that the units would retire by the end of 2028. Commenters in favor of this concept suggested longer deferral periods, ranging from 2029 through 2032, and some also suggested that the EPA should simultaneously enlarge the emissions budgets to provide more allowances for units subject to the deferred requirement. Other commenters opposed any deferral of the applicability of the backstop rate provisions.

Response: The EPA disagrees that implementation of the backstop daily emissions rate provisions for EGUs without existing SCR controls constitutes a mandate for such units to install controls or retire but agrees that, as intended, the provisions would create strong incentives to minimize operation of the units unless and until controls are installed, and further agrees that in some instances retirement and replacement may be a more economically attractive option for the unit's customers and/or owners than installation of new controls. The EPA's rationale for determining at Step 3 that the control stringency required to address states' good neighbor obligations includes achievement of emissions rates consistent with good SCR performance at all large coal-fired EGUs (other than circulating fluidized bed boilers) is discussed in section V.D.1 of this document, and the EPA's rationale for determining at Step 4 that the trading program should include strong unit-level incentives to implement these controls is discussed in section VI.B.1.c. of this document. As

noted in section VI.B.1.c of this document, the backstop daily emissions rate provisions are structured as incremental allowance surrender requirements rather than as directly enforceable emissions limits to incentivize improved emissions performance at the individual unit level while continuing to preserve, to the extent possible, the advantages that the flexibility of a trading program brings to the electric power sector. The EPA appreciates that, in comparison to previous transport rules using a trading program mechanism for the power sector, the degree of flexibility available under this rule is reduced both by the greater stringency of the overall emissions reduction requirements, which leave less room to accommodate emissions from high-emitting units such as uncontrolled coal-fired units, and by the backstop daily emissions rate provisions. However, the EPA maintains that the trading program structure still is significantly more flexible than an array of directly enforceable emissions limits imposed on all EGUs or even on all coal-fired EGUs, and the comments do not show otherwise.

With respect to the comments concerning the timing for application of the backstop daily emissions rate provisions to EGUs without existing SCR controls, in the final rule the provisions will apply to these units starting with the second control period in which newly installed SCR controls are operational at the unit, but not later than the 2030 control period. As discussed in section VI.B.1.d of this document, the purpose of this change from the proposal is to address concerns expressed by RTOs and other commenters that application of the backstop daily NO_x emissions rate to EGUs without existing SCR controls starting in the 2027 control period would provide insufficient time for planning and investments needed to facilitate the unit retirements they viewed as likely to be a preferred compliance pathway for some owners. The EPA recognizes that retrofitting new emissions controls on aging coal-fired EGUs may be less environmentally efficient than the alternative of retirement and replacement, which could yield lower cumulative emissions of NO_x and multiple other pollutants over time. The EPA also recognizes that several coal-fired EGUs have already been considering retirement in 2028 (or earlier) under compliance pathways available under the Clean Water Act effluent guidelines³³⁷ and the coal combustion residuals rule under the

³³⁶ The owner of one of the five plants with common stacks submitted comments stating that no location in the plant's ductwork could meet the criteria for a unit-specific monitoring location. As discussed in section VI.B.10 of this document, EPA staff have reviewed the comment and do not believe the commenter has provided sufficient information to reach such a conclusion.

³³⁷ See 40 CFR 423.11(w).

Resource Conservation and Recovery Act.³³⁸ The year 2028 also represents the end of the second planning period under the Regional Haze program, and thus is a significant year in states' planning of strategies to make reasonable progress towards natural visibility at Class I areas.³³⁹ In addition, other regulatory actions at the state or Federal level are being or recently have been proposed. This includes among other things a proposed revision to the PM NAAQS for which transport SIPs would be due later in the 2020s. We understand that EGUs may wish to take the entire regulatory and market landscape into account when deciding whether to invest in SCR or pursue other NO_x reduction strategies. To facilitate a unit-level compliance alternative under this rule that maintains the NO_x reductions corresponding to SCR-level emissions control performance required by the state budgets from 2026 forward and that is potentially superior both economically and environmentally across multiple regulatory programs than installation of new, capital-intensive, post-combustion controls, the EPA is providing the fleet more flexibility in how to achieve those emissions reductions in the years through 2029. Relatedly, the deferral of the application of the backstop emissions rate provisions to uncontrolled units also addresses commenters' concerns that the provisions otherwise would reduce the ability of uncontrolled units to operate as needed to back up intermittent renewable generation (subject of course to the allowance-holding requirements to cover emissions). The deferral addresses this concern directly for the period through 2029, by eliminating application of the backstop provisions to uncontrolled EGUs through this period, and also indirectly after 2029, by ensuring the availability of sufficient time for owners and operators to complete other investments that may be needed to back up renewable generation after that point.

The EPA disagrees with the comments stating that application of the backstop daily emissions rate provisions to uncontrolled units should not be deferred and also disagrees with the comments stating that deferral should be accompanied by increases in the state emissions budgets reflecting higher assumed emissions rates for these units. The responses to these two comments are related. This rule complies with the mandate for the EPA to address good

neighbor obligations as expeditiously as practicable and is based on a demonstration that emissions reductions commensurate with the overall emissions control strategy at Step 3 can be achieved beginning in the 2027 ozone season (following a two-year phase in of emissions reductions associated with installation of SCR retrofits). In the *RIA*, we demonstrate that EGUs will have multiple pathways to meeting the state budgets even if they choose not to install the SCR controls—thus no relaxation in the stringency of these budgets has been demonstrated to be warranted based on feasibility, necessity, or impossibility. The EGU economic modeling discussed in the *RIA* illustrates that many sources identified as currently having SCR retrofit potential elect not to install a SCR, and those that do retrofit SCR make no such installation until 2030. Yet, the fleet is able to comply with 2026 state emissions budgets (whose emissions reductions are premised in large part on assumed SCR retrofits) through reduced utilization (many of these units are projected to retire, and thus reduce emissions). While these changes in coal fleet utilization are not required or imposed through the EPA's state emissions budgets, they are projected to be an economic preference for a substantial portion of the unretrofitted fleet owing to future market and policy conditions. If sources do ultimately elect this pathway, then compliance will occur with significantly less demand on SCR retrofit labor and material markets than assumed at Step 3. The daily emissions rates are a backstop to the broader emissions reduction requirements, which we view as an important and necessary component to the elimination of significant contribution. But we also recognize that the objectives to be accomplished by the backstop must be balanced with larger economic and environmental conditions facing EGUs for which a deferral of the backstop rate ultimately is the most reasonable approach given these competing concerns. See *Wisconsin*, 938 F.3d at 320 (“EPA, though, possesses a measure of latitude in defining which upwind contribution ‘amounts’ count as ‘significant[]’ and thus must be abated.”). As noted in section VI.B.1.d of this document, the EPA finds that as long as state emissions budgets continue to reflect the required degree of emissions reductions at least for an interim period until the backstop rate would apply more uniformly, deferral of the backstop rate requirement for uncontrolled units in recognition of the

transition period identified by commenters can be justified on the basis of the greater long-term environmental benefits obtained through greater compliance flexibility.

8. Unit-Specific Emissions Limitations Contingent on Assurance Level Exceedances

As emphasized by the D.C. Circuit in its decision invalidating CAIR, under the CAA's good neighbor provision, emissions “within the State” that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in another state must be prohibited. *North Carolina v. EPA*, 531 F.3d 896, 906–08 (D.C. Cir. 2008). The CAIR trading programs contained no provisions limiting the degree to which a state could rely on net purchased allowances as a substitute for making in-state emissions reductions, an omission which the court found was inconsistent with the requirements of the good neighbor provision. *Id.* In response to that holding, the EPA established the CSAPR trading programs' assurance provisions to ensure that, in the context of a flexible trading program, the emissions reductions required under the good neighbor provision in fact will take place within the state. The EPA believes the assurance provisions have generally been successful in achieving that objective, as evidenced by the fact that since the assurance provisions took effect in 2017, out of the nearly 300 instances where a given state's compliance with the assurance provisions of a given CSAPR trading program for a given control period has been assessed, a state's collective emissions have exceeded the applicable assurance level only four times.

Unfortunately, the EPA also recognizes that the assurance provisions' very good historical compliance record is not good enough. The four past exceedances all occurred under the Group 2 trading program: sources in Mississippi collectively exceeded their applicable assurance levels in the 2019 and 2020 control periods, and sources in Missouri collectively exceeded their applicable assurance levels in the 2020 and 2021 control periods.³⁴⁰ Both of the exceedances by Missouri sources could easily have been avoided if the owner and operator of several SCR-equipped,

³⁴⁰ Information on the assurance level exceedances in the 2019, 2020, and 2021 control periods is available in the final notices concerning EPA's administration of the assurance provisions for those control periods. 85 FR 53364 (August 28, 2020); 86 FR 52674 (September 22, 2021); 87 FR 57695 (September 21, 2022).

³³⁸ See 40 CFR 257.103(b).

³³⁹ See 40 CFR 51.308(f).

coal-fired steam units had not chosen to idle the units' controls and rely instead on net out-of-state purchased allowances. The exceedances were large, and ample quantities of allowances to cover the resulting 3-for-1 allowance surrender requirements were purchased in advance, suggesting that the assurance level exceedances may have been anticipated as a possibility. In the case of the Mississippi exceedances, the exceedances were smaller, operational variability (manifesting as increased heat input) appears to have been a material contributing factor, and the EPA has not concluded that the owners and operators anticipated the exceedances. However, an additional contributing factor was the fact that several large, gas-fired steam units without SCR controls emitted NO_x at average rates much higher than the average emissions rates the same units had achieved in previous control periods. In short, while the Missouri exceedances appear far more significant, the EPA's analysis indicates that all four past exceedances could have been avoided if the units most responsible had achieved emissions rates more comparable to the same units' previous performance. In the EPA's view, the operation of the Missouri units in particular—although not prohibited by the current regulatory requirements—cannot be reconciled with the statutory requirements of the good neighbor provision. The fact that such operation is not prohibited by the current regulations therefore indicates a deficiency in the current regulatory requirements.

To correct the deficiency in the regulatory requirements, the EPA in this rulemaking is revising the Group 3 trading program regulations to establish an additional emissions limitation to more effectively deter avoidable assurance level exceedances starting with the 2024 control period. Because the pollutant involved is ozone season NO_x and the particular sources for which deterrence is most needed are located in states that are transitioning from the Group 2 trading program to the Group 3 trading program, the EPA is promulgating the strengthening provisions as revisions to the Group 3 trading program regulations rather than the Group 2 trading program regulations.³⁴¹

³⁴¹ The EPA believes that the occurrence of avoidable assurance level exceedances under the Group 2 trading program, combined with the express statutory directive that good neighbor obligations must be addressed "within the state," and through "prohibition," would also provide a sufficient legal basis for the Agency to promulgate

The two historical emissions-related compliance requirements in the Group 3 trading program regulations are both structured in the form of requirements to hold allowances. The first requirement applies at the source level: specifically, at the compliance deadline after each control period, the owners and operators of each source covered by the program must surrender a quantity of allowances that is determined based on the emissions from the units at the source during the control period. The second requirement applies at the designated representative level (which typically is the owner or operator level): if the state's sources collectively emit in excess of the state's assurance level, the owners and operators of each set of sources determined to have contributed to the exceedance must surrender an additional quantity of allowances. As long as a source's owners and operators comply with these two allowance surrender requirements (and meet certain other requirements not related to the amounts of the sources' emissions), they are in compliance with the program.

In light of the operation of the Missouri sources, the EPA is doubtful that strengthening the assurance provisions by increasing allowance surrender requirements at the unit, source, or designated representative level would create a sufficient deterrent. Accordingly, the EPA is instead adding a new, unit-level emissions limitation structured as a prohibition to emit NO_x in excess of a defined amount. A violation of the prohibition will not trigger additional allowance surrender requirements beyond the surrender requirements that would otherwise apply, but will trigger the possible application of the CAA's enforcement authorities. The new emissions limitation will be in addition to, not in lieu of, the other requirements of the Group 3 trading program. This point is being made explicit by relabeling the source-level allowance holding requirement, currently called the "emissions limitation," as the "primary emissions limitation" and labeling the

the same revisions to the assurance provisions for all the other CSAPR trading programs. The EPA is not doing so at this time because the Agency has seen no reason to expect exceedances of the assurance levels under any of the other CSAPR trading programs by any of the states that will remain subject to the respective trading programs after this rulemaking, except possibly by Missouri under the CSAPR NO_x Annual Trading Program. The EPA expects that reductions in Missouri's seasonal NO_x emissions sufficient to comply with the proposed provisions of the revised Group 3 trading program, including the secondary emissions limitations, would also prevent exceedances of Missouri's currently applicable assurance level for annual NO_x emissions.

new unit-level requirement as the "secondary emissions limitation." (The regulations label the designated representative-level requirement as "compliance with the . . . assurance provisions.")

Because the purpose of the new unit-level secondary emissions limitation is to deter conduct causing exceedances of a state's assurance level, the EPA is conditioning applicability of the new limitation on (1) the occurrence of an exceedance of the state's assurance level for the control period, and (2) the apportionment of at least some of the responsibility for the assurance level exceedance to the set of units represented by the unit's designated representative. Apportionment of responsibility for the assurance level exceedance will be carried out according to the existing assurance provision procedures and will therefore depend on the designated representative's shares of both the state's total emissions for the control period and the state's assurance level for the control period. To ensure that the secondary emissions limitation is focused on units where the need for improved incentives is greatest, and also to ensure that the limitation will not apply to units used only to meet peak electricity demand, the limitation applies only to units that are equipped with post-combustion controls (*i.e.*, SCR or SNCR) and that operated for at least ten percent of the hours in the control period in question and in at least one previous control period.

For units to which a secondary emissions limitation applies in a given control period based on the conditions just summarized, the limitation is defined by a formula in the regulations. The formula is generally designed to compute the potential amount the unit would have emitted during the control period, given its actual heat input during the control period, if the unit had achieved an average emissions rate equal to the unit's lowest average emissions rate in a previous control period plus a margin of 25 percent. To ensure that the data used to establish the unit's lowest previous average emissions rate are representative and of high quality, only past control periods where the unit participated in a CSAPR trading program for ozone season NO_x and operated in at least ten percent of the hours in the control period are considered. Further, to avoid causing units that achieve emissions rates lower than 0.08 lb/mmBtu from becoming subject to more stringent secondary emissions limitations in subsequent control periods, the secondary emissions limitation formula uses a

floor emissions rate of 0.10 lb/mmBtu (which is 0.08 lb/mmBtu plus the formula's 25 percent margin). In addition to making sure that performance better than 0.08 lb/mmBtu is not disincentivized, the inclusion of the floor emissions rate also ensures that no unit achieving an average emissions rate of 0.10 lb/mmBtu or less in a given control period will exceed a secondary emissions limitation in that control period. Finally, the formula includes a 50-ton threshold, which will avert violations for small performance deviations at large EGUs and also ensure that no unit emitting less than 50 tons in a given control period will exceed a secondary emissions limitation in that control period.

In summary, a secondary emissions limitation is applicable to a unit for a given control period only if the state's assurance level is exceeded, responsibility for the exceedance is apportioned at least in part to the set of

units represented by the unit's designated representative, the unit is equipped with post-combustion controls, and the unit operated for at least ten percent of the hours in the control period. Where a secondary emissions limitation applies to a unit for a given control period, the amount of the limitation is computed as the sum of 50 tons plus the product of (1) the unit's heat input for the control period times (2) a NO_x emissions rate of 0.10 lb/mmBtu or, if higher, 125 percent times the lowest seasonal average NO_x emissions rate achieved by the unit in a previous control period when the unit participated in a CSAPR trading program for ozone season NO_x emissions and operated in at least ten percent of the hours in the control period.³⁴²

Table VI.B.8-1 shows the secondary emissions limitations that the formula would have produced and which units would have exceeded those limitations

if the limitations and formula had been in effect for the Group 2 trading program in 2020 and 2021 when assurance level exceedances occurred in Missouri. Following consideration of comments, the EPA believes that in each case the formula functions in a reasonable manner, and the Missouri units identified as exceeding their respective secondary emissions limitations are sources for which an enforcement deterrent under CAA sections 113 and 304 would have been appropriate to compel better control of NO_x emissions. Table VI.B.8-1 does not show any units that would have been identified as subject to secondary emissions limitations in the case of the 2019 and 2020 assurance level exceedances in Mississippi because no units in the state meeting all conditions for applicability—including the requirement to be equipped with post-combustion controls—exceeded their respective limitations.

TABLE VI.B.8-1—ILLUSTRATIVE RESULTS OF APPLYING SECONDARY EMISSIONS LIMITATION IN PREVIOUS INSTANCES OF ASSURANCE LEVEL EXCEEDANCES

Owner/operator	Unit	125% of Lowest previously achieved NO _x emissions rate (lb/mmBtu)	Actual NO _x emissions rate (lb/mmBtu)	Secondary emissions limitation (tons)	Actual NO _x emissions (tons)	Exceedance (tons)
Missouri—2020						
Assoc. Elec. Coop	New Madrid 1	0.135	0.670	961	4,524	3,563
Assoc. Elec. Coop	New Madrid 2	0.131	0.497	866	3,108	2,242
Assoc. Elec. Coop	Thomas Hill 1	0.123	0.526	374	1,384	1,010
Assoc. Elec. Coop	Thomas Hill 2	0.122	0.537	548	2,187	1,639
Assoc. Elec. Coop	Thomas Hill 3	0.104	0.195	780	1,374	594
Missouri—2021						
Assoc. Elec. Coop	New Madrid 1	0.135	0.652	353	1,466	1,113
Assoc. Elec. Coop	New Madrid 2	0.131	0.611	1,054	4,700	3,646
Assoc. Elec. Coop	Thomas Hill 1	0.123	0.146	421	440	19
Assoc. Elec. Coop	Thomas Hill 2	0.122	0.400	600	1,801	1,201

For further illustrations of the application of the secondary emissions limitation formula to other units in the states to be subject to the expanded Group 3 trading program in the control periods from 2016 through 2021, see the spreadsheet “Illustrative Calculations Using Proposed Secondary Emissions Limitation Formula,” available in the docket. The EPA notes that, with the exception of the units listed in Table VI.B.8-1, no unit shown in the spreadsheet as having emissions exceeding the illustrative secondary emissions limitation calculated for the unit would have violated the prohibition because no violation would occur in the absence of an exceedance of the assurance level and

apportionment of responsibility for a share of the exceedance to the unit under the assurance provisions.

The secondary emissions limitation provisions are being finalized as proposed except for the addition of the condition that a unit to which the provisions apply must be equipped with post-combustion controls. The EPA's responses to comments concerning the secondary emissions limitation provisions, including the comments giving rise to the change just mentioned, are in the remainder of this section and section 5 of the RTC document.

Comment: Some commenters stated that the secondary emissions limitation is not necessary, or would be a disproportionate remedy, because

experience shows that exceedances of the assurance level have been rare, and where exceedances of a state's assurance level have occurred, the 3-for-1 surrender ratio under the existing regulations has applied, providing a sufficient remedy.

Response: The EPA disagrees with these comments. The purpose of the assurance provisions in the CSAPR trading programs is to ensure that the emissions reductions required to address a state's obligations under the Good Neighbor Provision occur “within the state” as mandated by the CAA. See *North Carolina v. EPA*, 531 F.3d 896, 906-08 (D.C. Cir. 2008). Prior to this action, the sole consequence for an exceedance of a state's assurance level

³⁴² For the actual regulatory language, see 40 CFR 97.1025(c) as added by this rule.

has been a requirement to surrender two additional allowances for each ton of the exceedance. The repeated, large, foreseeable, and easily avoidable exceedances of Missouri's assurance level under the Group 2 trading program in 2020 and 2021 have made clear that a remedy based solely on additional allowance surrenders is insufficient to address this statutory requirement and that a materially stronger deterrent is needed.

Comment: Some commenters stated that the secondary emissions limitation could apply to exceedances caused by factors outside the control of the EGU operator, going beyond the EPA's intent of deterring exceedances that are foreseeable and avoidable. For example, commenters pointed out that some units that typically combust gas may sometimes be ordered to combust oil at times when supplies of gas are constrained and expressed concern that the resulting higher NO_x emissions could cause a unit to exceed its secondary emissions limitation. Another commenter stated that it is not uncommon for units' seasonal average NO_x emissions rate to vary by more than 25 percent across control periods.

Response: The EPA agrees that the secondary emissions limitation is intended to apply to units in a position to avert an exceedance of a state's assurance level. The contention that year-to-year variability of 25 percent in units' seasonal average emissions rates is common is not in itself a persuasive reason to omit the secondary emissions limitation from the final rule, because the mere existence of such variability says nothing about whether the operators of those units could reduce that variability through their operational decisions, and the commenter provided no data regarding the extent to which the historical variability was avoidable. However, the EPA agrees that a secondary emissions limitation should be designed to avoid application to a unit whose increase in emissions rate was caused by mandated combustion of a higher-NO_x fuel than the unit's normal fuel. Moreover, based on the analysis of the secondary emissions limitation formula prepared for the proposal, the EPA has reviewed the applicability of the limitation more generally and has determined that it should apply only to units with post-combustion controls, which are the units with the greatest ability to manage their emissions rates through their operating behavior. This modification will avoid application of a secondary emissions limitation in situations where a unit's increase in seasonal average NO_x emissions rate relative to past

control periods is caused by factors in that control period beyond the operator's control, such as being mandated by a regulator to combust a higher proportion of oil or operating for a higher proportion of hours at load levels where the unit has a higher NO_x emissions rate for reasons other than non-operation of emissions controls.

Comment: Some commenters asserted that because it is not known if a state's assurance level has been exceeded until after the end of the control period, EGU operators would be unable to know whether the secondary emissions limitation would apply to them during the control period. Some of these commenters suggested that where a unit has been found to have contributed to an assurance level exceedance, the EPA should apply a secondary emissions limitation to the unit not in that control period but instead in the following control period.

Commenters suggested that uncertainty about whether a unit would be subject to a secondary emissions limitation could have a variety of undesirable consequences. For example, they asserted that some EGUs could become unwilling to operate when needed for reliability because they would be concerned that merely operating more than in previous control periods could cause a unit to exceed its limitation. One commenter asserted that the uncertainty would make it difficult for an owner of multiple EGUs to use allowances allocated to one EGU to meet another EGU's surrender requirements, possibly leading to operating restrictions on multiple EGUs.

Response: The EPA disagrees with these comments. While an operator cannot be certain that the secondary emissions limitation *will* apply to a particular EGU until after the end of a control period, the operator can be certain that the limitation *will not* apply to a particular EGU simply by ensuring that the unit's seasonal average NO_x emissions rate does not exceed the higher of 0.10 lb/mmBtu or 125 percent of the unit's lowest seasonal average NO_x emissions rate in a previous control period under a CSAPR trading program (excluding control periods where the unit operated for less than 10 percent of the hours). Because any operator of a unit with post-combustion controls can readily avoid being subject to the limitation, there is no need for application of the limitation to be deferred to the following control period. Deferral of the limitation's application would also have the effect of excusing a unit's first contribution to an assurance level exceedance, which the

EPA views as inappropriate when that exceedance could have been avoided.

The asserted possible consequences of uncertainty about whether the limitation would apply rest on mischaracterizations of the provision. The formula for the limitation reflects the unit's actual heat input for the control period, so there is no penalty for increased operation as long as the unit's seasonal NO_x average emissions rate stays below the level just referenced. Finally, nothing about the secondary emissions limitation disincentivizes an EGU fleet owner from transferring allocated allowances among the fleet's EGUs, because apportionment of responsibility for an assurance level exceedance—one of the conditions for application of the secondary emissions limitation—is determined at the level of the group of units represented by a common designated representative (typically the set of all units operated by a particular owner) rather than the individual unit.

Comment: Some commenters stated that the EPA should revise the secondary emissions limitation formula so that where a limitation applies to a unit, the unit's previous NO_x emissions rate used in the formula would not be subject to any floor. These commenters also recommended that if the secondary emissions limitation provisions are not finalized, the EPA instead should raise the allowance surrender ratio applied to exceedances of the assurance level in this final rule.

Response: The EPA disagrees with the suggestion to remove the emissions rate floor from the secondary emissions limitation formula, which would have the effect of making the limitation more stringent for any unit that has achieved a seasonal average NO_x emissions rate lower than 0.08 lb/mmBtu in a past control period. As indicated by their label, the secondary emissions limitation provisions play a secondary role in the Group 3 trading program regulations, specifically to provide the strongest possible deterrent against conduct leading to foreseeable and avoidable exceedances of a state's assurance level. The distinguishing feature of the secondary emissions limitation provisions is therefore the remedy for an exceedance, which is potential application of the CAA's enforcement authorities. The trading program's primary role of achieving required emissions reductions in a more flexible and cost-effective manner than command-and-control regulation is played by the primary emissions limitation provisions, which are structured as allowance surrender requirements. Within this overall

trading program structure, the EPA considers it sufficient for the operation of units at emissions rates lower than 0.08 lb/mmBtu to be incentivized through the allowance surrender requirements instead of being mandated through potential application of the CAA's enforcement authorities.

The recommendation to raise the allowance surrender ratio applicable to exceedances of the assurance level if the secondary emissions limitation is not finalized is moot because the secondary emissions limitation is being finalized.

9. Unit-Level Allowance Allocation and Recordation Procedures

In this rule, the EPA is establishing default procedures for allocating CSAPR NO_x Ozone Season Group 3 allowances ("Group 3 allowances") in amounts equal to each state emissions budget for each control period among the sources in the state for use in complying with the Group 3 trading program. Like the allocation processes established in CSAPR, the CSAPR Update, and the Revised CSAPR Update, the revised allocation process finalized in this rule is designed to provide default allowance allocations to all units that are subject to allowance holding requirements. The EPA's allocations and allocation procedures apply for the 2023 control period³⁴³ and, by default, for subsequent control periods unless and until a state or tribe provides state-determined or tribe-determined allowance allocations under an approved SIP revision or tribal implementation plan.³⁴⁴

The default allocation process for the Group 3 trading program as updated in this rule involves three main steps. First, portions of each state emissions budget for each control period are reserved for potential allocation to units that are subject to allowance holding requirements and that might not otherwise receive allowance allocations in the overall allocation process, including both "existing" units in any

³⁴³ The rule does not include an option for states to replace the EPA's unit-level allocations for the 2023 control period because the Agency believes a process for obtaining appropriately authorized allowance allocations determined by a state or tribe could not be completed in time for those allocations to be recorded before the end of the 2023 control period.

³⁴⁴ The options for states to submit SIP revisions that would replace the EPA's default allowance allocations are discussed in sections VI.D.1, VI.D.2, and VI.D.3 of this document. Similarly, for a covered area of Indian country not subject to a state's CAA implementation planning authority, a tribe could elect to work with the EPA under the Tribal Authority Rule to develop a full or partial tribal implementation plan under which the tribe would determine allowance allocations that would replace the EPA's default allocations for subsequent control periods.

areas of Indian country not subject to a state's CAA implementation planning authority as well as "new" units anywhere within a state's borders.³⁴⁵ Second, in advance of each control period, the unreserved portion of the state budget is allocated among the state's eligible existing units, any portion of the state budget reserved for existing units in Indian country not subject to the state's CAA implementation planning authority is allocated among those units, and the allocations are recorded in the respective sources' compliance accounts. Finally, after the control period but before the compliance deadline by which sources must hold allowances to cover their emissions for the control period, allowances from the portion of the budget reserved for new units are allocated to qualifying units, any remaining reserved allowances not allocated to qualifying units are allocated among the state's existing units, and the allocations are recorded in the respective sources' compliance accounts.

While the overall three-step allocation process summarized in this section was also followed in CSAPR, the CSAPR Update, and the Revised CSAPR Update, in this rule the EPA is making revisions to each step to better address units in Indian country and to better coordinate the unit-level allocation process with the dynamic budget-setting process discussed in section VI.B.4 of this document. The revisions to the three steps are discussed in sections VI.B.9.a, VI.B.9.b, and VI.B.9.c, respectively.

a. Set-Asides of Portions of State Emissions Budgets

The first step of the overall unit-level allocation process for a given control period involves reserving portions of each state's budget for the control period in "set-asides." In this rule, the EPA is making several revisions affecting the establishment of set-asides. The first revision, which is largely unrelated to the other aspects of this

³⁴⁵ Under this rule, the unit-level allocations to "existing" units are generally computed in the year before the year of each control period, and the determination of whether to treat a particular unit as existing for purposes of that control period's allocations is made as part of the allocation process, generally based on whether the Agency has the data needed to compute an allocation for the unit as an existing unit. A unit that is subject to allowance holding requirements for a given control period and that did not receive an allocation for that control period as an existing unit is generally eligible to receive an allocation from the portion of the budget reserved for "new" units. For further discussion of which units are considered eligible for allocations as existing units or new units in particular control periods, see sections VI.B.9.b and VI.B.9.c.

rulemaking, will update the regulations for the Group 3 trading program³⁴⁶ to reflect the D.C. Circuit's holding in *ODEQ v. EPA* that the relevant states have initial CAA implementation planning authority in non-reservation areas of Indian country until displaced by a demonstration of tribal jurisdiction over such an area.³⁴⁷ Consistent with this holding, the EPA is revising language in the Group 3 trading program regulations that prior to this rule, for purposes of allocating allowances from a given state's emissions budget, distinguished between (1) the set of units within the state's borders that are not in Indian country and (2) the set of units within the state's borders that are in Indian country. As revised, the provisions now distinguish between (1) the set of units within the state's borders that are not in Indian country or are in areas of Indian country covered by the state's CAA implementation planning authority and (2) the set of units within the state's borders that are in areas of Indian country not covered by the state's CAA implementation planning authority. The revised language more accurately distinguishes which units are, or are not, covered by a state's CAA implementation planning authority, which is the underlying purpose for which the term "Indian country" is currently used in the allowance allocation provisions. The effect of the revision is that any units located in areas of "Indian country" as defined in 18 U.S.C. 1151 that are covered by a state's CAA implementation planning authority will be treated for allowance allocation purposes in the same manner as units in areas of the state that are not Indian country, consistent with the *ODEQ* holding.³⁴⁸

The remaining revisions, which are interrelated, concern the types of set-asides that in the context of this rule will best accomplish the goal of ensuring the availability of allocations to units that are subject to allowance holding requirements and that would

³⁴⁶ As discussed in section VI.B.13, the EPA is also making this revision to the regulations for the other CSAPR trading programs in addition to the Group 3 trading program.

³⁴⁷ For additional discussion of the *ODEQ v. EPA* decision and other issues related to the CAA implementation planning authority of states, tribes, and the EPA in various areas of Indian country, see section III.C.2.

³⁴⁸ The EPA notes that the units that will be treated for allocation purposes in the same manner as units not in Indian country will include units in any areas of Indian country subject to a state's CAA implementation planning authority, whether those are non-reservation areas (consistent with *ODEQ*) or reservation areas (such as areas of Indian country within Oklahoma's borders covered by the EPA's October 1, 2020 approval of Oklahoma's request under SAFETEA, as discussed in section III.C.2).

not otherwise receive allowance allocations. One revision to the types of set-asides addresses allocations to existing units in Indian country. The revised geographic scope of the Group 3 trading program under this rule will for the first time include an existing EGU in Indian country not covered by a state's CAA implementation planning authority—the Bonanza coal-fired unit in the Uintah and Ouray Reservation within Utah's borders. To provide an option for Utah (or a similarly situated state in the future) to replace the Agency's default allowance allocations to most existing units with state-determined allocations through a SIP revision while continuing to ensure the availability of a default allocation to the Bonanza unit, which is not subject to the state's jurisdiction or control (or similarly situated units in the future), the EPA is revising the Group 3 trading program regulations to provide for "Indian country existing unit set-asides." Specifically, for each state and for each control period where the set of units within a state's borders eligible to receive allocations as existing units includes one or more units³⁴⁹ in an area of Indian country not covered by the state's CAA implementation planning authority, the EPA will reserve a portion of the state's emissions budget in an Indian country existing unit set-aside for the unit or units. The amount of each Indian country existing unit set-aside will equal the sum of the default allocations that the units covered by the set-aside would receive if the allocations to all existing units within the state's borders were computed according to EPA's default allocation procedure (which is discussed in section VI.B.9.b of this document). Immediately after determining the amount of a state's emissions budget for a control period (and after reserving a portion for potential allocation to new units, as discussed later in this section), the EPA will first determine the default allocations for all existing units within the state's borders, then allocate the appropriate quantity of allowances to the Indian country existing unit set-aside, then allocate the allowances from the set-aside to the covered units in Indian country, and finally record the allocations in the sources' compliance

³⁴⁹ In coordination with the dynamic budgeting process discussed in section VI.B.4, each unit included in the unit inventory used to determine a state's dynamic emissions budget for a given control period in 2026 or a later year will be considered an "existing" unit for that control period for purposes of the determination of unit-level allowance allocations. In other words, there will no longer be a single fixed date that divides "existing" from "new" units.

accounts at the same time as the allocations to other sources not in Indian country. The existence of the Indian country existing unit set-aside thus will have no substantive effect unless and until the relevant state chooses to replace the EPA's default allowance allocations through a SIP revision, in which case the state would have the ability to establish state-determined allocations for the units subject to the state's CAA implementation planning authority while the EPA would continue to administer the Indian country existing unit set-aside for the units in Indian country not covered by the state's CAA implementation planning authority.³⁵⁰ The EPA believes the establishment of Indian country existing unit set-asides accomplishes the objective of allowing states to control allowance allocations to units covered by their CAA implementation planning authority while ensuring that the allocations to units in Indian country not covered by such authority remain under Federal authority (unless replaced by a tribal implementation plan).

The remaining revisions to the types of set-asides address the set-asides used to ensure availability of allowance allocations to *new* units in light of the division of the budget for *existing* units into a reserved portion for existing units in Indian country and an unreserved portion for other existing units. Under the Group 3 trading program regulations as in effect before this rule, allowances for new units have been provided from separate new unit set-asides and Indian country new unit set-asides. Under this rule, the EPA is combining these two types of set-asides starting with the 2023 control period by eliminating the Indian country new unit set-asides and expanding eligibility for allocations from the new unit set-asides to include units anywhere within the relevant states' borders. However, as with the Indian country new unit set-asides under the current regulations, the EPA will continue to administer the new unit set-asides in the event a state chooses to replace the EPA's default allocations to existing units with state-determined allocations, thereby ensuring the availability of allocations to any new units not covered by a state's CAA implementation planning authority.

The reason for the revisions to the new unit set-asides and Indian country

³⁵⁰ As noted in section VI.D, a tribe could elect to work with EPA under the Tribal Authority Rule to develop a full or partial tribal implementation plan under which the tribe would determine allowance allocations for units in the relevant area of Indian country that would replace EPA's default allocations for subsequent control periods.

new unit set-asides is to avoid unnecessary and potentially inequitable changes to the degree to which individual existing units contribute to, or benefit from, the new unit set-asides. The allowances used to establish these set-asides are reserved from each state emissions budget before determination of the allocations from the unreserved portion of the budget to existing units, so that certain existing units—generally those receiving the largest allocations—contribute to creation of the set-asides through roughly proportional reductions in their allocations. Later, if any allowances in a set-aside are not allocated to qualifying new units, the remaining allowances are reallocated to the existing units in proportion to their initial allocations from the unreserved portion of the budget, so that certain existing units—again, generally those receiving the largest allocations—benefit from the reallocations in rough proportion to their previous contributions.³⁵¹ The EPA believes maintaining this symmetry, where the same existing units—whether in Indian country or not—both contribute to and potentially benefit from the set-asides, is a reasonable policy objective, and doing so requires that the EPA continue to administer the new unit set-asides in the event a state chooses to replace the EPA's default allocations to existing units with state-determined allocations, because otherwise the EPA would be unable to maintain Federal implementation authority and ensure that the units in Indian country would receive an appropriate share of any reallocated allowances.³⁵² The principal difference between the new unit set-asides and the Indian country new unit set-asides under the regulations in effect before this rule was that, if a state chose to replace the EPA's default allocations with state-determined allocations, the state would take over administration of the new unit set-aside, but not any Indian country new unit set-aside.

³⁵¹ Under the regulations in effect before this final rule, allowances from an Indian country new unit set-aside that are not allocated to qualifying new units in Indian country are first transferred to the state's new unit set-aside, and if the allowances are not allocated to qualifying new units elsewhere within the state's borders, the allowances are then reallocated to the state's existing units.

³⁵² If units in Indian country were unable to share in the benefits of reallocation of allowances from the new unit set-asides, it would be possible to achieve a different form of symmetry by simultaneously exempting the units in Indian country from the obligation to share in the contribution of allowances to the new unit set-asides. However, some stakeholders might view this alternative as potentially inequitable because existing units in Indian country would then make no contributions toward the new unit set-aside while other existing units would still be required to do so.

Under the revised regulations finalized in this rule, states will not be able to take over administration of the new unit set-asides in this situation. Therefore, there is no longer any reason to establish separate Indian country new unit set-asides in order to preserve Federal (and potentially tribal) authority to implement the rule in areas of Indian country subject to tribal jurisdiction.

With respect to the total amounts of allowances that will be set aside for potential allocation to new units from the emissions budgets for each state, for the control periods in 2023 through 2025 (but not for subsequent control periods, as discussed later in this section), the EPA is establishing total set-aside amounts equal to the projected amounts of emissions from any planned units in the state for the control period, plus an additional base 2 percent of the state emissions budget to address any unknown new units, with a minimum total amount of 5 percent. For example, if planned units in a state are projected to emit 4 percent of the state's NO_x ozone season emissions budget, then the

new unit set-aside for the state would be set at 6 percent, which is the sum of the 4 percent for planned units plus the base 2 percent for unknown new units. Alternatively, if planned new units are projected to emit only 1 percent of the state's budget, the new unit set-aside would be set at the minimum 5 percent amount. Except for the addition of the 5 percent minimum, which is a change being made in response to comments, the approach to setting the new unit set-aside amounts is generally the same approach previously used to establish the amounts of new unit set-asides in CSAPR, the CSAPR Update, and the Revised CSAPR Update for all the CSAPR trading programs. *See, e.g.*, 76 FR 48292 (August 8, 2011).

As under the Revised CSAPR Update, the EPA is making an exception for New York for the 2023 through 2025 control periods, establishing a total new unit set-aside amount for each control period of 5 percent of the state's emissions budget, with no additional consideration for planned units, because this approach is consistent with New

York's preferences as reflected in an approved SIP addressing allowance allocations for the Group 2 trading program.

The final regulations issued under this rule specify the new unit set-aside amounts in terms of the percentages of the state emissions budgets. The amounts are shown in Tables VI.B.9.a–1, VI.B.9.a–2, and VI.B.9.a–3 of this document show the tonnage amounts of the new unit set-asides for the control periods in 2023 through 2025 that are computed by multiplying the new unit set-aside percentages by the preset budgets finalized in this rule for those control periods. The amounts of the 2023 new unit set-asides are illustrative because they do not reflect the impact of transitional adjustments included in the rule that are likely to affect the 2023 budgets as implemented.³⁵³ The amounts of the 2024 and 2025 new unit set-asides are the actual amounts, because the 2024 and 2025 budgets computed in this rule are the budgets that will be implemented, without any need for transitional adjustments.

TABLE VI.B.9.a–1—ILLUSTRATIVE CSAPR NO_x OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR THE 2023 CONTROL PERIOD

State	Emissions budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons)
Alabama	6,379	5	319
Arkansas	8,927	5	446
Illinois	7,474	5	374
Indiana	12,440	5	622
Kentucky	13,601	5	680
Louisiana	9,363	5	468
Maryland	1,206	5	60
Michigan	10,727	5	536
Minnesota	5,504	5	275
Mississippi	6,210	5	311
Missouri	12,598	5	630
Nevada	2,368	9	213
New Jersey	773	5	39
New York	3,912	5	196
Ohio	9,110	6	547
Oklahoma	10,271	5	514
Pennsylvania	8,138	5	407
Texas	40,134	5	2,007
Utah	15,755	5	788
Virginia	3,143	5	157
West Virginia	13,791	5	690
Wisconsin	6,295	5	315

³⁵³ As discussed in section VI.B.12, the EPA expects that this final rule will become effective after May 1, 2023, causing the emissions budgets for the 2023 control period to be adjusted under the

rule's transitional provisions so as to ensure that the new budgets will apply only after the rule's effective date. The actual new unit set-asides for the 2023 control period will be computed using the

adjusted budgets, but the 2023 budget amounts shown in Table VI.B.9.a–1 do not reflect these adjustments.

TABLE VI.B.9.a-2—CSAPR NO_x OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR THE 2024 CONTROL PERIOD

State	Emissions budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons)
Alabama	6,489	5	324
Arkansas	8,927	5	446
Illinois	7,325	5	366
Indiana	11,413	5	571
Kentucky	12,999	5	650
Louisiana	9,363	5	468
Maryland	1,206	5	60
Michigan	10,275	5	514
Minnesota	4,058	5	203
Mississippi	5,058	5	253
Missouri	11,116	5	556
Nevada	2,589	9	233
New Jersey	773	5	39
New York	3,912	5	196
Ohio	7,929	6	476
Oklahoma	9,384	5	469
Pennsylvania	8,138	5	407
Texas	40,134	5	2,007
Utah	15,917	5	796
Virginia	2,756	5	138
West Virginia	11,958	5	598
Wisconsin	6,295	5	315

TABLE VI.B.9.a-3—CSAPR NO_x OZONE SEASON GROUP 3 NEW UNIT SET-ASIDE (NUSA) AMOUNTS FOR THE 2025 CONTROL PERIOD

State	Emissions budgets (tons)	New unit set-aside amount (percent)	New unit set-aside amount (tons)
Alabama	6,489	5	324
Arkansas	8,927	5	446
Illinois	7,325	5	366
Indiana	11,413	5	571
Kentucky	12,472	5	624
Louisiana	9,107	5	455
Maryland	1,206	5	60
Michigan	10,275	5	514
Minnesota	4,058	5	203
Mississippi	5,037	5	252
Missouri	11,116	5	556
Nevada	2,545	9	229
New Jersey	773	5	39
New York	3,912	5	196
Ohio	7,929	6	476
Oklahoma	9,376	5	469
Pennsylvania	8,138	5	407
Texas	38,542	5	1,927
Utah	15,917	5	796
Virginia	2,756	5	138
West Virginia	11,958	5	598
Wisconsin	5,988	5	299

For control periods in 2026 and later years, the EPA will allocate a total of 5 percent of each state emissions budget to a new unit set-aside, with no additional amount for planned new units. The amounts of the set-asides for each state and control period will be computed when the emissions budgets for the control period are established, by May 1 of the year before the year of the

control period. The procedure for determining the amounts of the set-asides based on the amounts of the state emissions budgets is being codified in the Group 3 trading program regulations and will reflect the same percentage of the emissions budget for all states.

The purpose of the change to the procedure for establishing the amounts of the set-asides is to coordinate with

the dynamic budget-setting process that may be used to determine budgets beginning with the 2026 control period. As discussed in section VI.B.4 of this document, under the dynamic budget-setting process, each state's budget for each control period will be computed using fleet composition information and the total ozone season heat input reported by all affected units in the state

for the most recent control periods before the budget-setting computations. (For example, 2026 emissions budgets would be based on 2022–2024 state-level heat input data.) Moreover, as discussed in section VI.B.9.b of this document, the set of units eligible to receive allocations as “existing” units in a given control period will generally be the set of units that operated in the control period two years earlier (with the exception of any units whose monitor certification deadlines fell after the start of that earlier control period). Consequently, by the 2025 control period, all or almost all units that commenced commercial operation before issuance of this rule will be considered “existing” units for purposes of budget-setting and allocations, and units commencing commercial operation after issuance of this rule generally will be considered “existing” units for all but their first two full control periods of operation (and possibly a preceding partial control period). Given that new units will not be relying on the new unit set-asides as a permanent source of allowances, as is the case for “new” units under the other CSAPR trading programs, the EPA believes it is unnecessary to establish set-aside percentages for some states that are permanently larger than 5 percent based solely on the fact that projected emissions from planned new units happen to be a somewhat larger proportion of those states’ overall budgets at the time of this rule’s issuance.

The changes to the structure and amounts of set-asides in this rule largely follow the proposal. The EPA received few comments on these topics. As noted previously, one commenter expressed the view that if the amounts of the new unit set-asides were based on 2 percent of the respective states’ budgets, the set-asides would be too small in certain circumstances, and in response the final rule bases the amounts of the set-asides on a floor percentage of 5 percent instead of 2 percent. The remaining commenters expressed a concern that the final rule’s provisions regarding set-asides should ensure that any tribal decisions relating to allowance allocations would not be constrained by state decisions. The EPA had this same concern in mind when designing the rule and believes that the final set-aside structure—encompassing Indian country existing unit set-asides as well as EPA-administered new unit set-asides for sources in all areas within each state’s borders—fully addresses the concern, is equitable, and preserves Federal and tribal authority under this

rule for areas of Indian country subject to tribal jurisdiction. The comments and the EPA’s responses are discussed in greater detail in section 1 of the *RTC* document.

b. Allocations to Existing Units, Including Units That Cease Operation

In conjunction with the new and revised state emissions budget-setting methodology for the Group 3 trading program finalized in this rulemaking, the EPA is necessarily establishing a revised procedure for making unit-level allocations of Group 3 allowances to existing units.³⁵⁴ The procedure that the EPA is employing to compute the unit-level allocations is very similar but not identical to the procedure used to compute unit-level allocations for units subject to the Group 3 trading program in the Revised CSAPR Update. The steps of the procedure for determining allocations from each state emissions budget for each control period are described in detail in the Unit-Level Allowance Allocations Final Rule TSD. The steps are summarized in the following paragraphs, with changes from the procedure followed in the Revised CSAPR Update noted.

In the first step, the EPA identifies the list of units eligible to receive allocations for the control period. The unit inventories used to compute unit-level allocations for the control periods in 2023 through 2025 are the same inventories that have been used to determine the preset emissions budget for these control periods. These inventories have been determined in this rulemaking in essentially the same manner as in the Revised CSAPR Update. The procedures for updating the unit inventories for these control periods are discussed in section VI.B.4 of this document, and the criteria that the EPA has applied to determine whether a unit’s scheduled retirement is sufficiently certain to serve as a basis for adjusting emissions budgets and unit-level allocations, are discussed in section V.B of this document and in the Ozone Transport Policy Analysis Final Rule TSD.

The unit inventories used to compute unit-level allocations for control periods in 2026 and later years will be determined in the year before the control period in question based on the latest reported emissions and operational data, which is an extension

³⁵⁴ The revisions to the procedures for computing unit-level allowance allocations in this rulemaking apply only to the Group 3 trading program. In this rulemaking, the EPA is not reopening the methodology for computing the amounts of allowances allocated to any unit under any other CSAPR trading program.

of the methodology used in the Revised CSAPR Update to reflect more recent data (for example, the unit inventories used to compute 2026 budgets and allocations will reflect reported data up through the 2024 control period). These inventories, which are generally the same as the inventories used to compute dynamic budgets for each control period, include any unit whose monitor certification deadline was no later than the start of the relevant historical control period and that reported emissions data during the relevant historical control period. The EPA notes that basing the list of eligible units on the list of units that reported heat input in the control period two years earlier than the control period for which allocations are being determined represents a revision to the Group 3 trading program regulations as in effect before this rule concerning the treatment of allocations to retired units. Under the prior regulations, units that cease operations for two consecutive control periods would continue to receive allocations as existing units for three additional years (that is, a total of five years) before the allowances they would otherwise have received are reallocated to the new unit set-aside for the state. Under the regulations as revised in this rule, units that cease operation will receive allocations for only two full control periods of non-operation. While the EPA has in prior transport rulemakings noted a qualitative concern that ceasing allowance allocations prematurely could distort the economic incentives of EGUs to continue operating when retirement is more economical, the EPA believes that anticipated market conditions (in particular, the incentives toward power sector transition to cleaner generating sources), particularly in the later 2020s, are such that a continuation of allowance allocations to retiring units likely has no more than a de minimis effect on the consideration of an EGU whether to retire or not.

In the second step of the procedure for determining allocations to existing units, the EPA will compile a database containing for each eligible unit the unit’s historical heat input and total NO_x emissions data for the five most recent ozone seasons. For each unit, the EPA will compute an average heat input value based on the three highest non-zero heat input values over the 5-year period, or as the average of all the non-zero values in the period if there are fewer than three non-zero values. For each unit, the EPA will also determine the maximum total NO_x emissions value over the 5-year period. For coal-

fired units of 100 MW or larger, the EPA will further determine a “maximum controlled baseline” NO_x emissions value, computed as the unit’s maximum heat input over the 5-year period times a NO_x emissions rate of 0.08 lb/mmBtu. The maximum controlled baseline will serve as an additional cap on unit-level allocations for all such coal-fired units starting with the control periods in which the assumed use of SCR controls at the units is reflected in the state emissions budgets. Thus, the maximum controlled baseline will apply for purposes of allocations to units with existing SCR controls for all control periods starting with the 2024 control period and for all other coal-fired units of 100 MW or more (except circulating fluidized bed units) starting with the 2027 control period. These procedures are nearly identical to the procedures used in the Revised CSAPR Update, with three exceptions. First, instead of using only the data available at the time of the rulemaking, for each control period the EPA will use data from the most recent five control periods for which data had been reported. (For example, for the 2026 control period, the EPA will use data for the 2020–2024 control periods.) Second, to simplify the data compilation process, the EPA will use only a five-year period for NO_x mass emissions, in contrast to the 8-year period used in the Revised CSAPR Update for NO_x mass emissions. Third, the use of the maximum controlled baseline as an additional cap on emissions is a change adopted in this rule in response to comments received on the proposal. Specifically, commenters observed that if a state’s emissions budget is decreased to reflect an assumption that a particular unit in the state is capable of reducing its emissions through the installation of new SCR controls, but the historical emissions cap applied to that unit in the unit-level allocation methodology does not reflect use of the new controls, then the allocation methodology could have the effect of reducing unit-level allocations to the other units in the state whose historical emissions already reflect use of existing controls rather than the unit assumed to install new controls. The EPA agrees with the comment and in this rule has added the maximum controlled baseline provision to the allocation methodology to mitigate the potential effect identified by the commenters.

In the third step of the procedure for determining allocations to existing units in each state, the EPA will allocate the available allowances for that state among the state’s eligible units in

proportion to the share each unit’s average heat input value represents of the total of the average heat input values for all the state’s eligible units, but not more than the unit’s maximum total NO_x value or, if applicable, the unit’s maximum controlled baseline. If the allocations to one or more units are curtailed because of the units’ applicable caps, the EPA will iterate the calculation procedure as needed to allocate the remaining allowances, excluding from each successive iteration any units whose allocations have already reached their caps. (If all units in a state reach their caps, any remaining allowances are allocated in proportion to the units’ average heat input values, notwithstanding the caps.) This calculation procedure is identical to the calculation procedure used in the Revised CSAPR Update (as well as the CSAPR Update and CSAPR), but using caps that reflect both the units’ maximum historical NO_x values and also, where applicable, the maximum controlled baseline values.

Illustrative unit-level allocations for the 2023 control period and final unit-level allocations for the 2024 and 2025 control periods are being determined in this rulemaking based on the emissions budgets for those control periods also determined in the rulemaking and are included in the docket. The 2023 allocations are only illustrative because, as discussed in section VI.B.12.a, the EPA expects the effective date of the rule to occur after the start of the 2023 control period and consequently expects the 2023 control period to be a transitional period in which the emissions budgets determined in this rulemaking apply only for the portion of the control period occurring on and after the rule’s effective date, while any previously determined emissions budgets apply for the portion of the control period before the rule’s effective date. The rule’s effective date will become known when the rule is published in the **Federal Register**. As soon as practicable thereafter, the EPA will calculate the final prorated or blended 2023 state emissions budgets and 2023 unit-level allocations based on the transitional formulas finalized in this action (see section VI.B.12.a of this document) and will communicate the information to the public through a notice of data availability. The 2023 and 2024 allocations will then be recorded 30 days after the effective date of the final rule (to provide an interval in which to execute the recall of 2023 and 2024 Group 2 allowances, as discussed in section VI.B.12.c of this document),

while the 2025 allocations will be recorded by July 1, 2024.³⁵⁵

The default unit-level allocations for each control period in 2026 or a later year will be computed immediately following the determination of the state emissions budgets for the control period. The EPA will perform the computations and issue a notice of data availability concerning the preliminary unit-level allocations for each control period by March 1 of the year before the control period. There will be a 30-day period in which objections to the data and preliminary computations may be submitted, and the EPA will then make any appropriate revisions and issue another notice of data availability by May 1 of the year before the control period. The EPA will then record the allocations by July 1 of the year before the control period.³⁵⁶

All covered states also have options to establish state-determined allowance allocations for control periods in 2024 and later years. As discussed in section VI.D.1 of this rule, a state choosing to establish state-determined allocations for the 2024 control period would need to submit a letter of intent to the EPA by August 4, 2023, and would need to submit the SIP revision with the allocations by September 1, 2023. The EPA would defer recordation of the 2024 allocations for the state’s sources until March 1, 2024, to provide time for this process to be completed. As discussed in sections VI.D.2 and VI.D.3 of this rule, a state choosing to establish state-determined allocations for control periods in 2025 and later years would need to submit a SIP revision by December 1 of the year two years before the first year for which state-determined allocations are being established—*e.g.*, by December 1, 2023, for allocations for the 2025 control period—and would need to submit the allocations for each control period by June 1 of the year before the control period—*e.g.*, by June 1, 2024, for allocations for the 2025

³⁵⁵ The recordation schedule for the 2023 and 2024 allocations represents an expected acceleration of the recordation schedule in effect immediately before this final rule, which called for allocations of 2023 and 2024 Group 3 allowances to existing units to be recorded by September 1, 2023. See *Deadlines for Submission and Recordation of Allowance Allocations Under the Cross-State Air Pollution Rule (CSAPR) Trading Programs and the Texas SO₂ Trading Program (the “Recordation Rule”)*, 87 FR 52473 (August 26, 2022).

³⁵⁶ The current recordation schedule, which provides for almost all allowance allocations to existing units for a given control period under all the CSAPR trading programs to be recorded by July 1 of the year before the year of that control period, was adopted in the Recordation Rule.

control period.³⁵⁷ The EPA would record any state-determined allocations for control periods in 2025 and later years by July 1 of the year before the control period, simultaneously with the recordation of allocations to units in states where the EPA determines the unit-level allocations.

The EPA notes that for the three states with approved SIP revisions establishing their own methodologies for allocating Group 2 allowances—Alabama, Indiana, and New York—the EPA will follow the states' methodologies to the extent possible in developing the EPA's allocations of Group 3 allowances to the units in those states for the control periods in 2023 through 2025.³⁵⁸ The EPA will not follow any state-specific methodologies as part of the procedures for determining default unit-level allocations of Group 3 allowances for control periods in 2026 or later years. However, like other states, these three states have options to replace the EPA's default allocations with state-determined allocations through SIP revisions starting with the 2024 control period.

As an exception to all of the recordation deadlines that would otherwise apply, the EPA will not record any allocations of Group 3 allowances in a source's compliance account unless that source has complied with the requirements to surrender previously allocated 2023–2024 Group 2 allowances. The surrender requirements are necessary to maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program under this final rule. The EPA finds that it is reasonable to condition the recordation of Group 3 allowances on compliance with the surrender requirements because the condition will spur compliance and will not impose an inappropriate burden on sources. The EPA considers establishment of this

condition, which will facilitate the continued functioning of the Group 2 trading program, to be an appropriate exercise of the Agency's authority under CAA section 301 (42 U.S.C. 7601) to prescribe such regulations as are necessary to carry out its functions under the Act.

The provisions governing allocations to existing units are being finalized substantially as proposed, except for the addition of an additional cap on unit-level allocations in response to comments. The EPA's responses to comments on the unit-level allocation provisions for existing units are in section 5 of the *RTC* document.

c. Allocations From Portions of State Emissions Budgets Set Aside for New Units

The Group 3 trading program regulations provide for the EPA to allocate allowances from each new unit set-aside after the end of the control period at issue. An eligible new unit for purposes of allocations from a set-aside for a given control period is generally any unit in the relevant area that reported emissions subject to allowance surrender requirements during the control period and that was not eligible to receive an allowance allocation as an "existing" unit for the control period. Thus, in addition to units that have not yet completed two full control periods of operation since their monitor certification deadlines, units eligible for allocations from the new unit set-asides may also include existing coal-fired units that first lose their eligibility for allocations from the unreserved portion of the applicable state budget by ceasing operation, and then resume operation in a later control period. The regulations call for the EPA to allocate allowances to any eligible "new" units in the state generally in proportion to their respective emissions during the control period, up to the amounts of those emissions if the relevant set-aside contains sufficient allowances, and not exceeding those emissions. However, in the case of a unit whose allocation for the control period would have been subject to a maximum controlled baseline if the unit was eligible to receive allocations as an existing unit, the unit's allocation from the new unit set-aside will not exceed a cap equal to the unit's reported heat input for the control period times an emissions rate of 0.08 lb/mmBtu.

Any allowances remaining in a new unit set-aside after the allocations to new units are reallocated to the existing units in the state in proportion to those units' previous allocations for the control period as existing units. The

EPA issues a notice of data availability concerning the proposed allocations by March 1 following the control period, provides an opportunity for submission of objections, and issues a final notice of data availability and record the allocations by May 1 following the control period, one month before the June 1 compliance deadline.

This EPA notes that the revisions to other provisions of the Group 3 trading program regulations discussed elsewhere in this document will reduce the portions of the state emissions budgets that are allocated through the new unit set-asides. Specifically, because the new unit set-asides will no longer receive any additional allowances when units retire, for control periods in 2025 and later years the amounts of allowances in the new unit set-asides will always be 5 percent of the respective state emissions budgets for the respective control periods. This limit on growth of the new unit set-asides is appropriate given that the number of consecutive control periods for which any particular unit is likely to receive allocations from a state's new unit set-aside will be reduced to two full control periods (and possibly a partial control period before those two control periods) before the unit becomes eligible to receive allocations as an "existing" unit from the unreserved portion of the state's emissions budget. This approach contrasts with the approach under the other CSAPR trading programs where a new unit never becomes eligible to receive allocations from the unreserved portion of the emissions budget and where the new unit set-aside therefore needs to grow to accommodate an ever-increasing share of the state's total emissions.

The EPA also notes that, as discussed in sections VI.D.2 and VI.D.3 of this document, in the event that a state chooses to replace EPA's default allowance allocations under the Group 3 trading program with state-determined allocations through a SIP revision, the EPA will continue to administer the portion of each state emissions budget reserved in a new unit set-aside to ensure the availability of allowance allocations to new units in any areas of Indian country within the state not covered by the state's CAA implementation planning authority.

The final rule's provisions concerning unit-level allocations from the new unit set-asides are unchanged from the proposal except for the addition of the allocation cap in a given control period for any unit that would have been subject to a maximum controlled baseline if the unit was eligible to receive an allocation as an existing unit

³⁵⁷ The current deadlines for states to submit state-determined allowance allocations to the EPA were adopted in the Recordation Rule and are coordinated with the schedule for computation of state emissions budgets for control periods in 2026 and later years. For example, for the 2026 control period, by May 1, 2025, the EPA will publish the final state emissions budgets and the EPA's default unit-level allocations; by June 1, 2025, states will submit any state-determined unit-level allocations that would replace the default allocations; and by July 1, 2025, the EPA will record the default unit-level allocations or the state-determined unit-level allocations, as applicable, in sources' compliance accounts.

³⁵⁸ For discussion of how the EPA is using the previously approved allocation methodologies for Alabama, Indiana, and New York to determine allocations to units in these states for the 2023–2025 control periods, see the Allowance Allocation Final Rule TSD.

for that control period.³⁵⁹ This change was made to address the same comments discussed in section VI.B.9.b of this document that caused the Agency to add the maximum controlled baseline provision to the procedure for allocating allowances to existing units. The Agency did not receive any other comments on the proposed provisions concerning unit-level allocations of allowances from the new unit set-asides.

d. Incorrectly Allocated Allowances

The Group 3 trading program regulations as promulgated in the Revised CSAPR Update include provisions addressing incorrectly allocated allowances. With regard to any allowances that were incorrectly allocated and are subsequently recovered, the provisions as in effect prior to this rule have generally called for the recovered allowances to be reallocated to other units in the relevant state (or Indian country within the borders of the state) through the process for allocating allowances from the new unit set-aside (or Indian country new unit set-aside) for the state. If the procedures for allocating allowances from the set-asides have already been carried out for the control period for which the recovered allowances were issued, the allowances would be allocated through the set-asides for subsequent control periods.

The EPA continues to view the current provisions for disposition of recovered allowances as reasonable in the case of any allowances that are recovered before the deadline for recording allocations of allowances from the new unit set-aside for the control period for which the recovered allowances were issued. However, in the case of any allowances that are recovered after that deadline, adding the recovered allowances to the new unit set-aside for a subsequent control period, as provided in the current regulations, would be inconsistent with the trading program enhancements discussed elsewhere in this document, where the amounts of allowances provided in the state emissions budgets for each control period are designed to reflect the most current available information on fleet composition and utilization and where the quantities of banked allowances available for use in each control period are recalibrated for consistency with the state emissions budgets. The EPA is therefore finalizing

revisions to provide that, starting with allowances allocated for the 2024 control period, any incorrectly allocated allowances that are recovered after the deadline for allocating allowances from the new unit set-aside for that control period (*i.e.*, May 1 of the year following the control period) will be transferred to a surrender account instead of being reallocated to other units in the state. The EPA received no comments on this proposed revision, which is being finalized as proposed.

10. Monitoring and Reporting Requirements

The Group 3 trading program requires monitoring and reporting of emissions and heat input data in accordance with the provisions of 40 CFR part 75. Under 40 CFR part 75, a given unit may have several options for monitoring and reporting. Any unit can use CEMS. Qualifying gas- or oil-fired units can use certain excepted monitoring methodologies that rely in part on fuel-flow metering in combination with CEMS-based or testing-based NO_x emissions rate data. Certain non-coal-fired, low-emitting units can use a low mass emissions (LME) methodology, and sources can seek approval of alternative monitoring systems approved by the Administrator through a petition process. Each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits and 24-hour calibrations. In addition, when a monitoring system is not operating properly, standard substitute data procedures are applied to produce a conservative estimate of emissions for the period involved. Further, 40 CFR part 75 requires electronic submission of quarterly emissions reports to the Administrator, in a format prescribed by the Administrator. The quarterly reports will contain all the data required concerning ozone season NO_x emissions under the Group 3 trading program.

In this rulemaking, as proposed, the EPA is making two changes to the Group 3 trading program's previous requirements related to monitoring, recordkeeping, and reporting. First, the EPA is revising the monitor certification deadline in the Group 3 trading program regulations applicable to certain units that have not already certified monitoring systems for use under 40 CFR part 75. This revision is expected to provide approximately 15 EGUs in Nevada and Utah with 180 days following the rule's effective date to certify monitoring systems, with the consequence that the units are expected to become subject to allowance holding

requirements under the Group 3 trading program starting with the 2024 control period. Second, to implement the trading program enhancements, the EPA is adding certain new recordkeeping and reporting requirements, which will be implemented through amendments to the regulations in 40 CFR part 75 and will apply starting January 1, 2024. Sources generally will be able to meet the additional recordkeeping and reporting requirements using the data that are already collected by their current monitoring systems, and the EPA is not requiring the installation of additional monitoring systems at any source. However, a small number of sources with common stacks could find it advantageous to upgrade their monitoring systems so as to monitor at the individual units instead of monitoring at the common stack. The Group 3 trading program monitor certification deadline revisions and the additional recordkeeping and reporting requirements are discussed in sections VI.B.10.a and VI.B.10.b, respectively.³⁶⁰

a. Monitor Certification Deadlines

In general, a unit subject to the Group 3 trading program must monitor and report emissions data using certified monitoring systems starting as of the date the unit enters the trading program or, if later, 180 days after the unit commences commercial operation. Where an EGU has already certified and maintained monitoring systems in accordance with 40 CFR part 75 for purposes of another trading program, no recertification solely for purposes of entering the Group 3 trading program is required. Under these pre-existing provisions of the Group 3 trading program regulations, nearly all currently operating EGUs transitioning to the trading program under this rule are positioned to begin monitoring and reporting under the trading program as of their dates of entry (or if later, 180 days after they commence commercial operation) because of the units' previous requirements to monitor and report emissions under other programs including the CSAPR NO_x Ozone Season Group 2 Trading Program (for

³⁶⁰ The EPA is not amending the existing provisions of the Group 3 trading program regulations that govern whether units covered by the program must record and report required data on a year-round basis or may elect to record and report required data on an ozone season-only basis. See 40 CFR 97.1034(d)(1); see also 40 CFR 75.74(a)-(b). Thus, for units that are required or elect to report other data on a year-round basis, the additional recordkeeping and reporting requirements will also apply year-round, while for units that are allowed and elect to report other data on an ozone season-only basis, the additional requirements will also apply for the ozone season only.

³⁵⁹ As discussed in section IX.B of this rule, the EPA is relocating some of the regulatory provisions relating to administration of the new unit set-asides and is also removing certain provisions that are made obsolete by revisions to other provisions of the Group 3 trading program regulations.

units in Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin), the CSAPR NO_x Annual Trading Program (for units in Minnesota), and the Acid Rain Program (for most units in Nevada and Utah).

As discussed in section VI.B.3 of this document, the EPA has identified 15 potentially affected units in Nevada and Utah that commenced commercial operation more than 180 days before the effective date of this rule and that do not currently report emissions data to the Agency under 40 CFR part 75.³⁶¹ To ensure that units in this situation have sufficient time to certify monitoring systems as required under this rule, the final rule establishes a monitoring certification deadline of 180 days after the effective date of the rule for affected units that are not already required to report emissions under 40 CFR part 75 under another program, equivalent to the 180-day window already provided to units commencing commercial operation after (or less than 180 days before) the final rule's effective date. The 180th day for units in this situation will likely fall after the end of the 2023 ozone season, with the result that the certification deadline will be extended until May 1, 2024, the first day of the 2024 ozone season. Because the Group 3 trading program's allowance holding requirements apply to a given unit only after that unit's monitor certification deadline, the units in this situation consequently will become subject to allowance holding requirements as of the 2024 ozone season rather than the 2023 ozone season.

The EPA received no comments on the provisions establishing a monitor certification deadline 180 days after the effective date of this rule for affected units that are not already required to report emissions under 40 CFR part 75, and the provisions are being finalized as proposed.

b. Additional Recordkeeping and Reporting Requirements

To facilitate implementation of the backstop daily NO_x emissions rates for certain coal-fired units, the secondary emissions limitations for units contributing to assurance level exceedances, and the revised default unit-level allowance allocation procedures, the final rule amends 40 CFR part 75 to establish two sets of additional recordkeeping and reporting requirements. The first set of additional recordkeeping and reporting requirements is specific to the backstop daily emissions rate provisions. Starting January 1, 2024, units listing coal as a

fuel in their monitoring plans, serving generators of 100 MW or larger, and equipped with SCR controls on or before the end of the previous control period (except circulating fluidized bed units) will be required to record and report total daily NO_x emissions and total daily heat input, daily average NO_x emissions rate, and daily NO_x emissions exceeding the backstop daily NO_x emissions rate. The units will also be required to record and report cumulative NO_x emissions exceeding the backstop daily NO_x emissions rate for the ozone season and any portion of such cumulative NO_x emissions exceeding 50 tons. Starting January 1, 2030, the same recordkeeping and reporting requirements will apply to all units listing coal as a fuel in their monitoring plans and serving generators of 100 MW or larger (except circulating fluidized bed units), including units not equipped with SCR controls. These data will be used to determine the allowance surrender requirements related to the backstop daily NO_x emissions rates. Implementation of these additional recordkeeping and reporting requirements would necessitate a one-time update to the units' data acquisition and handling systems but would not require any changes to the monitoring systems already needed to meet other requirements under 40 CFR part 75.

The second type of additional recordkeeping and reporting requirements applies to units exhausting to common stacks. For these units, 40 CFR part 75 includes options that often allow monitoring to be conducted at the common stack on a combined basis for all the units as an alternative to installing separate monitoring systems for the individual units in the ductwork leading to the common stack. The units then keep records and report hourly and cumulative NO_x mass emissions and in many cases heat input data on a combined basis for all units exhausting to the common stack. With respect to heat input data, but not NO_x mass emissions data, most such units have also been required historically to record and report hourly and cumulative data on an individual-unit basis, and where necessary they typically have computed the necessary unit-level hourly heat input values by apportioning the combined hourly heat input values for the common stack in proportion to the individual units' recorded hourly output of electricity or steam. See generally 40 CFR 75.72.

In this rulemaking, the provisions governing default unit-level allowance allocations, backstop daily NO_x

emissions rates for certain coal-fired units, and secondary emissions limitations for units contributing to assurance level exceedances all require the use of unit-level reported data on NO_x mass emissions (or unit-level NO_x emissions rates computed in part based on unit-level reported data on NO_x mass emissions). To facilitate the implementation of these provisions, the final rule requires all units covered by the Group 3 trading program exhausting to common stacks to record and report unit-level hourly and cumulative NO_x mass emissions data starting January 1, 2024. To obtain the necessary unit-level hourly mass emissions values, the revised regulations rule allow the units to apportion hourly mass emissions values determined at the common stack in proportion to the individual units' recorded hourly heat input. The apportionment procedure is very similar to the apportionment procedure that most such units already apply to compute reported unit-level heat input data. Where sources choose to obtain the additional required data values through apportionment, implementation of the additional recordkeeping and reporting requirements will necessitate a one-time update to the units' data acquisition and handling systems but will not require any changes to the monitoring systems already needed to meet other requirements under 40 CFR part 75.

For most units sharing common stacks, the EPA expects that the reported unit-specific hourly NO_x emissions values computed through the apportionment procedures will reasonably approximate the values that could be obtained through installation and operation of separate monitoring systems for the individual units, because the units exhausting to the common stack would be expected to have similar NO_x emissions rates. However, the EPA also recognizes that at some plants, particularly those where SCR-equipped and non-SCR-equipped coal-fired units share a common stack, unit-level values determined through apportionment based on electricity or steam output could overstate the reported NO_x mass emissions for the SCR-equipped units and correspondingly understate the reported NO_x mass emissions for the non-SCR-equipped units.³⁶² As proposed, the

³⁶¹ The units are listed in Table VI.B.3-1.

³⁶² The EPA is aware of five plants in the states covered by this rule where SCR-equipped and non-SCR-equipped coal-fired units exhaust to a common stack: Clifty Creek in Indiana; Cooper, Ghent, and Shawnee in Kentucky; and Sammis in Ohio. The owners of the Sammis plant have announced plans to retire the plant in 2023.

final rule leaves in place the existing options under 40 CFR part 75 for plants to upgrade their monitoring equipment to monitor on a unit-specific basis instead of at the common stack. Plant owners may find this option attractive if they believe it would reduce the quantities of reported emissions exceeding the backstop daily emissions rate.

The EPA is finalizing the additional recordkeeping and reporting requirements generally as proposed, with modifications as needed to accommodate the changes in the backstop daily emissions rate provisions from proposal discussed in sections VI.B.1.c.i and VI.B.1.7. No comments were received on the recordkeeping and reporting requirements added to facilitate implementation of the backstop daily emissions rate. Comments on the requirement to report unit-specific NO_x emissions data for units sharing common stacks are addressed in the following paragraphs.

Comment: Some commenters claimed that for plants where SCR-equipped and non-SCR-equipped coal-fired units share common stacks, the rule as proposed would have effectively mandated installation of unit-specific monitoring systems in order to comply with the backstop daily emissions rate provisions. The commenters generally requested that application of the backstop daily rate provisions be delayed for plants with common stacks until all units sharing the stacks were subject to the provisions. Alternatively, they claimed that the EPA should consider the cost of the additional unit-specific monitoring system to be a cost of the rule.

One commenter claimed that the option to install unit-specific monitoring systems for the units sharing a common stack at its plant was not feasible because of a lack of locations in the units' ductwork suitable for installation of the monitoring equipment. Specifically, the commenter claimed that EPA Method 1 requires monitoring equipment to be located at least eight duct diameters downstream and two duct diameters upstream of any flow disturbance and stated that the units had no straight runs of ductwork sufficiently long to meet these criteria.

Response: The EPA's response to comments about the application of backstop rate requirements to units sharing common stacks is in section VI.B.7 of this document. With respect to assertions that the rule effectively mandates installation of unit-specific monitoring systems, the EPA disagrees. Although the EPA pointed out the option in the proposal, anticipating that

owners of some units sharing common stacks might find it advantageous to upgrade their monitoring systems, the final rule does not mandate such upgrades and explicitly provides a reporting option that can be used if a plant owner continues to monitor only at the common stack. For example, a plant owner might choose not to upgrade monitoring systems if the owner does not plan to operate the non-SCR-equipped units sharing the stack frequently. Regarding the contention that the cost of additional monitoring systems should be considered a cost of the rule, the EPA notes that the monitoring cost estimates that the Agency regularly develops for 40 CFR part 75 already reflect the conservative assumption that all affected units perform monitoring on a unit-specific basis.

With respect to the comment asserting an inability to install unit-specific monitoring equipment because of a lack of suitable locations, the EPA does not believe the commenter has provided sufficient information to support the assertion. Although the commenter cites the EPA Method 1 location criteria, the CEMS location provisions in 40 CFR part 75 do not reference those location criteria but instead reference the EPA Performance Specification 2 location criteria, which recommend that a CEMS be located at least two duct diameters downstream and a half duct diameter upstream from a point at which a change in pollutant concentration may occur.³⁶³ Thus, while the commenter states that its units do not have straight runs of ductwork ten duct diameters long, the relevant siting criteria actually call for straight runs of ductwork only 2.5 duct diameters long, and the commenter has not provided information indicating that these criteria could not be met. Moreover, even EPA Method 1 does not require monitoring equipment to be located eight duct diameters upstream and two duct diameters downstream of any flow disturbance. While the method recommends those distances as the first option, the method also allows for locations two duct diameters upstream and a half duct diameter upstream from any flow disturbance, as well as other locations if certain performance criteria can be met.³⁶⁴

³⁶³ Appendix B to 40 CFR part 60, Performance Specification 2, sec. 8.1.2; *see also* appendix A to 40 CFR part 75, section 1.1.

³⁶⁴ Appendix A-1 to 40 CFR part 60, Method 1, sec. 11.1.

11. Designated Representative Requirements

As noted in section VI.B.1.a of this document, a core design element of all the CSAPR trading programs is the requirement that each source must have a designated representative who is authorized to represent all of the source's owners and operators and is responsible for certifying the accuracy of the source's reports to the EPA and overseeing the source's Allowance Management System account. The necessary authorization of a designated representative is certified to the EPA in a certificate of representation.

The existing designated representative provisions in the Group 3 trading program regulations already provide that the EPA will interpret references to the Group 2 trading program in certain documents—including a certificate of representation as well as a notice of delegation to an agent or an application for a general account—as if the documents referenced the Group 3 trading program instead of the Group 2 trading program. For these reasons, sources that have participated in the Group 2 trading program and that are transitioning to the Group 3 trading program under this rule will not need to submit any new forms as part of the transition, because previously submitted forms will be valid for purposes of the Group 3 trading program.

For a source that is newly affected under the Group 3 trading program and that is not currently affected under the Group 2 trading program, a designated representative who has been duly authorized by the source's owners and operators must submit a new or updated certificate of representation to the EPA. The EPA will not record any Group 3 allowances allocated to a source in the source's compliance account until a certificate of representation has been submitted for the source. If a source is also affected under other CSAPR trading programs or the Acid Rain Program, the same individual must be the source's designated representative for purposes of all the programs.

The EPA did not propose and is not finalizing any changes to the designated representative requirements. The EPA received no comments on the provisions of the proposal relating to these requirements.

12. Transitional Provisions

This section discusses several provisions that the EPA will implement to address the transition of sources into the Group 3 trading program as revised. The purposes of the transitional provisions are generally the same as the

purposes of the analogous transitional provisions promulgated in the Revised CSAPR Update: first, addressing the likelihood that the effective date of this rule will fall after the starting date of the first affected ozone season (which in this case is, May 1, 2023); second, establishing an appropriately-sized initial allowance bank through the conversion of previously banked allowances; and third, preserving the intended stringency of the Group 2 trading program for the sources that will continue to be subject to that program.³⁶⁵ However, the sources that will be participants in the revised Group 3 trading program under this rule are transitioning from several different starting points—with some sources already in the existing Group 3 trading program, some sources coming from the Group 2 trading program, and some sources not currently participating in any seasonal NO_x trading program. The EPA is therefore finalizing transitional provisions that differ across the sets of potentially affected sources based on the sources' different starting points.

a. Prorating Emissions Budgets, Assurance Levels, and Unit-Level Allowance Allocations in the Event of an Effective Date After May 1, 2023

The EPA expects that the effective date of this rule will fall after the start of the Group 3 trading program's 2023 control period on May 1, 2023, because the effective date of the rule will be 60 days after the date of the final rule's publication in the **Federal Register**. The EPA is addressing this circumstance by determining the amounts of emissions budgets and unit-level allowance allocations on a full-season basis in the rulemaking and by also including provisions in the revised regulations to prorate the full-season amounts as needed to ensure that no sources become subject to new or more stringent regulatory requirements before the final rule's effective date.³⁶⁶ Variability

³⁶⁵ As discussed in section VI.B.1.d, the EPA is not creating a "safety valve" mechanism in this rule analogous to the voluntary supplemental allowance conversion mechanism established under the Revised CSAPR Update, but intends in the near future to propose and take comment on potential amendments to the Group 3 trading program that would add an auction mechanism to the regulations for the purpose of further increasing allowance market liquidity in conjunction with other appropriate changes to ensure program stringency is maintained. While these changes may provide an additional measure of assurance to the market that allowances will be available for compliance to a degree consistent with the Step 3 emissions control stringency, the EPA does not anticipate that market liquidity concerns pose a challenge to the feasibility of sources to comply with the Group 3 trading program as finalized in this action.

³⁶⁶ As discussed in sections VI.B.7 and VI.B.8, the revisions establishing unit-specific backstop daily

limits, assurance levels, and unit-level allocations for 2023 will all be computed using the appropriately prorated emissions budgets amounts.³⁶⁷

As discussed in section VI.B.2 of this document, in the case of the three states (and Indian country within the states' borders) whose sources do not currently participate in either the Group 2 trading program or the Group 3 trading program—Minnesota, Nevada, and Utah—the sources will begin participating in the Group 3 trading program on the later of May 1, 2023, or the rule's effective date. For these states, in the rulemaking the EPA has computed the full-season emissions budgets that would have applied for the entire 2023 control period if the final rule had become effective no later than May 1, 2023, and were therefore in effect for the entire 153-day control period from May 1, 2023, through September 30, 2023. Assuming that the final rule becomes effective after May 1, 2023, as expected, the EPA will determine prorated emissions budgets for the 2023 control period by multiplying each full-season emissions budget by the number of days from the rule's effective date through September 30, 2023, dividing by 153 days, and rounding to the nearest allowance. The prorated variability limits for the 2023 control period will be computed by first determining for each state the percentage by which the state's reported heat input for the full 2023 ozone season (*i.e.*, May 1, 2023 through September 30, 2023) exceeds the heat input used to compute the state's full-season 2023 emissions budget under this rule and then multiplying the higher of this percentage or 21 percent by the state's prorated emissions budget and rounding to the nearest allowance, yielding prorated assurance levels that equal a minimum of 121 percent of the prorated emissions budgets. To determine unit-level allocation amounts from the prorated emissions budgets, the EPA will apply the unit-level allocation procedure described in section VI.B.9 to the prorated budgets. All calculations required to determine the prorated emissions budgets, the minimum 21 percent variability limits, and the unit-level allocations for the 2023 control period will be carried out as soon as possible after the EPA learns the rule's effective date. The unit-level

emissions rates and, for units contributing to assurance level exceedances, secondary unit-specific emissions limitations, will not take effect until the 2024 control period or later.

³⁶⁷ The EPA notes that transitional provisions similar to the prorating provisions being finalized in this rule were finalized and implemented without issue under the Revised CSAPR Update.

allocations for both the 2023 and 2024 control periods will be recorded in facilities' compliance accounts approximately 30 days after the rule's effective date, as discussed in section VI.B.9.b of this document.

In the case of the states (and Indian country within the states' borders) whose sources currently participate in the Group 3 trading program—Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia—the sources will continue to participate in the Group 3 trading program for the 2023 control period, subject to prorating procedures designed to ensure that the changes in 2023 emissions budgets and assurance levels will not substantively affect the sources' requirements prior to the rule's effective date. For these states, in the rulemaking the EPA has computed the full-season emissions budgets that would have applied for the entire 2023 control period if the final rule had become effective no later than May 1, 2023, but the EPA has also retained in the regulations the full-season emissions budgets for the 2023 control period that were established in the Revised CSAPR Update rulemaking. The EPA has added a provision to the regulations indicating that the emissions budgets promulgated in the Revised CSAPR Update will apply on a prorated basis for the portion of the 2023 control period before the final rule's effective date and the emissions budgets established in this rulemaking will apply on a prorated basis for the portion of the 2023 control period on and after the final rule's effective date. Under this provision, the EPA will determine a blended emissions budget for each state for the 2023 control period, computed as the sum of the appropriately prorated amounts of the state's previous and revised emissions budgets. (For example, if the final rule becomes effective on the eleventh day of the 153-day 2023 control period, the blended emissions budget will equal the sum of 10/153 times the previous emissions budget plus 143/153 times the revised emissions budget, rounded to the nearest allowance.) Blended variability limits for the 2023 control period will be computed by first determining for each state the percentage by which the state's reported heat input for the full 2023 ozone season exceeds the heat input used to compute the state's full-season 2023 emissions budget under this rule and then multiplying the higher of this percentage or 21 percent by the state's prorated emissions budget and rounding to the nearest allowance,

yielding blended assurance levels that equal a minimum of 121 percent of the blended emissions budgets. Unit-level allocations will be determined by applying the allocation procedure described in section VI.B.9 to the blended budgets. Again, all calculations required to determine the prorated emissions budgets, the minimum 21 percent variability limits, and the unit-level allocations for the 2023 control period will be carried out as soon as possible after the EPA learns the effective date of this rule. The unit-level allocations for both the 2023 and 2024 control periods will be recorded in facilities' compliance accounts approximately 30 days after the final rule's effective date, as discussed in section VI.B.9.b of this document.

In the case of the states (and Indian country within the states' borders) whose sources currently participate in the Group 2 trading program—Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin—the sources will begin to participate in the Group 3 trading program as of May 1, 2023, regardless of the rule's effective date, as discussed in section VI.B.2 of this document, subject to prorating procedures designed to ensure that the transition from the Group 2 trading program to the Group 3 trading program will not substantively affect the sources' requirements prior to the rule's effective date. The prorating procedures for these states mirror the procedures for the states currently in the Group 3 trading program, except that because no emissions budgets currently appear in the Group 3 trading program regulations for the states that are currently covered by the Group 2 trading program, the EPA has added two sets of emissions budgets for these states to the Group 3 trading program regulations: first, the states' emissions budgets for the 2023 control period that currently appear in the Group 2 trading program regulations, which are being included in the revised Group 3 trading program regulations to represent the states' emissions budgets for the portion of the 2023 control period before the rule's effective date, and second, the emissions budgets for the 2023 control period established for the states in this rulemaking, which are being included in the revised Group 3 trading program regulations to represent the state's emissions budgets for the portion of the 2023 control period on and after the rule's effective date. The procedures and timing for determining blended emissions budgets, variability limits and assurance levels, and unit-level allowance allocations, as well as the

timing for the recordation of unit-level allocations, are the same as for the states currently in the Group 3 trading program.

Beginning administrative implementation of the Group 3 trading program starting on May 1, 2023, for sources currently in the Group 2 trading program imposes no new or different requirements on these sources. It would serve the public interest and greatly aid in administrative efficiency for most elements of the Group 3 trading program—specifically, all elements of the trading program other than the elements designed to establish more stringent emissions limitations for the sources coming from the Group 2 trading program—to apply to the sources starting on May 1, 2023. This is how the EPA handled the earlier transition of twelve states from the Group 2 to the Group 3 trading program in the Revised CSAPR Update, which was accomplished successfully and without incident. *See* 86 FR 23133–34. This approach would facilitate implementation of the Group 3 trading program in an orderly manner for the entire 2023 ozone season and reduce compliance burdens and potential confusion. Each of the CSAPR trading programs for ozone season NO_x is designed to be implemented over an entire ozone season. Implementing the transition from the Group 2 trading program to the Group 3 trading program in a manner that required the covered sources to participate in the Group 2 trading program for part of the 2023 ozone season and the Group 3 trading program for the remainder of that ozone season would be complex and burdensome for sources. Attempting to address the issue by splitting the Group 2 and Group 3 requirements for these sources into separate years is not a viable approach, because the EPA has no legal basis for releasing the transitioning Group 2 sources from the emissions reduction requirements found to be necessary in the CSAPR Update for a portion of the 2023 ozone season, and the EPA similarly has no legal basis for deferring implementation of the 2023 emissions reduction requirements found to be necessary under this rule for the transitioning Group 2 sources until 2024. Moreover, the requirements of the current Group 2 trading program and the revised Group 3 trading program for the 2023 control period are substantively identical as to almost all provisions, such that with respect to those provisions, a source will not need to alter its operations in any manner or face different compliance obligations as a consequence of a transition from the

Group 2 trading program to the Group 3 trading program. Thus, the EPA believes that no substantive concerns regarding retroactivity arise from transitioning the sources currently in the Group 2 trading program to the Group 3 trading program starting on May 1, 2023, as long as those aspects of the revised Group 3 trading program for the 2023 control period that *do* meaningfully differ from the analogous aspects of the Group 2 trading program—that is, the relative stringencies of the two trading programs, as reflected in the emissions budgets and associated assurance levels—are applied only as of the effective date of the final rule.

In all respects other than prorating the emissions budgets, variability limits and assurance levels, and unit-level allowance allocations, with respect to the sources currently participating in the Group 2 trading program or the Group 3 trading program, the EPA will implement the revised Group 3 trading program for the 2023 control period in a uniform manner for the entire control period. Thus, emissions will be monitored and reported for the entire 2023 ozone season (*i.e.*, May 1, 2023, through September 30, 2023), and as of the allowance transfer deadline for the 2023 control period (*i.e.*, June 1, 2024) each source will be required to hold in its compliance account vintage-year 2023 Group 3 allowances not less than the source's emissions of NO_x during the entire 2023 ozone season. Any efforts undertaken by one of these sources to reduce its emissions during the portion of the 2023 ozone season before the effective date of the rule will aid the source's compliance by reducing the amount of Group 3 allowances that the source would need to hold in its compliance account as of the allowance transfer deadline, increasing the range of options available to the source for meeting its compliance obligations under the revised Group 3 trading program.

In the case of the sources in the three states that do not currently participate in the Group 2 trading program or the Group 3 trading program, the 2023 control period will begin on the effective date of the rule, and because the effective date of the rule is expected to fall after May 1, 2023, the 2023 control period for the sources in these states will be shorter than the 153-day length of the 2023 control period for the sources in the remaining states. However, the EPA similarly will implement the revised Group 3 trading program for the sources in these states in a uniform manner for the entire shorter control period.

The prorating provisions are being finalized as proposed. The EPA received no comments on the portion of the proposal discussing these provisions.

b. Creation of Additional Group 3 Allowance Bank for 2023 Control Period

In the CSAPR Update, where the EPA established the Group 2 trading program and transitioned over 95 percent of the sources that had been participating in what is now the CSAPR NO_x Ozone Season Group 1 Trading Program (the “Group 1 trading program”) to the new program, the EPA determined that it was reasonable to establish an initial bank of allowances for the Group 2 trading program by converting almost all allowances banked under the Group 1 trading program at a conversion ratio determined by a formula. In the Revised CSAPR Update, where the EPA established the Group 3 trading program and transitioned approximately 55 percent of the sources that had been participating in the Group 2 trading program to the new program, the EPA similarly determined that it was reasonable to provide for an initial bank of allowances for the Group 3 trading program by converting allowances banked under the Group 2 trading program at a conversion ratio determined by a formula, using a conversion procedure that was modified to leave much of the Group 2 allowance bank available for use by the approximately 45 percent of sources then in the Group 2 trading program that would remain in that program. Any conversion of banked allowances from a previous trading program for use in a new trading program must ensure that implementation of the new trading program will result in NO_x emissions reductions sufficient to address significant contribution by all states that would be participating in the new trading program, while also providing industry certainty (and obtaining an environmental benefit) through continued recognition of the value of saving allowances through early reductions in emissions. The EPA’s approach to balancing these concerns in the CSAPR Update through the conversion of banked allowances from the Group 1 trading program to the Group 2 trading program was upheld in *Wisconsin v. EPA*, 938 F.3d at 321.

Under this final rule, applying the same balancing principle as in the CSAPR Update and the Revised CSAPR Update, the EPA will carry out a further conversion of allowances banked for control periods before 2023 under the Group 2 trading program into allowances usable in the Group 3 trading program in control periods in

2023 and later years. Because the EPA is transitioning over 80 percent of the remaining sources in the Group 2 trading program to the Group 3 trading program—much closer to the situation in the CSAPR Update than the situation in the Revised CSAPR Update—in this rule the EPA is applying a conversion procedure similar to the procedure followed in the CSAPR Update. Under the conversion procedure in this rule, the EPA has not set a predetermined conversion ratio in the regulations (as was done in the Revised CSAPR Update) but instead has established provisions identifying the target amount of new Group 3 allowances that will be created and defining the types of accounts whose holdings of Group 2 allowances will be converted to Group 3 allowances (as was done in the CSAPR Update). The conversion date will be carried out by September 18, 2023, which is expected to be approximately 2 months after the compliance deadline for the 2022 control period under the Group 2 trading program and approximately ten months before the compliance deadline for the 2023 control period under the Group 3 trading program. The actual conversion ratio will be determined as of the conversion date and will be the ratio of the total amount of Group 2 allowances held in the identified types of accounts prior to the conversion to the total amount of Group 3 allowances being created.

With respect to the numerator of the conversion ratio—that is, the total amount of Group 2 allowances being converted—the EPA has defined the types of accounts included in the conversion to include all accounts except the facility accounts of sources in states that will remain in the Group 2 trading program, consistent with the approach taken in the CSAPR Update.³⁶⁸ Thus, the accounts whose holdings of Group 2 allowances will be converted to Group 3 allowances will include (1) the facility accounts of all sources in the states transitioning from the Group 2 trading program to the Group 3 trading program, (2) the facility accounts of all sources in the states already participating in the Group 3 trading program, (3) the facility accounts of all sources in any other states not covered by the Group 2 trading program that happen to hold Group 2 allowances as of the conversion date, and (4) all general accounts (that is, accounts that are not facility

³⁶⁸The states whose sources will continue to participate in the Group 2 trading program for the 2023 control period will be Iowa, Kansas, and Tennessee.

accounts, including other accounts controlled by source owners as well as accounts controlled by non-source entities such as allowance brokers). Creating the new Group 3 allowances through conversion of previously banked Group 2 allowances will also help preserve the stringency of the Group 2 trading program for the states that remain covered by that trading program at levels consistent with the stringency found to be appropriate to address those states’ good neighbor obligations with respect to the 2008 ozone NAAQS in the CSAPR Update.

With respect to the denominator of the conversion ratio—that is, the target amount of Group 3 allowances that will be created in the conversion process—the EPA has followed the same approach for setting the target amount that was used in the Revised CSAPR Update for creation of the initial Group 3 allowance bank. Specifically, the target amount of Group 3 allowances to be created in this rule will be computed as the sum of the minimum 21 percent variability limits for the 2024 control period³⁶⁹ established for the ten states being added to the Group 3 trading program, prorated to reflect the portion of the 2023 control period occurring on and after the effective date of the final rule. Based on the amounts of the state emissions budgets and variability limits, the full-season target amount for the conversion would be 23,094 Group 3 allowances. The quantity of banked Group 2 allowances currently held in accounts other than the facility accounts of sources in Iowa, Kansas, and Tennessee exceeding the quantity of allowances likely to be needed for 2022 compliance is approximately 149,386 allowances. Thus, if the quantities of banked Group 2 allowances held in the accounts being included in the conversion do not change between now and the conversion date, and if there was no prorating adjustment, the conversion ratio would be approximately 6.5-to-1, meaning that one Group 3 allowance would be created for every 6.5 Group 2 allowances deducted in the conversion process.³⁷⁰

As noted in section VI.B.12.a of this document, the EPA expects that the effective date of this rule will occur after

³⁶⁹Similar to the approach taken in the Revised CSAPR Update, because emissions reductions from some of the emissions controls that EPA has identified as appropriate to use in setting budgets are first reflected in the 2024 state budgets rather than the 2023 state budgets, the EPA is basing the bank target amount on the sum of the states’ 2024 variability limits rather than the 2023 variability limits.

³⁷⁰By comparison, the analogous conversion ratio under the Revised CSAPR Update was 8-to-1.

the start of the 2023 ozone season, and prorating provisions are being promulgated in this rule to ensure that the increased stringency of this rule's state budgets and state assurance levels (*i.e.*, the sums of the budgets and variability limits) will take effect only after the rule's effective date. Consistent with these other procedures, the EPA will similarly prorate the bank target amount used in the conversion process. For example, if the effective date of the final rule is the eleventh day of the 153-day 2023 ozone season, the full-season initial bank target amount of 23,094 allowances would be prorated to an initial bank target amount of 21,585 allowances.³⁷¹ The EPA notes that prorating the bank amount in this manner will not reduce sources' compliance flexibility for the 2023 ozone season, because the amounts of Group 3 allowances that sources will receive for the portion of the 2023 ozone season before the rule's effective date will be based on the trading program budgets for the 2023 control period that were in effect before this rulemaking. These trading program budgets exceed the sources' collective 2022 emissions by approximately 29,789 tons, indicating potentially surplus allowances roughly 1.3 times the full-season bank conversion target amount of 23,094 allowances. Thus, although the prorating procedure will reduce the amount of Group 3 allowances that would be available to sources in the form of an initial bank, the reduction in the quantity of these allowances will be more than offset by the quantities of Group 3 allowances that will be allocated in excess of sources' recent historical emissions levels for the portion of the ozone season before the final rule's effective date.

As in the CSAPR Update and the Revised CSAPR Update, the EPA's overall objective in establishing the target amount for the allowance conversion is to achieve a total target amount for the bank at a level high enough to accommodate year-to-year variability in operations and emissions, as reflected in states' variability limits, but not high enough to allow sources collectively to plan to emit in excess of the collective state budgets. The EPA believes that a well-established trading program should be able to function with an allowance bank lower than the full amount of the covered states' variability limits, as discussed in section VI.B.6 of this document with respect to the bank recalibration process that will begin with the 2024 control period. However, the EPA also believes there are several

compelling reasons in this instance to use a bank target higher than the minimum practicable level.

First, making an allowance bank available for use in the 2023 control period that is somewhat higher than the minimum practicable level will help to address concerns that might otherwise arise regarding the transition to a new set of compliance requirements, for some sources, and the transition to compliance requirements based on revised emissions budgets different from the emissions budgets that the sources had reason to anticipate under previous rulemakings, for the remaining sources. Although the EPA is confident that the emissions budgets being established in this rulemaking for the 2023 control period are readily achievable, the EPA also believes that the existence of a somewhat larger allowance bank at this transition point will promote sources' confidence in their ability to meet their 2023 compliance obligations in general and in a liquid allowance market in particular. Second, because the large majority of the remaining Group 2 allowances that will be converted to Group 3 allowances in this rulemaking are held by the sources currently in the Group 2 trading program, while the large majority of the initial bank of Group 3 allowances previously created in the conversion under the Revised CSAPR Update are held by the sources already in the Group 3 trading program, basing the conversion in this rulemaking on a target bank amount set in the same manner as the target bank amount used in the Revised CSAPR Update is expected to result in a less concentrated distribution of holdings of banked Group 3 allowances following the conversion than would be the case if a more stringent target bank amount were used under this rulemaking than was used in the Revised CSAPR Update. A lower concentration of holdings of banked Group 3 allowances would generally be expected to help ensure allowance market liquidity. Third, the EPA considers it equitable to treat the sources in the states transitioning from the Group 2 trading program to the Group 3 trading program in this rulemaking roughly similarly to the sources in the states that transitioned between the same two trading programs in the Revised CSAPR Update with respect to the benefit they would receive under the Group 3 trading program for any efforts they may have made to make emissions reductions under the Group 2 trading program beyond the minimum efforts that were required to comply with the emissions budgets under that program. Finally, to the extent that the

conversion results in a larger bank of allowances remaining after the 2023 control period than is considered necessary to sustain a well-functioning trading program in subsequent control periods, the excess will be removed from the program in the bank recalibration process that will be implemented starting with the 2024 control period and therefore will not weaken sources' incentives to control emissions on a permanent basis.

The rule's provisions relating to the creation of an incremental Group 3 allowance bank are being finalized as proposed. Comments on the creation of the incremental allowance bank are discussed in section 5 of the *RTC*.

c. Recall of Group 2 Allowances Allocated for Control Periods After 2022

To maintain the previously established levels of stringency of the Group 2 trading program for the states and sources that remain subject to that program, the EPA is recalling CSAPR NO_x Ozone Season Group 2 allowances equivalent in amount and usability to all vintage year 2023–2024 CSAPR NO_x Ozone Season Group 2 allowances previously allocated to sources in states and areas of Indian country transitioning to the Group 3 trading program and recorded in the sources' compliance accounts. The recall provisions apply to all sources in jurisdictions newly added to the Group 3 trading program in whose compliance accounts CSAPR NO_x Ozone Season Group 2 allowances for a control period in 2023 or 2024 were recorded, including sources where some or all units have permanently retired or where the previously recorded 2023–2024 allowances have been transferred out of the compliance account. The recall provisions provide a flexible compliance schedule intended to accommodate any sources that have already transferred the previously recorded 2023–2024 allowances out of their compliance accounts and allow Group 2 allowances of earlier vintages to be surrendered to achieve compliance. Like the similar recall provisions finalized in the Revised CSAPR Update, the recall provisions include specifications for how the recall provisions apply in instances where a source and its allowances have been transferred to different parties and for the procedures that the EPA will follow to implement the recall.

Under the Group 2 trading program regulations, each Group 2 allowance is a "limited authorization to emit one ton of NO_x during the control period in one year," where the relevant limitations include the EPA Administrator's

³⁷¹ 23,094 × (153 – 10) ÷ 153 = 21,585.

authority “to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.” 40 CFR 97.806(c)(6)(ii). The Administrator is determining that, to effectively implement the Group 2 trading program as a compliance mechanism through which states not subject to the Group 3 trading program may continue to meet their obligations under CAA section 110(a)(2)(D)(i)(I) with regard to the 2008 ozone NAAQS, it is necessary to limit the use of Group 2 allowances equivalent in quantity and usability to all Group 2 allowances previously allocated for the 2023–2024 control periods and recorded in the compliance accounts of sources in the newly added Group 3 jurisdictions. The Group 2 allowances that have already been allocated to sources in the newly added Group 3 states for the 2023–2024 control periods and recorded in the sources’ compliance accounts represent the substantial majority of the total remaining quantity of Group 2 allowances that have been allocated and recorded for the 2023–2024 control periods and that were not already made subject to recall when other jurisdictions were transferred from the Group 2 trading program to the Group 3 trading program in the Revised CSAPR Update. Because allowances can be freely traded, if the use of the 2023–2024 Group 2 allowances previously recorded in newly added Group 3 sources’ compliance accounts (or equivalent Group 2 allowances) were not limited, the effect would be the same as if the EPA had issued to sources in the states that will remain covered by the Group 2 trading program a quantity of allowances available for compliance under the 2023–2024 control periods many times the levels that the EPA determined to be appropriate emissions budgets for these states in the CSAPR Update. Through the use of banked allowances, the excess Group 2 allowances would affect compliance under the Group 2 trading program in control periods after 2024 as well. Continued implementation of the Group 2 trading program at levels of stringency consistent with the levels contemplated under the CSAPR Update therefore requires that the EPA limit the use of the excess allowances, as the EPA is doing through the recall provisions.

In this rule, the EPA is implementing limitations on the use of the excess 2023–2024 Group 2 allowances through requirements to surrender, for each 2023–2024 Group 2 allowance recorded in a newly added Group 3 source’s

compliance account, one Group 2 allowance of equivalent usability under the Group 2 trading program. The surrender requirements apply to the owners and operators of the Group 3 sources in whose compliance account the excess 2023–2024 Group 2 allowances were initially recorded. In general, each source’s current owners and operators are required to comply with the surrender requirements for the source by ensuring that sufficient allowances to complete the deductions are available in the source’s compliance account by one of two possible deadlines discussed later in this section. However, an exception is provided if a source’s current owners and operators obtained ownership and operational control of the source in a transaction that did not include rights to direct the use and transfer of some or all of the 2023–2024 Group 2 allowances allocated and recorded (either before or after that transaction) in the source’s compliance account. The rule provides that in such a circumstance, with respect to the 2023–2024 Group 2 allowances for which rights were not included in the transaction, the surrender requirements apply to the most recent former owners and operators of the source before any such transactions occurred. Because in this situation a source’s former owners and operators might lack the ability to access the source’s compliance account for purposes of complying with the surrender requirements, the former owners and operators would instead be allowed to meet the surrender requirements with Group 2 allowances held in a general account.³⁷²

To provide as much flexibility as possible consistent with the need to limit the use of the excess Group 2 allowances, for each 2023–2024 Group 2 allowance recorded in a Group 3 source’s compliance account, the EPA will accept the surrender of either the same specific 2023–2024 Group 2 allowance or any other Group 2 allowance with equivalent (or greater) usability under the Group 2 trading program. Thus, a surrender requirement with regard to a Group 2 allowance allocated for the 2023 control period could be met through the surrender of any Group 2 allowance allocated for the 2023 control period or the control period in any earlier year—in other words, any 2017–2023 Group 2 allowance.³⁷³ Similarly, the surrender

³⁷² The EPA is currently unaware of any source that would need to use this flexibility but has included the option in the rule to address the theoretical possibility of such a situation.

³⁷³ The first control period for the Group 2 trading program was in 2017.

requirement with regard to a 2024 Group 2 allowance could be met through the surrender of any 2017–2024 Group 2 allowance.

Owners and operators subject to the surrender requirements can choose from two possible deadlines for meeting the requirements. The optional first deadline will be 15 days after the effective date of this rule.³⁷⁴ As soon as practicable or after this date, the EPA will make a first attempt to complete the deductions of Group 2 allowances required for each Group 3 source from the source’s compliance account. The EPA will deduct Group 2 allowances first to address any surrender requirements for the 2023 control period and then to address any surrender requirements for the 2024 control period. When deducting Group 2 allowances to address the surrender requirements for each control period, EPA will first deduct allowances allocated for that control period and then will deduct allowances allocated for each successively earlier control period. This order of deductions is intended to ensure that whatever Group 2 allowances are available in the account are applied to the surrender requirements in a manner that both maximizes the extent to which all of the source’s surrender requirements will be met and also ensures that any Group 2 allowances left in the source’s compliance account after completion of all required deductions will be the earliest allocated, and therefore most useful, Group 2 allowances possible. Among the Group 2 allowances allocated for a given control period, The EPA will first deduct allowances that were initially recorded in that account, in the order of recordation, and will then deduct allowances that were transferred into that account after having been initially recorded in some other account, in the order of recordation.

Following the first attempt to deduct Group 2 allowances to address Group 3 sources’ surrender requirements, the

³⁷⁴ As discussed later in this section and in section VI.B.9.b, the EPA has conditioned recordation of any allocations of Group 3 allowances in a source’s compliance account on the source’s prior compliance with the recall requirements for Group 2 allowances. The purpose of providing an optional first deadline for the recall provisions 15 days after a final rule’s effective is to ensure that sources have an early opportunity to comply with the recall provisions to be eligible to have allocations of Group 3 allowances recorded in their accounts 30 days after the final rule’s effective date. Because the vast majority of sources subject to the recall provisions already hold sufficient Group 2 allowances to comply with the recall provisions, the EPA anticipates that the sources will easily be able to comply with the optional first recall deadline.

EPA will send a notification to the designated representative for each such source (as well as any alternate designated representative) indicating whether all required deductions were completed and, if not, the additional amounts of Group 2 allowances usable in the 2023 or 2024 control periods that must be held in the appropriate account by the second surrender deadline of September 15, 2023. Each notification will be sent to the email addresses most recently provided to the EPA for the recipients and will include information on how to contact the EPA with any questions. The EPA has provided that no allocations of Group 3 allowances will be recorded in a source's compliance account until all the source's surrender requirements with regard to 2023–2024 Group 2 allowances have been met. For this reason, the principal consequence to a source of failure to fully comply with the surrender requirements by 15 days after the effective date of this rule will be that any Group 3 allowances allocated to the units at the source for the 2023 and 2024 control periods that would otherwise have been recorded in the source's compliance account by 30 days after the effective date of a final rule will not be recorded as of that recordation date.

If all surrender requirements of 2023–2024 Group 2 allowances for a source have not been met in EPA's first attempt, the EPA will make a second attempt to complete the required deductions from the source's compliance account (or from a specified general account, in the limited circumstance noted previously) as soon as practicable on or after September 15, 2023. The order in which Group 2 allowances are deducted will be the same as described previously for the first attempt.

If the second attempt to deduct Group 2 allowances to meet the surrender requirements through deductions from the source's compliance account (or from a specified general account) is unsuccessful for a given source, as soon as practicable on or after November 15, 2023, to the extent necessary to address the unsatisfied surrender requirements for the source, the EPA will deduct the 2023–2024 Group 2 allowances that were initially recorded in the source's compliance account from whatever accounts the allowances are held in as of the date of the deduction, except for any allowances where, as of April 30, 2022, no person with an ownership interest in the allowances was an owner or operator of the source, was a direct or indirect parent or subsidiary of an owner or operator of the source, or was

directly or indirectly under common ownership with an owner or operator of the source.³⁷⁵ Before making any deduction under this provision, the EPA will send a notification to the authorized account representative for the account in which the allowance is held and will provide an opportunity for submission of objections concerning the data upon which the EPA is relying. In EPA's view, this provision does not unduly interfere with the legitimate expectations of participants in the allowance markets because the provision will not be invoked in the case of any allowance that was transferred to an independent party in an arms-length transaction before EPA's intent to recall 2023–2024 Group 2 allowances became widely known. The provision would apply only to a Group 2 allowance that, as of April 30, 2022, was still controlled either by the owners and operators of the source in whose compliance account it was initially recorded or by an entity affiliated with such an owner or operator. The EPA believes that by April 30, 2022, all market participants had ample opportunity to become informed of the proposed rule provisions to recall 2023–2024 Group 2 allowances recorded in Group 3 sources' compliance accounts, particularly since the EPA implemented a closely analogous recall of Group 2 allowances in the Revised CSAPR Update.³⁷⁶

The final revised regulations provide that failure of a source's owners and operators to comply with the surrender requirements will be subject to possible enforcement as a violation of the CAA, with each allowance and each day of the control period constituting a separate violation.

To eliminate any possible uncertainty regarding the amounts of Group 2 allowances allocated for the 2023–2024 control periods (or earlier control periods) that the owners and operators

³⁷⁵ The provision under which the EPA will not deduct Group 2 allowances transferred to unrelated parties before April 30, 2022 from the transferees' accounts does not relieve the source to which the Group 2 allowances were originally allocated from the obligation to comply with the recall requirements. Specifically, the source would be required to comply with the recall requirements by obtaining and surrendering other Group 2 allowances.

³⁷⁶ Even before publication of the proposed rule, the EPA posted information on its websites to notify market participants that a pending rulemaking could have consequences for the value and usability of Group 2 allowances. The posted locations included the electronic portal that authorized account representatives use to enter allowance transfers for recordation by the EPA in the Allowance Management System. Additionally, the EPA emailed a notice identifying the possibility of such consequences to the representatives for all Allowance Management System accounts.

of each Group 3 source are required to surrender under the recall provisions, the EPA has prepared a list of the sources in the additional Group 3 states and areas of Indian country in whose compliance accounts allocations of 2023–2024 Group 2 allowances were recorded, with the amounts of the allocations recorded in each such compliance account for the 2023 and 2024 control periods. An additional list shows, for each newly added Group 3 source, the specific Group 2 allowances (batched by serial number) allocated for each control period and recorded in the source's compliance account and indicates whether, as of April 30, 2022, that batch of allowances was held in the source's compliance account, in an account believed to be partially or fully controlled by a related party (*i.e.*, an owner or operator of the source or an affiliate of an owner or operator of the source), or in an account believed to be fully controlled by independent parties. The lists are in a spreadsheet titled, "Recall of Additional CSAPR NO_x Ozone Season Group 2 Allowances," available in the docket for this rule. After the first and second surrender deadlines, the EPA intends to update the lists to indicate for each Group 3 source whether the surrender requirements for the source under the recall provisions have been fully satisfied. The EPA will post the updated lists on a publicly accessible website to ensure that all market participants have the ability to determine which specific 2023–2024 Group 2 allowances initially recorded in any given Group 3 source's compliance account do or do not remain subject to potential deduction to address the source's surrender requirements under the recall provisions.

The recall provisions have been finalized without change from the proposal. The EPA received no comments on the proposed provisions.

13. Conforming Revisions to Regulations for Other CSAPR Trading Programs

As noted in section VI.B.1.a of this document, in addition to the Group 3 trading program, EPA currently administers five other CSAPR trading programs, all of which have provisions that in most respects parallel the provisions of the Group 3 trading program.³⁷⁷ In this rulemaking, in addition to the revisions to the Group 3 trading program, the EPA is finalizing a set of conforming revisions that concern how various areas of Indian country are

³⁷⁷ The regulations for the Group 3 Trading Program are at 40 CFR part 97, subpart GGGGG. The regulations for the other five CSAPR trading programs are at 40 CFR part 97, subparts AAAAA, BBBBB, CCCCC, DDDDD, and EEEEE.

treated for purposes of the allowance allocation provisions of the regulations for all the CSAPR trading programs.³⁷⁸

As discussed in section VI.B.9.a of this document, to reflect the D.C. Circuit's holding in *ODEQ v. EPA* that states have initial CAA implementation planning authority in non-reservation areas of Indian country until displaced by a demonstration of tribal jurisdiction over such an area, the EPA is revising the allowance allocation provisions in the Group 3 trading program regulations so that, instead of distinguishing between the sets of units within a given state's borders that either are not or are in Indian country, the revised regulations distinguish between (1) the set of units within the state's borders that are not in Indian country or are in areas of Indian country covered by the state's CAA implementation planning authority and (2) the set of units within the state's borders that are in areas of Indian country not covered by the state's CAA implementation planning authority. For the same reasons stated in section VI.B.9.a of this document for the Group 3 trading program, the EPA is revising the allowance allocation provisions in the regulations for all the other CSAPR trading programs establishing the same substantive distinction among the sets of units within each state's borders. The specific regulatory provisions that are affected are identified in section IX.D of this document. The EPA is unaware of any currently operating units that would be affected by this revision to the regulations for the other CSAPR trading programs.

The conforming revisions to the regulations for the other CSAPR trading programs concerning Indian country are being finalized as proposed with no changes. The EPA received no comments on this portion of the proposal.

C. Regulatory Requirements for Stationary Industrial Sources

The EPA is finalizing FIPs with requirements for certain non-EGU industry sources for 20 of the states covered in this final rule. See section II.B of this document for the list of states. The FIPs include new emissions limitations for units in nine non-EGU industries that the EPA finds (as discussed in sections IV and V of this final rule) are significantly contributing

to nonattainment or interfering with maintenance in other states. The emissions control requirements of these FIPs for non-EGU sources apply only during the ozone season (May through September) each year, beginning in 2026.

To achieve the necessary non-EGU emissions reductions for these 20 states, the EPA is finalizing the proposed emissions limitations with some adjustments as a result of information received during the public comment period. The final emissions limits apply to the most impactful types of units in the relevant industries and are achievable with the control technologies identified in this preamble and further discussed in the Final Non-EGU Sectors TSD. The non-EGU regulatory requirements unique to each industry that EPA is finalizing after considering public comments are discussed in sections VI.C.1 through VI.C.6 of this document.

These final FIP requirements apply to both new and existing emissions units. The non-EGU emissions limits and compliance requirements will apply in all 20 states (and, as discussed in section III.C.2 of this document, in areas of Indian country within the borders of those states), even if some of those states do not currently have emissions units in a particular source category. This approach is consistent with the approach that the EPA proposed, and the EPA did not receive any comments specifically objecting to our proposal to regulate new units. This approach will ensure that all new sources constructed in any of the 20 states will be subject to the same good neighbor requirements that apply to existing units under this final rule. This will also avoid creating incentives to move production from an existing non-EGU source to a new non-EGU source of the same type but lacking the relevant emissions control requirements either within a linked state or in another linked state.

Comment: The EPA received several comments regarding the proposed approach of establishing unit-specific emissions limitations for non-EGUs instead of an emissions trading program. Some commenters suggested that a trading program for non-EGUs could provide for operational flexibility and that EPA should allow sources to work with regulatory authorities to develop a trading program. Other commenters generally supported EPA's proposed approach and the decision to not include non-EGUs in an emissions trading program, because the EPA would not need to require sources to unnecessarily install CEMS. Commenters from several states and

industry groups generally supported other monitoring options over CEMS, such as parametric monitoring, performance testing, and predictive emissions monitoring systems (PEMS). Additional commenters voiced concern with the expense and burden of continuous parametric monitoring and semi-annual performance tests. Specifically, commenters explained that semi-annual testing should not be required when the emissions limits only apply during the ozone season. Commenters also noted that many non-EGU boilers have recently been relieved from meeting the CEMS requirements under the 1998 NO_x SIP Call and that implementing CEMS on many of the non-EGU sources would be difficult and unnecessary.

Response: The EPA is finalizing a unit-specific approach with rate-based emissions limitations set on a uniform basis for the different segments of non-EGU emissions units using applicability criteria based on size and type of unit and, in some cases, emissions thresholds. In response to public comments, the EPA has adjusted these requirements as necessary to ensure that the emissions control requirements are achievable while ensuring that the FIPs achieve the necessary emissions reductions from the covered units to eliminate significant contribution to nonattainment and interference with maintenance as discussed in section V of this document. The EPA has concluded that a unit-specific approach is more appropriate for non-EGUs at this time than implementing a trading program and requiring all units to implement rigorous part 75 monitoring and reporting requirements. As explained in the proposal, to be considered for a trading program, non-EGU sources would have to comply with requirements for monitoring and reporting of hourly mass emissions in accordance with 40 CFR part 75 as we have required for all previous trading programs. Monitoring and reporting under part 75 include CEMS (or an approved alternative method), rigorous initial certification testing, and periodic quality assurance testing thereafter, such as relative accuracy test audits and daily calibrations. Consistent and accurate measurement of emissions is necessary to ensure that each allowance actually represents one ton of emissions and that one ton of reported emissions from one source would be equivalent to one ton of reported emissions from another source. See 75 FR 45325 (August 2, 2010). Moreover, these monitoring requirements generally would need to be in place for at least

³⁷⁸ Additional conforming revisions concerning the schedules for the EPA to record allowance allocations in source's compliance accounts and for states to submit state-determined allowance allocations to the EPA for subsequent recordation were finalized in an earlier final rule in this docket. See 87 FR 52473 (August 26, 2022).

one full ozone season to establish baseline data before it would be appropriate to rely on a trading program as the mechanism to achieve the required emissions reductions. Many industry and state commenters provided information confirming that many non-EGU units subject to this rulemaking do not currently utilize CEMS and specifically requested that EPA avoid requiring CEMS for all non-EGU industries. The EPA generally agrees that CEMS is not necessary for all non-EGU industries under the approach of this final rule and is finalizing other continuous monitoring, recordkeeping, and reporting requirements, as appropriate, that are specific to each non-EGU industry. The EPA has determined that establishing unit-specific emissions limitations for non-EGUs is a preferable approach in part because it avoids the rigorous monitoring requirements that would be applied to non-EGUs for the first time under a trading program.

Furthermore, to address commenters' concerns regarding non-EGU requirements for performance testing on a semi-annual basis, the EPA has also reduced the frequency of all required performance testing for non-EGU sources to once per calendar year. As commenters correctly pointed out, the emissions limits in these final FIPs only apply during the ozone season and testing once per calendar year should be sufficient to confirm the accuracy of the parameters being monitored to demonstrate continuous compliance during the ozone season. The EPA also agrees with commenters that the annual testing requirements need not occur during the ozone season.

In addition, the EPA is modifying the applicability criteria and other regulatory requirements in response to public comments to provide certain compliance flexibilities for non-EGU industries where appropriate. As discussed further in section V.C.1 of this document, the EPA is modifying the requirements for Pipeline Transportation of Natural Gas by finalizing an exemption for emergency engines and allowing any owner or operator of an affected unit to propose a "Facility-Wide Averaging Plan" that would, if approved by EPA, provide an alternative means for compliance with the emissions limits in this final rule. Further, as discussed in section VI.C.5 of this document, the EPA is finalizing a low-use exemption for non-EGU boilers that operates less than 10 percent per year on an hourly basis, based on the three most recent years of use and no more than 20 percent in any one of the three years. These final rule

provisions require controls on the most impactful non-EGU industrial sources while providing the flexibility needed to accommodate unique circumstances on a case-by-case basis.

Comment: Commenters from several non-EGU industries and states raised general concerns regarding the ability for all sources to comply with the proposed emissions limits. Some commenters suggested that the EPA allow for case-by-case limits where necessary, similar to case-by-case RACT determinations. Specifically, commenters operating boilers, furnaces, and MWCs provided general explanations of how some units might not be able to meet the proposed emissions limits and requested that EPA provide for compliance flexibility where a source can demonstrate technical and economical infeasibility.

Response: As explained more in sections VI.C.1 through VI.C.6, the EPA has made several adjustments to the proposed applicability criteria, emissions limits, and compliance requirements in response to public comments and to reduce the costs of compliance with the final rule. For Pipeline Transportation and Natural Gas, the EPA is finalizing emissions averaging provisions and exemptions for emergency engines to allow facilities to avoid installing controls on units with lower actual emissions where the installation of controls would be less cost effective compared to higher-emitting units. For Cement and Concrete Product Manufacturing, the EPA has removed the daily source cap that would have resulted in an artificially restrictive NO_x emissions limit for affected cement kilns that have operated at lower levels due to the COVID-19 pandemic. For Iron and Steel and Ferroalloy Manufacturing, the EPA is finalizing a "test-and-set" requirement for reheat furnaces that will require the installation of low-NO_x burners or equivalent technology. The EPA has addressed the economic concerns raised by commenters regarding installation of controls at Iron and Steel facilities by not finalizing the other ten proposed emissions limits that were intended to require the installation of SCR at these facilities. For Glass and Glass Product Manufacturing, the EPA is finalizing alternative standards that apply during startup, shutdown, and idling conditions. For boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, Pulp, Paper, and Paperboard Mills, Metal Ore Mining, and the Iron and Steel Industry, the EPA is finalizing a low-use exemption to eliminate the need to install controls on boilers that would

have resulted in relatively small reductions in emissions. Finally, the EPA has modified the monitoring and recordkeeping requirements for all non-EGU industries where possible to reduce the testing frequency to once a year and to provide for alternative monitoring protocols where appropriate, which should further reduce the costs of compliance on non-EGU sources. With these modifications to the final rule in response to comments, the non-EGU sources subject to this rule should be able to meet the applicable control requirements established in this final rule.

The EPA also recognizes, however, that there may be unique circumstances the Agency cannot anticipate that would, for a particular source, render the final emissions control requirements technically impossible or impossible without extreme economic hardship. To address these limited circumstances, the EPA is finalizing a provision that allows a source to request EPA approval of a case-by-case emissions limit based on a showing that an emissions unit cannot meet the applicable standard due to technical impossibility or extreme economic hardship. The EPA has modeled the case-by-case emissions limit mechanism on case-by-case RACT requirements and certain facility-specific emissions limits under 40 CFR part 60 identified by commenters.³⁷⁹ The owner or operator of a source seeking a case-by-case emissions limit must submit a request meeting specific requirements to the EPA by August 5, 2024, one year after the effective date of this final rule. The applicable emissions limits established in this final rule remain in effect until the EPA approves a source's request for a case-by-case emissions limit. Given the May 1, 2026 compliance date that generally applies to all affected units in the non-EGU industries covered by this final rule, we encourage owners and operators of affected units who believe they must seek case-by-case emissions limits to submit their requests to the EPA before the one-year deadline for such requests, if possible, to ensure adequate time for EPA review and to install the necessary controls.

For a source requesting a case-by-case limit due to technical impossibility, the final rule requires that the request include emissions data obtained through CEMS or stack tests, an analysis

³⁷⁹ For examples of case-by-case RACT provisions and source specific limits for boilers in subpart Db of the EPA's NSPS, see 40 CFR 60.44b(f); Regulations of Connecticut State Agencies section 22a-174-22e; Code of Maryland Regulations section 26.11.09.08(B)(3); and Code of Maine Rules section 096-138-3, subsection (I).

of all available control technologies based on an engineering assessment by a professional engineer or data from a representative sample of similar sources, and a recommendation concerning the most stringent emissions limit the source can technically achieve.

For a source requesting a case-by-case limit on the basis of extreme economic hardship, the final rule requires that the request include at least three vendor estimates from three separate vendors that do not have a corporate or business-affiliation with the source of the costs of installing the control technology necessary to meet the applicable emissions limit and other information that demonstrates, to the satisfaction of the Administrator, that the cost of compliance with the applicable emissions limit for that particular source would present an extreme economic hardship relative to the costs borne by other comparable sources in the industry under this rule. In evaluating a source's request for a case-by-case limit due to extreme economic hardship, the EPA will consider the emissions reductions and costs identified in this final rulemaking (and related support documents) for other sources in the relevant industry and whether the costs of compliance for the source seeking the case-by-case limit would significantly exceed the highest representative end of the range of estimated cost-per-ton figures identified for any source in the relevant industry as discussed in section V of this document.

As discussed in section VI.A of this document, in *Wisconsin* the court held that some deviation from the CAA's mandate to eliminate prohibited transport by downwind attainment deadlines may be allowed only "under particular circumstances and upon a sufficient showing of necessity," e.g., when compliance with the statutory mandate amounts to an impossibility.³⁸⁰ Given these directives, the EPA cannot allow a covered source to avoid complying with the emissions limits established in this final rule unless the source can demonstrate that compliance with the limit would either be impossible as a technical matter or result in an extreme economic hardship—i.e., exceed the high end of the cost-effectiveness estimates that informed the EPA's Step 3 determination of significant contribution, as discussed in section V of this document. The criteria that must

be met to qualify for a case-by-case limit are designed to meet this statutory mandate.

Comment: Several commenters raised concerns about the EPA's differing applicability criteria for the various non-EGU industries. Specifically, the commenters questioned why EPA set applicability criteria for engines in Pipeline Transportation of Natural Gas and non-EGU boilers based on design capacity instead of potential to emit (PTE). Commenters also requested that the EPA allow each non-EGU category to rely on operating permits or other federally enforceable instruments to avoid being subject to the rule, such as limits to the PTE or limits on fuels used.

Response: The 100 tpy PTE threshold and comparable design capacity thresholds of 1,000 horsepower (hp) for engines and 100 mmBtu/hr for boilers are appropriate to ensure that the final rule reduces emissions from the most impactful units. The EPA finds the control technologies assumed to be installed to meet the final emissions limits would not be as readily available or cost effective for emissions units with PTE or design capacities lower than the applicability thresholds in this final rule.

With regard to the selection of design capacity thresholds for boilers and engines, the EPA finds that most RACT requirements and other standards reviewed by the EPA establish applicability criteria for engines and boilers based on design capacity rather than PTE. We further explain our basis for establishing applicability thresholds based on design capacity for these two source categories in sections VI.C.1. and VI.C.5. For consistency with preexisting requirements for engines and boilers and to capture the sizes of units identified in Step 3 of our analysis, the EPA selected design capacities of 1,000 hp for engines and 100 mmBtu/hr for boilers. The EPA recognizes that these applicability thresholds captured more units than the EPA intended, particularly some low-use units. Therefore, as explained in sections VI.C.1 and VI.C.5., the EPA is establishing exemptions for low-use boilers and emergency engines, as well as new emissions averaging provisions for engines, to ensure that this final rule focuses on larger, more impactful units.

The EPA also agrees with commenters that the applicability criteria should allow for sources to rely on enforceable requirements that limit a source's PTE and is finalizing a regulatory definition of PTE that is generally consistent with the definitions of that term in the EPA's title V and NSR permit programs. See, e.g., 40 CFR 51.165(a)(1)(iii), 70.2. In

constructing the list of potential sources subject to the final rule, the EPA relied on available information to identify the PTE of the emissions units in the various non-EGU industries that are captured by the applicability criteria. See *Memo to Docket titled Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs*. Thus, the EPA's Step 3 analysis takes into account available information about currently enforceable emissions limits and physical and operational limitations identified in existing permits. The EPA finds it necessary to define PTE consistent with its use in the title V and NSR permit programs to ensure that the requirements of the final FIPs apply to the most impactful units identified in Step 3 of our analysis. However, to ensure that these FIPs achieve the emissions reductions necessary to eliminate significant contribution or interference with maintenance as described in this final rule, the applicability criteria for the Cement and Concrete Manufacturing, Iron and Steel and Ferroalloy Manufacturing, and Glass and Glass Product Manufacturing industries take into account only those enforceable PTE limits in effect as of the effective date of this final rule. Thus, any emissions unit in these three industries that has a PTE equal to or greater than 100 tons per year and thus meets the definition of an "affected unit" as of August 4, 2023, will remain subject to the applicable FIPs, without regard to any PTE limit that the emissions unit may subsequently become subject to. Each affected unit in these three industries must submit an initial notification of applicability to the EPA by December 4, 2023, that identifies its PTE as of the effective date of this final rule. Additionally, any owner or operator of an existing emissions unit that is not an affected unit as of August 4, 2023, but subsequently meets the applicability criteria (e.g., due to a change in fuel use that increases the unit's PTE) will become an affected unit subject to the applicable requirements of this final rule at that time.

Comment: In responding to the EPA's request for comment on whether some non-EGU units would need to run controls required by the final FIP year-round, one commenter anticipated that control equipment would be operated as necessary to achieve applicable emissions limits, but that operational

³⁸⁰ *Wisconsin*, 938 F.3d at 316 and 319–320 (noting that any such deviation must be "rooted in Title I's framework" and "provide a sufficient level of protection to downwind States").

flexibility, cost considerations and equipment longevity would warrant operation of certain control equipment on a schedule such that the equipment would not be used when unnecessary to meet emissions limits and/or outside of ozone season (*i.e.*, during winter months). The commenter further explained that flexibility in the operation of certain control equipment when unnecessary to meet emissions limits will allow for routine maintenance and repairs without requiring variances or similar exemptions from continuous operation requirements.

Response: Based on the feedback received during the public comment period, the EPA is finalizing requirements for non-EGU sources that will apply only during the ozone season, which runs annually from May to September. As discussed in the proposed rule, this is consistent with EPA's prior practice in Federal actions to eliminate significant contribution of ozone in the 1998 NO_x SIP Call, CAIR, CSAPR, CSAPR Update, and the Revised CSAPR Update. In addition, the EPA did not receive any information during the public comment period suggesting that sources would have to run the necessary controls year-round due to the nature of those controls. We note, however, that certain emissions-control technologies, such as combustion controls that are integrated into the unit itself, would likely function to reduce NO_x emissions year-round as a practical engineering matter.

Comment: Regarding electronic reporting through the Compliance and Emissions Data Reporting Interface (CEDRI), one commenter requested that CEDRI reporting requirements be consolidated in one location rather than repeated in each section. Another commenter requested that EPA include electronic reporting requirements for MWCs and specifically require that MWCs report CEMS data to CEDRI. Another commenter requested that EPA allow for extensions of time for electronic reports due to technical glitches.

Response: To increase the ease and efficiency of data submittal and data accessibility, the EPA is finalizing, as proposed, a requirement that owners and operators of non-EGU sources subject to the final FIPs, including MWCs, submit electronic copies of required initial notifications of applicability, performance test reports, performance evaluation reports, quarterly and semi-annual reports, and excess emissions reports through EPA's Central Data Exchange (CDX) using the CEDRI. The final rule requires that

performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website³⁸¹ 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 that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, the EPA is finalizing a requirement that performance evaluation results of CEMS measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT 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 a requirement that other performance evaluation results be submitted in PDF using the attachment module of the ERT. The final rule also requires that initial notifications of applicability, annual compliance reports, and excess emissions reports be submitted in PDF uploaded in CEDRI.

Furthermore, the EPA is finalizing, as proposed, provisions that allow owners and operators to seek extensions of time to submit electronic reports due to circumstances beyond the control of the owner or operator (*e.g.*, due to a possible outage in CDX or CEDRI or a *force majeure* event) in the time just prior to a report's due date, as well as provisions specifying how to submit such a claim. Public commenters supported these proposed provisions.

The EPA agrees with commenters that the CEDRI reporting requirements could be centralized and has moved the CEDRI reporting requirements to 40 CFR 52.40.

1. Pipeline Transportation of Natural Gas

Applicability

The EPA is finalizing regulatory requirements for the Pipeline Transportation of Natural Gas industry that apply to stationary, natural gas-fired, spark ignited reciprocating internal combustion engines ("stationary SI engines") within these facilities that have a maximum rated capacity of 1,000 hp or greater. Based on our review of the potential emissions from stationary SI engines, we find that use of a maximum rated capacity of 1,000 hp reasonably approximates the 100 tpy PTE threshold used in the *Screening Assessment of Potential Emissions Reductions, Air Quality*

Impacts, and Costs from Non-EGU Emissions Units for 2026, as described in section V.B of this document.

The EPA is also modifying certain provisions in response to public comments to provide compliance flexibilities for the Pipeline Transportation of Natural Gas industry sector in order to focus emissions reduction efforts on the highest emitting units. Specifically, the EPA is finalizing an exemption for emergency engines, and establishing provisions that allow any owner or operator of an affected unit to propose a Facility-Wide Averaging Plan that would, if approved by EPA, provide an alternative means for compliance with the emissions limits in this final rule.

For purposes of this rule, the EPA is clarifying and narrowing the definition of "pipeline transportation of natural gas" to mean the transport or storage of natural gas prior to delivery to a local distribution company custody transfer station or to a final end-user (if there is no local distribution company custody transfer station). The revised definition of this term in § 52.41(a) is consistent with the EPA's regulatory definition of "natural gas transmission and storage segment" in 40 CFR 60.5430(a) (subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015).

The EPA is also adding definitions of the terms "local distribution company" and "local distribution company custody transfer station" that are consistent with the definitions found in 40 CFR 98.400 (subpart NN, Suppliers of Natural Gas and Natural Gas Liquids) and 40 CFR 60.5430(a) (subpart OOOOa, Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification, or Reconstruction Commenced After September 18, 2015), respectively.

Comment: Several commenters asked EPA to exclude emergency engines in the final rule and one commenter recommended that the EPA revise the definition of affected unit to specifically exempt emergency engines.

Commenters stated that doing so would not only be consistent with other regulations applicable to stationary SI engines, but it would also be more consistent with EPA's applicability analysis, which assumes stationary SI engines will operate for 7,000 hours a year, something emergency engines are prohibited from doing by Federal regulation. Commenters also stated that emergency generators are currently exempt from requirements applicable to non-emergency RICE covered by both

³⁸¹ The ERT website is located at <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

the relevant NSPS rule (subpart JJJJ), as well as the relevant NESHAP rule (subpart ZZZZ), and that although the NSPS and NESHAP standards EPA has adopted for emergency RICE do not limit the amount of time they may run for emergency purposes, EPA has recognized in the past that states may assume a maximum of 500 hours of operation to estimate the “potential to emit” in issuing air permits for emergency RICE. One commenter asserted that emergency engines operating under other standards currently only operate for emergencies or for a few hours at a time to periodically conduct regular maintenance, that their emissions are low, and that their contribution to the ozone transport issues EPA’s proposal seeks to address is negligible. Another commenter stated that the EPA has traditionally exempted emergency engines in past standards because the EPA has typically found that the use of add-on emissions controls cannot be justified due to the cost of the technology relative to the emissions reduction that would be obtained.

Response: With respect to stationary SI emergency engines, the EPA has reviewed the information submitted by the commenters and has decided to exempt such engines from the requirements of the final rule. Exemption of emergency engines is generally consistent with the EPA’s treatment of emergency engines in other CAA rulemakings. *See, e.g.,* 40 CFR 63.6585(f). The EPA expects that this change from the proposed rule addresses the concerns expressed by the commenters about the requirements for stationary emergency engines.

The final rule defines emergency engines as engines that are stationary and operated to provide electrical power or mechanical work during an emergency situation. These engines are typically used only a few hours per year, and the costs of emissions control are not warranted when compared to the emissions reductions that would be achieved.

In the final rule, emergency engines are subject to certain compliance requirements on a continuous basis. Continuous compliance requirements include operating limitations that apply during non-emergency use but do not include emissions testing of emergency engines.

Comment: Several commenters raised concerns about the EPA’s proposal to establish applicability criteria for engines in Pipeline Transportation of Natural Gas based on design capacity rather than PTE. Other commenters asserted that the horsepower rating of an engine does not necessarily correspond to its annual emissions and that engines with a rated capacity of more than 1,000 hp in this industry sector may operate at low load and/or infrequently and be associated with limited NO_x emissions. One commenter stated that most of the subject facilities in their state that have natural gas fired SI engines with a nameplate capacity rating of 1,000 hp or greater have annual NO_x emissions less than 100 tpy, with nearly 25 percent of them less than 25 tpy. The commenter suggested that the 1,000 hp applicability threshold would result in overcontrol. According to one commenter, the EPA has overestimated the emissions rates and operating hours of engines with a rated capacity of more than 1,000 hp and thus underestimated the size of pipeline RICE that would be expected to emit more than 100 tpy of NO_x annually. According to this commenter, only engines much larger than 1,000 hp are likely to emit at the level EPA deemed appropriate for regulation.

Another commenter suggested that the EPA should use a 150 ton per year threshold that the commenter alleges was used in the Revised CSAPR Update rulemaking so that stationary SI engines are regulated on equal footing with EGUs and raise the 1,000 hp threshold to 2,000 hp, which according to the commenter would not sacrifice the emissions reductions to be achieved.

Response: As explained in the proposal, the EPA found that most RACT requirements and other standards reviewed by the EPA establish applicability criteria for engines based on design capacity rather than PTE. For consistency with preexisting requirements for engines, the EPA selected a design capacity of 1,000 hp for engines to capture the sizes of units identified in Step 3 of our analysis. Based on the Non-EGU Screening Assessment memorandum, engines with a potential to emit of 100 tpy or greater had the most significant potential for NO_x emissions reductions. The EPA recognizes that the use of a 1,000 hp design capacity as part of the applicability criteria may capture low-

use units and some units with emissions of less than 100 tons per year. However, it is also not possible to guarantee without an effective emissions control program that all such units could not increase emissions in the future. As discussed in section V of this document, we continue to find that collectively engines with a design capacity of 1,000 hp or higher in the states and industries covered by this final rule emit substantial amounts of NO_x that significantly contribute to downwind air quality problems.

However, in response to concerns raised by commenters while continuing to ensure that this rule establishes an effective emissions control program for these units that is consistent with our Step 3 determinations, the EPA is establishing a compliance alternative using facility-wide emissions averaging, which will allow facilities to prioritize emissions reductions from larger, higher-emitting units. (As previously discussed, we are also establishing an exemption for emergency engines, which also helps ensure that this final rule focuses on larger, more impactful units in this industry.) The facility-wide emissions averaging alternative is explained in the following paragraphs.

Emissions Limitations and Rationale

In developing the emissions limits for the Pipeline Transportation of Natural Gas industry, the EPA reviewed RACT NO_x rules, air permits, and OTC model rules. While some permits and rules express engine emissions limits in parts per million by volume (ppmv), the majority of rules and source-specific requirements express the emissions limits in grams per horsepower per hour (g/hp-hr). The EPA has historically set emissions limits for these types of engines using g/hp-hr and finds that method appropriate for this final FIP as well.

Based on the available information for this industry, including applicable State and local air agency rules and active air permits issued to sources with similar engines, the EPA is finalizing the following emissions limits for stationary SI engines in the covered states. Beginning in the 2026 ozone season and in each ozone season thereafter, the following emissions limits apply, based on a 30-day rolling average emissions rate during the ozone season:

TABLE VI.C-1—SUMMARY OF FINAL NO_x EMISSIONS LIMITS FOR PIPELINE TRANSPORTATION OF NATURAL GAS

Engine type and fuel	Final NO _x emissions limit (g/hp-hr)
Natural Gas Fired Four Stroke Rich Burn	1.0
Natural Gas Fired Four Stroke Lean Burn	1.5
Natural Gas Fired Two Stroke Lean Burn	3.0

The EPA anticipates that, in some cases, affected engines will need to install NO_x controls to comply with the final emissions limits in Table VI.C-1. The emissions limits for four stroke rich burn engines, four stroke lean burn engines and two stroke lean burn engines are designed to be achievable by installing Non-Selective Catalytic Reduction (NSCR) on existing four stroke rich burn engines; installing SCR on existing four stroke lean burn engines; and retrofitting layer combustion on existing two stroke lean burn engines as identified in the Final Non-EGU Sectors TSD. Sources have the flexibility to install any other control technologies that enable the affected units to meet the applicable emissions limit on a continuous basis.

The EPA is establishing provisions that allow any owner or operator of an affected unit in the Pipeline Transportation of Natural Gas Industry to propose a Facility-Wide Averaging Plan that would, if approved by EPA, provide an alternative means for compliance with the emissions limits in this final rule. These provisions will provide some flexibility to owners and operators of affected units to determine which engines to control and at what level, so long as the average emissions across all covered units, on a weighted basis, meet the applicable emissions limits for each engine type. This approach allows facilities to target the most cost-effective emissions reductions and to avoid installing controls on equipment that is infrequently operated.

We provide a more detailed discussion of the basis for the final emissions limits and the anticipated control technologies to be installed in the Final Non-EGU Sectors TSD.

Four Stroke Rich Burn and Four Stroke Lean Burn Engines

The EPA requested comment on whether a lower emissions limit is appropriate for four stroke rich burn engines since even an assumed reduction of 95 percent would result in most engines being able to achieve an emissions rate of 0.5 g/hp-hr. The EPA also requested comment on whether a lower or higher emissions limit is

appropriate for four stroke lean burn engines.

Comment: One commenter stated that the limits as proposed were not technically feasible in all circumstances. The commenter explained that its company has 150 four stroke rich burn engines in its fleet and that some of those engines cannot achieve the proposed 1.0 g/hp-hr limit even with both NSCR and layered combustion due to the vintage design of the individual cylinder geometry and the fact that most of those engines are not in production today, which limits availability of parts and retrofit technologies. The commenter asserted that 10 of its four stroke rich burn engines have all available controls on them and half of those still exceed the proposed limits. The commenter estimated that 10 of its four stroke lean burn engines would require SCR to meet the 1.5 g/hp-hr limit and that this control installation would require custom retrofit due to the age of these engines. Furthermore, the commenter stated that if current limits are not achievable in all circumstances, then lower limits are likewise impossible for four stroke rich burn engines and four stroke lean burn engines in even more circumstances. The commenter stated that the technical feasibility of installing controls on any single existing engine varies and depends, in part, on site-specific and engine-specific considerations such as space for the installation of the control, the availability of sufficient power, the emissions reductions required to meet the applicable standards, and the vintage, make, and model of a particular engine. Another commenter recommended tightening the proposed emissions standards for four stroke lean burn engines to an emissions limit similar to Colorado’s limit of 1.2 g/hp-hr. A third commenter noted that the District of Columbia Department of Energy and Environment has NO_x emissions limits for both rich- and lean burn engines burning natural gas at 0.7 g/hp-hr.

Response: The EPA is finalizing the emissions limits for both four stroke rich burn engines and four stroke lean burn engines as proposed but also establishing alternative compliance

provisions and criteria for establishing case-by-case alternative emissions limits in response to the concerns raised by commenters. NSCR can achieve NO_x reductions of 90 to 99 percent, and engines in California, Colorado, Pennsylvania and Texas have achieved the emissions limits that the EPA had proposed. Based on this information and the emissions limits and NO_x controls analysis developed by the OTC in a report entitled *Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions* (October 17, 2012), the EPA is finalizing a 1.0 g/hp-hr emissions limit for four stroke rich burn engines and a 1.5 g/hp-hr emissions limit for four stroke lean burn engines. The Final Non-EGU Sectors TSD provides a more detailed explanation of the basis for these emissions limits.

To address the concerns raised by some commenters that not all engines may be able to achieve the emissions limits as proposed due to engine vintage and technical constraints, the final rule allows any owner or operator of an affected unit to request a Facility-Wide Averaging Plan that would, if approved by EPA, provide an alternative means for compliance with the emissions limits in the final rule. An approved Facility-Wide Averaging Plan would allow the owner or operator of the facility to identify the most cost-effective means for installing the necessary controls (*i.e.*, by installing controls on the subset of engines that provide the greatest emissions reduction potential at lowest costs). In addition to the Facility-Wide Averaging Plan provisions, the final rule allows owners and operators to seek EPA approval of alternative emissions limits, on a case-by-case basis, where necessary due to technical impossibility or to avoid extreme economic hardship. The provisions governing case-by-case alternative limits are explained in more detail in section VI.C of this document.

Two Stroke Lean Burn Engines

The EPA requested comment on whether a lower emissions limit would be achievable with layered combustion alone for the two stroke lean burn engines covered by this final rule. The

EPA also sought comment on whether these engines could install additional control technology at or below the marginal cost threshold to achieve a lower emissions rate.

Comment: Commenters did not specifically address whether a lower emissions limit would be achievable with layered combustion alone at two stroke lean burn engines. However, one commenter stated that older two stroke lean burn engines generally would not be able to achieve the proposed NO_x emissions limits. The commenter stated that conversion kits are available for several models that can reduce emissions but that such kits are not made for all models, especially older stationary engines. Commenters further stated that where conversion kits are not available, a company would likely have no choice but to replace the older four stroke or two stroke stationary engines, typically at a cost of \$2 million to \$4 million each.

Two commenters stated that they are required by their state agency to have RACT, BACT, or BART controls, at minimum. Commenters stated that requiring additional controls at facilities already equipped with RACT, BACT or BART control technologies would not achieve the anticipated emissions reductions due to operational factors inherent in the preexisting and pre-controlled equipment and that the achievability of targeted control levels is highly dependent upon a number of variables at each facility.

Another commenter suggested that the EPA set lower limits for two stroke lean burn engines similar to the OTC-recommended limits in the range of 1.5–2.0 g/hp-hr.

Response: Information currently available to the EPA indicates that the amount of emissions reductions achievable with layered combustion controls is unit specific and can range from a 60 to 90 percent reduction in NO_x emissions. The EPA estimates that existing uncontrolled two stroke lean burn engines would need to reduce emissions by up to 80 percent to comply with a 3.0 g/hp-hr emissions limit. The EPA has found that engines in California, Colorado, Pennsylvania and Texas have achieved these emissions rates. Based on this information and the emissions limits and NO_x controls analysis developed by the OTC in a report entitled *Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions* (October 17, 2012), the EPA is finalizing a 3.0 g/hp-hr emissions limit for two stroke lean burn engines. Although some affected units may be able to achieve a lower emissions rate, we find

that a 3.0 g/hp-hr emissions limit generally reflects a level of control that is cost-effective for the majority of the affected units and sufficient to achieve the necessary emissions reductions. As explained in the proposed rule and expressed by public commenters, if the EPA were to establish an emissions limit lower than 3.0 g/hp-hr, some two stroke lean burn engines would not be able to meet the emissions limit with the installation of layered combustion control alone. In that case, the lower limit might require the installation of SCR, which the EPA did not find to be cost-effective for two stroke lean burn engines in its Step 3 analysis.³⁸² The Final Non-EGU Sectors TSD provides a more detailed explanation of the basis for this emissions limit.

In response to commenters' concerns about the difficulties involved in retrofitting or replacing older stationary engines to achieve the EPA's proposed emissions limit, the final rule allows any owner or operator of an affected unit to request a Facility-Wide Averaging Plan that would, if approved by EPA, provide an alternative means for compliance with the emissions limits in the final rule. In addition to the Facility-Wide Averaging Plan provisions, the final rule allows owners and operators to seek EPA approval of alternative emissions limits, on a case-by-case basis, where necessary due to technical impossibility or to avoid extreme economic hardship. However, in the context of older or "vintage," high-emitting engines in this industry for which commenters claim emissions control technology retrofit is not feasible, the Agency anticipates taking into consideration the cost associated with alternative compliance strategies, such as replacement with new, far more efficient and less polluting engines, in evaluating claims of extreme economic hardship.

Facility-Wide Averaging Plan

The EPA is finalizing regulatory text that provides for an emissions limit compliance alternative using facility-level emissions averaging. An approved Facility-Wide Averaging Plan will allow the owner or operator of the facility to average emissions across all participating units and thus to select the most cost-effective means for installing the necessary controls (*i.e.*, by installing controls on the subset of engines that provide the greatest emissions reduction potential at lowest costs and avoiding

³⁸² 87 FR 20036, 20143 (noting that an emissions limit below 3.0 g/hp-hr may require some two stroke lean burn engines to install additional controls beyond the EPA's cost threshold).

installation of controls on equipment that is infrequently operated or otherwise less cost-effective to control). So long as all of the emissions units covered by the Facility-Wide Averaging Plan collectively emit less than or equal to the total amount of NO_x emissions (in tons per day) that would be emitted if each covered unit individually met the applicable NO_x emissions limitations, the covered units will be in compliance with the final rule. Under this alternative compliance option, facilities have the flexibility to prioritize emissions reductions from larger, dirtier engines.

Comment: Several commenters recommended that the EPA promulgate emissions averaging provisions, as it did in the 2004 NO_x SIP Call Phase 2 rule (69 FR 21604), in which the EPA evaluated and supported reliance on emissions averaging for RICE in the Pipeline Transportation of Natural Gas industry sector. The commenter stated that the EPA's guidance to states on developing an appropriate SIP in response to the SIP Call provided companies the "flexibility" to use a number of control options, as long as the collective result achieved the required NO_x reductions, and that many states built their revised SIPs around the emissions averaging approach addressed in this guidance document.³⁸³ One commenter recommended that the EPA allow intra-state emissions averaging across all pipeline RICE owned or operated by the same company. Another commenter asserted that units of certain vintages and units from certain manufacturers will not be able to meet the emissions rate limits the EPA had proposed. The commenter claimed that, absent a system based on source-specific emissions limits, emissions averaging is one of the only practical mechanisms for addressing these challenges.

One commenter stated that it had evaluated the cost of controls for engines in its fleet and that the variety in cost-per-ton for each potential project counsels for a more flexible approach, like an averaging program. Another commenter advocated for an emissions averaging plan that would allow an engine-by-engine showing of economic infeasibility to ensure a cost-effective application of the emissions standards, a reduced impact on natural gas capacity, and a means for addressing the problem presented by achieving

³⁸³ The commenter refers to an August 22, 2002 memorandum from Lydia N. Wegman, Director, EPA, Air Quality Strategies and Standards Division to EPA Air Division Directors, entitled "State Implementation Plan (SIP) Call for Reducing Nitrogen Oxides (NO_x)—Stationary Reciprocating Internal Combustion Engines."

compliance on engines that are technically impossible to retrofit.

One commenter stated that the EPA should also consider allowing companies to choose a mass-based alternative that would ensure emissions reductions align with the tons per year reductions upon which the EPA based its significant contribution and over-control analyses.

Response: Based upon the EPA's 2019 NEI emissions inventory data, the EPA estimates that a total of 3,005 stationary SI engines are subject to the final rule. The EPA recognizes that many low-use engines are captured by the 1,000 hp design capacity applicability threshold. In the process of reviewing public comments, the EPA reviewed emissions averaging plans found in state air quality rules for Colorado, Illinois, Louisiana, New Jersey, and Tennessee.³⁸⁴ Based on these additional reviews, the EPA is finalizing in § 52.41(c) of this final rule an emissions limit compliance alternative using facility-level emissions averaging. Emissions averaging plans will allow facility owners and operators to determine how to best achieve the necessary emissions reductions by installing controls on the affected engines with the greatest emissions reduction potential rather than on units with lower actual emissions where the installation of controls would be less cost effective. The final rule defines "facility" consistent with the definition of this term as it generally applies in the EPA's NSR and title V permitting regulations,³⁸⁵ with one addition to make clear that, for purposes of this final rule, a "facility" may not extend beyond the boundaries of the 20 states covered by the FIP for industrial sources, as identified in § 52.40(b)(2). Because a facility cannot extend beyond this geographic area, a Facility-Wide Averaging Plan also cannot extend beyond the 20-state area covered by the FIP.

To estimate the number of facilities that may take advantage of the Facility-

Wide Averaging Plan provisions, and the number of affected units that would install controls under such an emissions averaging plan, the EPA conducted an analysis on a subset of the estimated 3,005 stationary IC engines subject to the final rule. The EPA evaluated the reported actual NO_x emissions data in tpy from a subset of facilities in the covered states using 2019 NEI data for stationary IC engines with design capacities of 1,000 hp or greater. The EPA then identified a number of facilities that have more than one affected engine, calculated each facility's emissions "cap" as the total NO_x emissions (in tpy) allowed facility-wide based on the unit-specific NO_x emissions limits applicable to all affected units at the facility, and identified a number of higher-emitting engines at each facility that were candidates for having controls installed. For engines that EPA identified were likely to install controls, the EPA assumed that four stroke rich burn engines, four stroke lean burn engines, and two stroke lean burn engines could achieve a NO_x emissions rate of 0.5 g/hp-hr with the installation of SCR based on data obtained from the Ozone Transport Commission report entitled *Technical Information Oil and Gas Sector Significant Stationary Sources of NO_x Emissions* (October 17, 2012). For the remaining engines identified as uncontrolled, the EPA assumed a NO_x emissions rate of 16 g/hp-hr for all engine types. Thus, under the assumed averaging scenarios, engines with controls installed would achieve emissions levels below the emissions limits in the final rule and would offset the higher emissions from the remaining uncontrolled units.

The EPA then calculated the total facility-wide emissions (in tpy) under various assumed averaging scenarios and compared those totals to each facility's calculated emissions cap (in tpy) to estimate the number of affected units at each facility that would need to install controls to ensure that total facility-wide emissions remained below the emissions cap. Based on these analyses, the EPA found that emissions averaging should allow most facilities to install controls on approximately one-third of the engines at their sites, on average, while complying with the applicable NO_x emissions cap on a facility-wide basis. For a more detailed discussion of the EPA's analysis and related assumptions, see the Final Non-EGU Sectors TSD.

The Facility-Wide Averaging Plan provisions that the EPA is finalizing provide the flexibility needed to address the concerns about the costs of

emissions control installations for certain stationary SI engines, by allowing facility owners and operators to average emissions across all participating units and thus to select the most cost-effective means for installing the necessary controls (*i.e.*, by installing controls on the subset of engines that provide the greatest emissions reduction potential at lowest costs and avoiding installation of controls on equipment that is infrequently operated or otherwise less cost-effective to control).

An owner or operator of a facility containing more than one affected unit may elect to use an EPA-approved Facility-Wide Averaging Plan as an alternative means of compliance with the NO_x emissions limits in § 52.41(c). The owner or operator of such a facility must submit a request to the EPA that, among other things, specifies the affected units that will be covered by the plan, provides facility and unit-level identification information, identifies the facility-wide emissions "cap" (in tpd) that the facility must comply with on a 30-day rolling average basis, and provides the calculation methodology used to demonstrate compliance with the identified emissions cap. The EPA will approve a request for a Facility-Wide Averaging Plan if the EPA determines that the facility-wide emissions total (in tpd), based on a 30-day rolling emissions average basis during the ozone season, is less than the emissions cap (in tpd) and the plan establishes satisfactory means for determining initial and continuous compliance, including appropriate testing, monitoring, and recordkeeping requirements.

Compliance Assurance Requirements

The EPA is requiring owners and operators of affected units to conduct annual performance tests in accordance with 40 CFR 60.8 to demonstrate compliance with the NO_x emissions limit in this final rule. The EPA is also requiring owners and operators to monitor and record hours of operation and fuel consumption and to use continuous parametric monitoring systems to demonstrate ongoing compliance with the applicable NO_x emissions limit. For example, owners and operators of engines that utilize layered combustion controls will need to monitor and record temperature, air to fuel ratio, and other parameters as appropriate to ensure that combustion conditions are optimized to reduce NO_x emissions and assure compliance with the emissions limit. For engines using SCR or NSCR, owners and operators must monitor and record parameters such as inlet temperature to the catalyst

³⁸⁴ See Code of Colorado Regulations, Regulation Number 7 (5 CCR 1001-9), Part E, Section I.D.5.c., Illinois Administrative Code, Title 35, Section 217.390, Louisiana Administrative Code, Title 33, Section 2201, New Jersey Administrative Code, Title 7, Chapter 27, Section 19.6, and Rules of the Tennessee Dept. of Environment and Conservation, Rule 1200-03-27-.09.

³⁸⁵ See 40 CFR 51.165(a)(1)(ii)(A), 51.166(b)(6)(i), and 52.21(b)(6)(i) (defining "building, structure, facility, or installation" for Nonattainment New Source Review and Prevention of Significant Deterioration permits) and *Natural Resources Defense Council v. EPA*, 725 F.2d 761 (D.C. Cir. 1984) (vacating and remanding EPA's categorical exclusion of vessel activities from this definition); see also 40 CFR 70.2 (defining "major source" for title V operating permits).

and pressure drop across the catalyst. For affected engines that meet the certification requirements of § 60.4243(a), however, the facility-wide emissions calculations may be based on certified engine emissions standards data pursuant to § 60.4243(a), instead of performance tests.

In calculating the facility-wide emissions total during the ozone season, affected engines covered by the Facility-Wide Averaging Plan must be identified by each engine's nameplate capacity in horsepower, its actual operating hours during the ozone season, and its emissions rates in g/hp-hr from certified engine data or from the most recent performance test results for non-certified engines according to § 52.41(e).

Comment: Several commenters stated that semi-annual performance testing would not be appropriate due to its high costs and limited benefits. One commenter proposed a "step-down" testing alternative that could be conducted after establishing an engine's initial compliance via performance testing. Under this approach, owners and operators would conduct one performance test and would only need to conduct a second performance test within a given year if the first performance test demonstrated that an engine was not meeting the applicable emissions standards.

Another commenter asserted that to test all of its 950 units, a minimum of 12 months would be needed rather than the six months the EPA had proposed to provide (or five months if the EPA would require one of the semi-annual tests to be conducted during the ozone season). The commenter stated that the EPA had accounted for these operational realities in the past and that under the NSPS and NESHAP, testing is generally required only once for every 8,760 hours of run time. The commenter asserted that there is no reason to require more frequent testing than those required under the NSPS and NESHAP.

Several commenters requested that the EPA allow for reduction in the frequency of testing to once every two years if testing shows that NO_x emissions are no more than 75 percent of permitted NO_x emissions limits. In addition, several commenters stated that since the rule is intended to address the ozone season, a single, annual test is more feasible than semi-annual testing and reporting.

Response: For the stationary SI engines subject to this final rule, the

EPA is revising the frequency of required performance tests from a semi-annual basis to once per calendar year. As commenters correctly pointed out, the emissions limits in these final FIPs only apply during the 5-month ozone season and testing once per calendar year should be sufficient to confirm the accuracy of the parameters being monitored to determine continuous compliance during the ozone season. The EPA also agrees with commenters that the annual tests required under the final rule need not occur during the ozone season. However, where sources are able to do so, we recommend conducting a stack test in the period relatively soon before the start of the ozone season. This would provide the greatest assurance that the emissions control systems are working as intended and the applicable emissions limit will be met when the ozone season starts.

Comment: Commenters generally stated that requiring CEMS would add an unnecessary cost and complexity, would provide no emissions reduction benefit for the affected units the proposed FIP intends to control and are not warranted due to the availability of other established methods of compliance assurance, such as parametric monitoring and periodic testing. One commenter stated that requiring CEMS would add unnecessary CEMS testing obligations. Another commenter stated that the costs associated with CEMS and frequent performance testing on affected RICE would be as much, if not more, than the costs associated with installation and operation of some of the control technologies EPA has considered in setting the proposed emissions limits. According to one commenter, the EPA has traditionally agreed with this viewpoint on the high cost of CEMS, as most stationary engines are not currently required under the NSPS or NESHAP to install or operate CEMS.

Another commenter stated that in addition to cost, there are other barriers to installing CEMS on RICE across the Pipeline Transportation of Natural Gas industry. Many RICE in the Pipeline Transportation of Natural Gas industry are located at remote, unstaffed locations, meaning that there would be no staff available to respond and react to communication or alarms from CEMS.

Response: The EPA acknowledges the costs associated with the installation and maintenance of CEMS at affected

units in the Pipeline Transportation of Natural Gas industry and agrees that it is not necessary to require CEMS for purposes of compliance with the requirements of this final rule for this industry. Accordingly, the EPA is not finalizing requirements for affected units in this industry sector to install or operate CEMS. Instead, the EPA is requiring parametric monitoring protocols, as described earlier, coupled with an annual performance test, which will ensure that the emissions limits are legally and practically enforceable on a continuous basis, and that data are recorded, reported, and can be made publicly available, ensuring the ability of state and Federal regulators and other persons under CAA sections 113 and 304 to enforce the requirements of the Act.

2. Cement and Concrete Product Manufacturing Applicability

For cement kilns in the Cement and Cement Product Manufacturing industry, the EPA is finalizing the proposed applicability provisions without change. The affected units in this industry are cement kilns that emit or have a PTE of 100 tpy or more of NO_x. The EPA received comments regarding the definition of PTE, which we address in section VI.C, but no comments concerning the 100 tpy PTE threshold for applicability purposes.

Emissions Limitations and Rationale

As explained in the proposal, the EPA based the proposed emissions limits for cement kilns on the types of limits being met across the nation in RACT NO_x rules, NSPS, air permits, and consent decrees. Based on these requirements, the EPA proposed emissions limits in the form of mass of pollutant emitted (in pounds) per kiln's clinker output (in tons), *i.e.*, pounds of NO_x emitted per ton of clinker produced during a 30-operating day rolling average period. Further, the EPA proposed specific emissions limits for long wet, long dry, preheater, precalciner, and combined preheater/precalciner kilns. The EPA also proposed a daily source cap limit that would apply to all units at a facility. Based on information received from public comments, the EPA is removing the daily source cap limit but finalizing the emissions limits as proposed in all other respects, as shown in Table VI.C-2.

TABLE VI.C-2—SUMMARY OF NO_x EMISSIONS LIMITS FOR KILN TYPES IN CEMENT AND CONCRETE PRODUCT MANUFACTURING

Kiln type	NO _x emissions limit (lb/ton of clinker)
Long Wet	4.0
Long Dry	3.0
Preheater	3.8
Precalciner	2.3
Preheater/Precalciner	2.8

Comment: Numerous commenters raised concerns about designing a source cap limit based on average annual production in tons of clinker and kiln type. Commenters stated that the source cap limit equation as used in a prior action applied to long wet and dry preheater-preciner or preciner kilns and did not include other kiln types. Commenters expressed concern that the CAP2015 Ozone Transport equation the EPA proposed in this rule could lead to artificially low and restrictive daily emissions caps for facilities that experienced a temporary decrease in production due to the COVID-19 pandemic, during the historical three-year period proposed for use in determining the NO_x source cap. Also, commenters expressed concern that the proposed daily emissions cap limit originated as a local or regional limit for a single county and would not be appropriate for national application without further evaluation taking into account the specific characteristics of cement kilns in other states. One commenter suggested more stringent emissions limits than those the EPA had proposed for individual kiln types.

Response: The EPA is not finalizing the proposed daily source cap limit as the Agency agrees with the commenters that this proposed limit would be unnecessarily restrictive and was based on a formula that did not include all kiln types. Given the unusual reduction in cement production activities due to the COVID-19 pandemic, production rates during the 2019–2021 period are not representative of cement plants activities generally. Accordingly, use of the proposed daily source cap limit would result in an artificially restrictive NO_x emissions limit for affected cement kilns, particularly when this sector operates longer hours during the spring and summer construction season. With respect to those comments supporting more stringent emissions limits than those the EPA proposed for individual kiln types, we disagree given the significant differences among different kilns in design, configuration, age, fuel capabilities, and raw material composition. The EPA finds that the

ozone season emissions limits for individual kiln types listed in Table VI.C-2 will achieve the necessary emissions reductions for purposes of eliminating significant contribution as defined in section V and is, therefore, finalizing these emissions limitations without change.

Comment: One commenter supported retirement of existing long wet kilns and replacement of these kilns with modern kilns. Other commenters opposed the phase out and retiring of these kilns, stating that many of the screened kilns have SNCR already installed and questioning whether replacement of existing long wet kilns is cost-effective. Some commenters also stated that according to EPA’s “NO_x Control Technologies for the Cement Industry, Final Report,” SNCR is not an appropriate NO_x control technique for long wet kilns.

Response: The EPA appreciates the challenges identified by commenters, such as site-specific technical evaluation and review and significant capital investment associated with undertaking kiln conversions or to install new kilns and is not finalizing any requirements to replace existing long wet kilns in this rule.

Comment: Several commenters expressed concern about the supply chain issues relevant to the procurement, design, construction, and installation of control devices, as well as securing related contracts, for the cement industry, particularly when cement sources will be competing with the EGU and other industrial sectors for similar services. One commenter stated that many preheater/preciner kilns are already equipped with SNCR and that one facility not equipped with SNCR is already meeting NO_x emissions levels of 1.95 lb/ton of clinker or less. The commenter stated that the EPA should revise its assessment of potential NO_x reductions and cost estimates by accurately accounting for existing operating efficiencies and control devices at cement kilns.

Response: The EPA’s response to comments on the time needed for installation of controls for non-EGU

sources is provided in section VI.A. Regarding the comment that certain facilities may already have SNCR control technology installed, we recognize that many sources throughout the EGU sector and non-EGU industries covered by this rule may already be achieving enforceable emissions performance commensurate with the requirements of this action. This is entirely consistent with the logic of our 4-step interstate transport framework, which is designed to bring all covered sources within the region of linked upwind states up to a uniform level of NO_x emissions performance during the ozone season. *See EME Homer City*, 572 U.S. at 519. Sources that are already achieving that level of performance will face relatively limited compliance costs associated with this rule.

Compliance Assurance Requirements

The EPA received no comments on the proposed test methods and procedures provisions for the cement industry. Therefore, we are finalizing the proposed test methods and procedures for affected cement kilns without change.

Comment: Commenters generally supported requiring performance testing or installation of CEMS on affected cement kilns. Some commenters suggested that no performance testing should be required and others suggested that performance testing should only be required when a title V permit is due for renewal (every 5 years). One commenter suggested requiring sources to conduct stack tests during the ozone season.

Response: Affected kilns that operate a NO_x CEMS may use CEMS data consistent with the requirements of 40 CFR 60.13 in lieu of performance tests to demonstrate compliance with the requirements of this final rule. For affected kilns subject to this final rule that do not employ NO_x CEMS, the EPA is adjusting the performance testing frequency and requiring kilns to conduct a performance test on an annual basis during a given calendar

year.³⁸⁶ The EPA finds that annual performance testing and recordkeeping of cement production and fuel consumption during the ozone season will assure compliance with the emissions limits during the ozone season (May through September) each year for purposes of this rule. The required annual performance test may be performed at any time during the calendar year. However, where sources are able to do so, we recommend conducting a stack test in the period relatively soon before the start of the ozone season. This would provide the greatest assurance that the emissions control systems are working as intended and the applicable emissions limit will be met when the ozone season starts.

Comment: One commenter stated that CEMS has been used successfully at its facility. Another commenter explained that the inside of a cement kiln is an extremely challenging environment for making any kind of continuous measurement as temperatures are high, and there is a lot of dust and tumbling clinker can damage in situ measuring instruments.

Response: The majority of cement kilns in the United States are already equipped with CEMS. However, in response to commenters concerns regarding the installation of CEMS, the EPA is finalizing alternative compliance requirements in lieu of CEMS. Owners or operators of affected emissions units without CEMS installed must conduct annual performance testing and continuous parametric monitoring to demonstrate compliance with the emissions limits in this final rule. Specifically, owners or operators of affected units without CEMS must monitor and record stack exhaust gas flow rate, hourly production rate, and stack exhaust temperature during the initial performance test and subsequent annual performance tests to assure compliance with the applicable emissions limit. The owner or operator must then continuously monitor and record those parameters to demonstrate continuous compliance with the NO_x emissions limits.

3. Iron and Steel Mills and Ferroalloy Manufacturing

Applicability

The EPA is establishing emissions control requirements for the Iron and Steel Mills and Ferroalloy Manufacturing source category that apply to reheat furnaces that directly emit or have the potential to emit 100

tpy or more of NO_x. After review of all available information received during public comment, the EPA has determined that there is sufficient information to determine that low-NO_x burners can be installed on reheat furnaces. As explained further in the Final Non-EGU Sectors TSD, the EPA identified 32 reheat furnaces with low-NO_x burners installed and has concluded that low-NO_x burners are a readily available and widely implemented emissions reduction strategy.³⁸⁷ This rule defines reheat furnaces to include all furnaces used to heat steel product—metal ingots, billets, slabs, beams, blooms and other similar products—to temperatures at which it will be suitable for deformation and further processing.

Comment: Several industry commenters requested that the EPA not include certain iron and steel emissions units—including blast furnaces, basic oxygen furnaces (BOFs), ladle and tundish preheaters, annealing furnaces, vacuum degassers, taconite kilns, coke ovens, and electric arc furnaces (EAFs)—in the final rule as proposed due to, among other things, the uniqueness of each emissions unit, various design-related challenges, and expected impossibility of successful implementation of add-on NO_x control technology. Commenters expressed concern about requirements to install SCR for all iron and steel units for which the EPA proposed emissions limits. The commenters stated that iron and steel units had not installed SCR except in a few rare instances for experimental reasons and that SCR technology was not readily available or known for the iron and steel industry, unlike the control technologies expected to be installed in other non-EGU industries. Furthermore, commenters stated that SCR had not been applied for RACT, BACT, or LAER purposes on iron and steel units.

Response: In light of the comments we received on the complex economic and, in some cases, technical challenges associated with implementation of NO_x control technologies on certain emissions units in this sector, the EPA is not finalizing the proposed emissions limits for blast furnaces, BOFs, ladle and tundish preheaters, annealing furnaces, vacuum degassers, taconite kilns, coke ovens, or EAFs.

The EPA is aware of many examples of low-NO_x technology utilized at furnaces, kilns, and other emissions units in other sectors with similar stoichiometry, including taconite kilns, blast furnace stoves, electric arc

furnaces (oxy-fuel burners), and many other examples at refineries and other large industrial facilities. The EPA anticipates that with adequate time, modeling, and optimization efforts, such NO_x reduction technology may be achievable and cost-effective for these emissions units in the Iron and Steel Mills and Ferroalloy Manufacturing sector as well. However, the data we have reviewed is insufficient at this time to support a generalized conclusion that the application of NO_x control technologies such as LNB, is currently both technically feasible and cost effective on a fleetwide basis for these emission source types in this industry. We provide a more detailed discussion of the economic and technical issues associated with implementation of NO_x control technologies on these emissions units, including information provided by commenters, in section 4 of the Final Non-EGU Sectors TSD.

Reheat furnaces are the only type of emissions unit within the Iron and Steel Mills and Ferroalloy Manufacturing industry that this final rule applies to. Low-NO_x controls (e.g., low-NO_x burners) are a demonstrated control technology that many reheat furnaces have successfully employed.

Comment: One commenter claimed that the proposed definition of “reheat furnaces” is overly vague and requested that the EPA amend the definition. Specifically, the commenter asserted that the EPA’s proposed definition does not indicate what counts as “steel product” and whether this includes only products that have already been manufactured into some form before being introduced to a reheat furnace, or whether it also includes steel that has never left the original production process, such as hot steel coming directly from a connected casting process which has not yet been formed into a definitive product. The commenter referenced the definition of reheat furnaces in Ohio’s RACT regulations as an example to consider.

Response: In response to these comments, the EPA is finalizing a definition of reheat furnaces that is consistent with the definition in Ohio’s NO_x RACT regulations. See Ohio Admin. Code 3745–110–01(b)(35) (March 25, 2022). Specifically, the EPA is defining reheat furnaces to mean “all furnaces used to heat steel product, including metal ingots, billets, slabs, beams, blooms and other similar products, to temperatures at which it will be suitable for deformation and further processing.”

³⁸⁶ 40 CFR 63.11237 “Calendar year” defined as the period between January 1 and December 31, inclusive, for a given year.

³⁸⁷ See Final Non-EGU Sectors TSD, Section 4.

Emissions Control Requirements, Testing, and Rationale

Based on the available information for this industry, applicable Federal and state rules, and active air permits or enforceable orders issued to affected facilities in the iron and steel and ferroalloy manufacturing industry, the EPA is finalizing requirements for each facility with an affected reheat furnace to design, fabricate and install high-efficiency low-NO_x burners designed to reduce NO_x emissions from pre-installation emissions rates by at least 40 percent by volume, and to conduct performance testing before and after burner installation to set emissions limits and verify emissions reductions from pre-installation emissions rates. Each low-NO_x burner shall be designed to achieve at least 40 percent NO_x reduction from existing reheat furnace exhaust emissions rates. Each facility with an affected reheat furnace shall, within 60 days of conclusion of the post-installation performance test, submit testing results to the EPA to establish NO_x emissions limits over a 30-day rolling average. Each proposed emissions limit must be supported by performance test data and analysis.

In evaluating potential emissions limits for the Iron and Steel and Ferroalloy Manufacturing industry, the EPA reviewed RACT NO_x rules, NESHAP rules, air permits and related emissions tests, technical support documents, and consent decrees. These rules and source-specific requirements most commonly express emissions limits for this industry in terms of mass of pollutant emitted (pounds) per operating hour (hour) (*i.e.*, pounds of NO_x emitted per production hour), pounds per energy unit (*i.e.*, million British thermal unit (mmBtu)), or pounds of NO_x per ton of steel produced. Regulated iron and steel facilities, including facilities operating reheat furnaces in this sector, routinely monitor and keep track of production in terms of tons of steel produced per hour (heat rate) as it pertains to each facility's rate of iron and steel production. Several facilities, including Steel Dynamics, Columbia, Indiana, Cleveland-Cliffs, Cleveland, Ohio, and Cleveland-Cliffs, Burns Harbor, Indiana, are already operating various types of reheat furnaces with low-NO_x burners and achieving emissions rates as low as 0.11 lb/mmBtu of NO_x. The EPA identified at least nine reheat furnaces with a PTE greater than 100 tpy, including slab, rotary hearth, and walking beam furnaces, that have

installed low-NO_x burners and are achieving various emissions rates.³⁸⁸

Due to variations in the emissions rates that different types of reheat furnaces can achieve, the EPA is not finalizing one emissions limit for all reheat furnaces and is instead requiring the installation of low-NO_x burners or equivalent low-NO_x technology designed to achieve a minimum 40 percent reduction from baseline NO_x emission levels, together with source specific emissions limits to be set thereafter based on performance testing. Specifically, the final rule requires that each owner or operator of an affected unit submit to the EPA, within one year after the effective date of the final rule, a work plan that identifies the low-NO_x burner or alternative low-NO_x technology selected, the phased construction timeframe by which the owner or operator will design, install, and consistently operate the control device, an emissions limit reflecting the required 40 percent reduction in NO_x emission levels, and, where applicable, performance test results obtained no more than five years before the effective date of the final rule to be used as baseline emissions testing data providing the basis for the required emissions reductions. If no such data exist, then the owner or operator must perform pre-installation testing to establish baseline emissions data.

Comment: One commenter stated that the standard practice for setting NO_x limits for iron and steel sources often requires consideration of site or unit-specific issues. Similarly, another commenter stated that a single limit would not provide an adequate basis for establishing NO_x emissions limits that will universally apply to multiple, unique facilities. The same commenter stated that NO_x reduction in certain furnaces is routinely achievable by combustion controls or measures other than SCR.

Response: The EPA acknowledges the difficulty in crafting one emissions limit for multiple iron and steel facilities and units of varying size, age, and design, in light of the unique issues associated with varying unit types in this particular industry. We also acknowledge that in some cases, reheat furnaces are equipped with recently

installed, high-efficiency low-NO_x burners. Many sources throughout the EGU sector and non-EGU industries covered by this rule may already be achieving enforceable emissions performance commensurate with the requirements of this action. This is entirely consistent with the logic of our 4-step interstate transport framework, which is designed to bring all covered sources within the region of linked upwind states up to a uniform level of NO_x emissions performance during the ozone season. *See EME Homer City*, 572 U.S. at 519. Sources that are already achieving that level of performance will face relatively limited compliance costs associated with this rule.

The EPA is finalizing requirements for reheat furnaces to install high-efficiency low-NO_x burners designed to reduce NO_x emissions from pre-installation emissions rates by 40 percent by volume, and to perform pre- and post-installation performance testing at exhaust outlets to determine rate-based emissions limits for reheat furnaces in lb/hour, lb/mmBtu, or lb/ton on a rolling 30-operating day average. Owners and operators of affected units must also monitor NO_x emissions from reheat furnaces using CEMS or annual performance testing and recordkeeping and operate low-NO_x burners in accordance with work practice standards set forth in the regulatory text. Due to the many types of emissions units within the Iron and Steel Mills and Ferroalloy Manufacturing industry, and the limited information available at this time regarding NO_x control options that are achievable for these units, the EPA is finalizing requirements only for reheat furnaces at this time.

Comment: Commenters expressed concern that the proposed emissions limits identified both a 3-hour and a 30-day averaging time for the same limits and requested that the EPA clarify the averaging time in the final rule. Commenters requested that the EPA finalize limits with a 30-day averaging time consistent with the requirements for other non-EGU industries.

Response: In determining the appropriateness of 30-day rolling averaging times, the EPA initially reviewed the NESHAP for Iron and Steel Foundries codified at 40 CFR part 63, subpart EEEEE, the NESHAP for Integrated Iron and Steel manufacturing facilities codified at 40 CFR part 63, subpart FFFFF, the NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese codified at 40 CFR part 63, subpart XXX, and the NESHAP for Ferroalloys Production Facilities codified at 40 CFR part 63, subpart YYYYYY. The EPA also reviewed

³⁸⁸ Specifically, through a review of title V permits, the EPA identified reheat furnaces with low-NO_x burners installed at Steel Dynamics in Columbia City, Indiana (two furnaces), Steel Dynamics in Butler, Indiana (one furnace), Cleveland Cliffs in Burns Harbor, Indiana (four furnaces), Cleveland Cliffs in East Chicago, Indiana (one furnace), and Cleveland Cliffs in Cleveland, Ohio (one furnace). For a further discussion of the limits and information on these facilities, see the Final Non-EGU Sectors TSD.

various RACT NO_x rules from states located within the OTR, several of which have chosen to implement OTC model rules and recommendations. Based on this information and the information provided by public commenters, the EPA is requiring a 30-operating day rolling average period as the averaging timeframe for reheat furnaces. The EPA finds that a 30-operating day rolling average period provides a reasonable balance between short term (hourly or daily) and long term (annual) averaging periods, while providing the flexibility needed to address fluctuations in operations and production.

Compliance Assurance Requirements

The EPA is finalizing requirements for each owner or operator of an affected unit in the Iron and Steel Mills and Ferroalloy Manufacturing industry to use CEMS or annual performance tests and continuous parametric monitoring to determine compliance with the 30-day rolling average emissions limit during the ozone season. Facilities choosing to use CEMS must perform an initial RATA per CEMS and maintain and operate the CEMS according to the applicable performance specifications in 40 CFR part 60, appendix B. Facilities choosing to use testing and continuous parametric monitoring for compliance purposes must use the test methods and procedures in 40 CFR part 60, appendix A–4, Method 7E, or other EPA-approved (federally enforceable) test methods and procedures.

Comment: Several commenters raised concerns with the requirement to install and operate CEMS to monitor NO_x emissions. Commenters cited the high relative costs of installing CEMS, especially for smaller units with lower actual emissions, and the complexities with installing CEMS on mobile reheat furnaces. Further, commenters explained that due to the unique configuration of certain facilities, it would be impossible for a CEMS to differentiate emissions from a reheat furnace and other units, like waste heat boilers. As an alternative to CEMS, commenters requested that the EPA finalize similar monitoring and recordkeeping requirements as proposed for the Cement and Concrete Product Manufacturing industry in the proposed rule, which allow for CEMS or performance testing and recordkeeping. Commenters explained that for reheat furnaces that are natural gas-fired, emissions can be tracked by relying on vendor guarantees and emissions factors and natural gas throughput.

Response: The EPA reviewed comments received from the industry

regarding their concerns of affected units within the iron and steel mills and ferroalloy manufacturing sector being required to demonstrate compliance through CEMS. The EPA acknowledges the cost associated with the installation and maintenance of CEMS to demonstrate compliance with the finalized emissions standards for reheat furnaces. In this final rule, the EPA is revising the compliance assurance requirements to provide flexibility to owners or operators of affected units. Compliance may be demonstrated through CEMS or annual performance testing and continuous parametric monitoring to demonstrate compliance with the emissions limits in this final rule. If an affected unit does not use CEMS, the final rule requires the owner or operator to monitor and record stack exhaust gas flow rate, hourly production rate, and stack exhaust temperature during the initial performance test and subsequent annual performance tests to assure compliance with the applicable emissions limit. The owner or operator must then continuously monitor and record those parameters to demonstrate continuous compliance with the NO_x emissions limits. Affected units that operate NO_x CEMS meeting specified requirements may use CEMS data in lieu of performance testing and monitoring of operating parameters. For sources relying on annual performance tests and continuous parametric monitoring to assure compliance, the EPA is requiring that sources keep records of production and fuel usage during the ozone season to assure compliance with the emissions limits on a 30-day rolling average basis. To avoid challenges in scheduling and availability of testing firms, the annual performance test required under this final rule does not have to be performed during the ozone season. However, where sources are able to do so, we recommend conducting a stack test in the period relatively soon before the start of the ozone season. This would provide the greatest assurance that the emissions control systems are working as intended and the applicable emissions limit will be met when the ozone season starts.

4. Glass and Glass Product Manufacturing Applicability

The EPA is finalizing regulatory requirements for the Glass and Glass Product Manufacturing source category that apply to furnaces that directly emit or have a PTE of 100 tpy or more of NO_x. For this industry, the EPA is

finalizing the proposed applicability provisions without change.

Comment: One commenter requested that the applicability threshold for glass manufacturing furnaces should be based on a unit's design production capacity instead of the proposed applicability criteria (*i.e.*, units that directly emit or have the potential to emit 100 TPY or more of NO_x). The commenter stated that the production capacity for glass manufacturing furnaces is a more relevant basis for applicability and would focus the EPA analysis on cost-effective regulations.

Response: During the EPA's development of the proposed emissions limits, the EPA reviewed the applicability provisions in various state RACT NO_x rules, air permits, consent decrees, and Federal regulations applicable to glass manufacturing furnaces. Most of these applicability provisions were expressed in terms of actual emissions or PTE. Given the significant differences in the types, designs, configurations, ages, and fuel capabilities among glass furnaces, and differences in raw material compositions within the sector, the EPA finds that applicability criteria based on emissions or potential to emit are the most appropriate way to capture higher-emitting glass manufacturing furnaces that contribute NO_x emissions to downwind receptors.

Emissions Limitations and Rationale

The EPA is finalizing the proposed NO_x emissions limits for furnaces within the Glass and Glass Product Manufacturing industry, except that for flat glass manufacturing furnaces the EPA is finalizing an emissions limit slightly lower than the limit we had proposed, based on a correction to a factual error in our proposal. For further discussion of the basis for the form and level of the final emissions limits, see the proposed rule, 87 FR 20036, 20146 (April 6, 2022) (discussing EPA review of state RACT rules, NSPS, and other regulations applicable to the Glass and Glass Product Manufacturing industry). Several comments supported the EPA's effort to regulate sources within the Glass and Glass Product Manufacturing industry but also requested that the EPA establish more stringent emissions limits for this industry.

Comment: One commenter stated that NO_x emissions from the Glass and Glass Product Manufacturing industry are not currently subject to any Federal NSPS and that the industry is expected to grow in the coming years. The commenter stated that while the EPA's proposed limits on glass furnaces fell within the ranges of limits required by

various states and air districts, they fell at the weakest levels within those ranges. For example, the commenter stated that the EPA had proposed a 4.0 lb/ton NO_x emissions limit for container glass manufacturing furnaces, while state and local NO_x emissions limits for these emissions units range from 1 to 4 lb/ton. Similarly, the commenter stated that the EPA had proposed a 4.0 lb/ton NO_x emissions limit for pressed/blown glass manufacturing furnaces, while state and local NO_x emissions limits for these emissions units range from 1.36 to 4 lb/ton, and that EPA had proposed a 9.2 lb/ton NO_x emissions limit for flat glass manufacturing furnaces, while state NO_x emissions limits for these emissions units range from 5–9.2 lb/ton. The commenter urged the EPA to establish emissions limits lower than those the EPA had proposed.

Response: The EPA is finalizing the emissions limits for affected units in the glass and glass product manufacturing industry as proposed for all but flat glass manufacturing furnaces, for which the EPA is finalizing a slightly lower emissions limit to reflect a correction to a factual error in our proposal. During the EPA’s development of the proposed emissions limits, the EPA reviewed the control requirements or recommendations and related analyses in various RACT NO_x rules, air permits, Alternative Control Techniques (ACT) documents, and consent decrees to

determine the appropriate NO_x emissions limits for the different types of glass manufacturing furnaces. Based on these reviews and given the significant differences in the types, designs, configurations, ages, and fuel capabilities among glass furnaces, and differences in raw material compositions within the sector, the EPA has concluded that it is appropriate to finalize the emissions limits for this industry as proposed, except for the limit proposed for flat glass manufacturing furnaces. For flat glass manufacturing furnaces, the EPA had proposed a NO_x emissions limit of 9.2 pounds (lbs) per ton of glass pulled but is finalizing a limit of 7.0 lbs/ton of glass pulled on a 30-day rolling average basis. This is based on our review of specific state RACT NO_x regulations that contain a 9.2 lbs/ton limit averaged over a single day but contain a 7.0 lbs/ton limit over a 30-day averaging period. This change aligns the final limit for flat glass manufacturing furnaces with the correct averaging time and is consistent with both the state RACT regulations that we reviewed³⁸⁹ and our evaluation of cost-effective controls for this industry in the supporting documents for the proposed and final rule.

The EPA acknowledges that NO_x emissions from some glass manufacturing furnaces are subject to control under other regulatory programs, such as those adopted by

states to meet CAA RACT requirements, and that some of these programs have implemented more stringent emissions limits than those the EPA is finalizing in these FIPs. However, as noted in the preamble to the proposed rule and related TSD, many OTR states do not establish specific NO_x emissions limits for glass manufacturing sources.³⁹⁰ See 87 FR 20146. In addition to state RACT rules, air permits, ACT documents, and consent decrees applicable to this industry, the EPA reviewed reports and recommendations from the National Association of Clean Air Agencies (NACAA), the European Union Commission, and EPA’s Menu of Control Measures (MCM) to identify potentially available control measures for reducing NO_x emissions from the glass manufacturing industry. The EPA also reviewed permit data for existing glass manufacturing furnaces to identify control devices currently in use at these sources. Based on these reviews, we find that the final emissions limits for the Glass and Glass Product Manufacturing industry provided in Table VI.C.3–1 generally reflect a level of control that is cost-effective for the majority of the affected units and sufficient to achieve the necessary emissions reductions. The Final Non-EGU Sectors TSD provides a more detailed explanation of the basis for these emissions limits.

TABLE VI.C.3–1—SUMMARY OF FINALIZED NO_x EMISSIONS LIMITS FOR FURNACE UNIT TYPES IN GLASS AND GLASS PRODUCT MANUFACTURING

Furnace type	NO _x emissions limit (lbs/ton of glass produced, 30 operating-day rolling average)
Container Glass Manufacturing Furnace	4.0
Pressed/Blown Glass Manufacturing Furnace or Fiberglass Manufacturing Furnace	4.0
Flat Glass Manufacturing Furnace	7.0

Alternative Emissions Standards During Periods of Start-Up, Shutdown, and Idling

Comment: Numerous commenters urged the EPA to provide additional flexibilities, alternative NO_x emissions limits, or exceptions to the NO_x emissions limits for glass manufacturing furnaces during periods of startup, shutdown and idling. Commenters requested that the EPA consider excluding days with low glass pull (e.g.,

abnormally low production rate), furnace start-up days, furnace maintenance days, and malfunction days from the definition of “operating day” to allow for exclusion of these days from the calculation of an emissions unit’s 30-operating day rolling average emissions. The commenters argued that because the glass furnace temperature is much lower during these periods than they are during normal operating conditions, it

would be technologically infeasible to equip furnaces with NO_x control devices including SCR. Commenters also stated that because control equipment cannot be operated during these periods without damaging the equipment, it would be very difficult or impossible to meet the proposed NO_x limits during these periods.

Response: After review of the comments received and the EPA’s assessment of current practices within

³⁸⁹ For example, Pennsylvania’s RACT NO_x emission limits for flat glass furnaces are 7.0 lbs of NO_x per ton of glass produced on 30-day rolling average. See Title 25, Part I, Subpart C, Article III, Section 129.304, available at <https://casetext.com/>

[regulation/pennsylvania-code-rules-and-regulations/title-25-environmental-protection/part-i-department-of-environmental-protection/subpart-c-protection-of-natural-resources/article-iii-air-resources/chapter-129-standards-for-sources/](https://www.epa.gov/regulation/pennsylvania-code-rules-and-regulations/title-25-environmental-protection/part-i-department-of-environmental-protection/subpart-c-protection-of-natural-resources/article-iii-air-resources/chapter-129-standards-for-sources/)

[control-of-nox-emissions-from-glass-melting-furnaces/section-129304-emission-requirements](https://www.epa.gov/control-of-nox-emissions-from-glass-melting-furnaces/section-129304-emission-requirements).

³⁹⁰ See Proposed Non-EGU Sectors TSD at 56, EPA–HQ–OAR–2021–0668–0145.

the glass manufacturing industry, the EPA is establishing provisions for alternative work practice standards and emissions limits that may apply in lieu of the emissions limits in § 52.44(c) during periods of start-up, shutdown, and idling. The emissions limits for glass melting furnaces in § 52.44(c) do not apply during periods of start-up, shutdown, and/or idling at affected units that comply instead with the alternative requirements for start-up, shutdown, and/or idling periods specified in § 52.44(d), (e), and/or (f), respectively. The EPA has modeled these alternative requirements that apply during startup, shutdown, and idling to some extent on State RACT requirements identified by commenters.³⁹¹ These alternative work practice standards adequately address the seven criteria that the EPA has recommended states consider when establishing appropriate alternative emissions limitations for periods of startup and shutdown.³⁹² We provide a more detailed evaluation of these provisions in the TSD supporting this final rule.

Specifically, each owner or operator of an affected unit seeking to comply with alternative work practice standards in lieu of emissions limits during startup or shutdown periods must submit specific information to the Administrator no later than 30 days prior to the anticipated date of startup or shutdown. The required information is necessary to ensure that the furnace will be properly operated during the startup or shutdown period, as applicable. The final rule establishes limits on the number of days when the owner or operator may comply with alternative work practice standards in lieu of emissions limits during startup and shutdown, depending on the type of glass furnace. Additionally, the owner or operator must maintain operating records and additional documentation as necessary to demonstrate compliance with the alternative requirements during startup or shutdown periods. For startups, the owner or operator must place the emissions control system in

operation as soon as technologically feasible to minimize emissions. For shutdowns, the owner or operator must operate the emissions control system whenever technologically feasible to minimize emissions.

For periods of idling, the owner or operator of an affected unit may comply with an alternative emissions limit calculated in accordance with a specific equation to limit emissions to an amount (in pounds per day) that reflects the furnace's permitted production capacity in tons of glass produced per day. Additionally, the owner or operator must maintain operating records as necessary to demonstrate compliance with the alternative emissions limitations during idling periods. During idling, the owner or operator must operate the emissions control system to minimize emissions whenever technologically feasible.

All-Electric Glass Furnaces

The EPA solicited comment on whether it is feasible or appropriate to phase out and retire existing glass manufacturing furnaces in the affected states and replace them with more energy efficient and less emitting units like all-electric melter installations. The EPA also requested comment on the time needed to complete such a task. All-electric melters are glass melting furnaces in which all the heat required for melting is provided by electric current from electrodes submerged in the molten glass.³⁹³ The EPA received numerous comments from the glass industry regarding their concerns with replacing an existing glass manufacturing furnace with an all-electric melter. The commenters stated that various operational restrictions present within all-electric furnaces prevent these units from being implemented throughout the industry, including limited glass production output, reduced glass furnace life, and increased glass plant operating cost due to high levels of electric current usage. Based on the EPA's review of comments submitted on this issue, the EPA has decided not to establish any requirements to replace existing glass manufacturing furnaces with all-electric furnaces at this time. We provide in the following paragraphs a summary of the comments and the EPA's responses thereto.

Comment: One commenter stated that the lifetime of an all-electric glass melting furnace is only about three to five years before it must be rebricked, compared to well-maintained natural gas or hybrid furnace that may be

operated continuously for as long as fifteen to twenty years between rebricking events. The commenter also states that electric furnaces for manufacture of glass containers are limited to a maximum glass production of about 120 tons per day, which is a stark contrast to large natural gas fired glass melting furnaces, which are capable of producing over 400 tons of glass per day. The commenter also stated that the cullet percentage is greatly reduced in all-electric furnaces which increases energy consumption in the affected facility.

Response: At proposal, the EPA solicited comment on whether it is feasible or appropriate for owners or operators of existing glass manufacturing furnaces to phase out and retire their units and replace them with less emitting units like all-electric furnace installations. As explained in the Final Non-EGU Sectors TSD, over the last few decades the demand for flat, container, and pressed/blown glass has continued to grow annually. Nitrogen oxides remain one of the primary air pollutants emitted during the production and manufacturing of glass products. However, no current Federal CAA regulation controls NO_x emissions from the industry on a category-wide basis.³⁹⁴ Therefore, the glass manufacturing industry has conducted various pollution prevention and research efforts to help identify preferred techniques for the control of NO_x. Some of these studies revealed recent trends to control NO_x emissions in the glass industry, including the use of all-electric glass furnaces. We understand based on the comments received from the glass manufacturing industry that significant differences exist in the design, configuration, age, and replacement cost of glass furnaces and in the feasibility of controls and raw material compositions. These differences as well as the production limitations present with all-electric furnaces create difficulties in implementing all-electric furnaces across the industry while keeping up with glass product demands. Therefore, the EPA is not mandating any requirement for owners or operators of existing glass manufacturing furnaces to replace their units with all-electric furnaces.

Combustion Modification and Post-Combustion Modification Control Devices

According to the EPA's "Alternative Control Techniques Document—NO_x Emissions from Glass

³⁹¹ See Pennsylvania Code, Title 25, Part I, Subpart C, Article III, Sections 129.305–129.307 (effective June 19, 2010), available at <https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/025/chapter129/chap129toc.html&d=reduce> and San Joaquin Valley Unified Air Pollution Control District, Rule 4354, "Glass Melting Furnaces," sections 5.5–5.7 (amended May 19, 2011), available at <https://www.valleyair.org/rules/currnrules/R4354%20051911.pdf>.

³⁹² See 80 FR 33840, 33914 (June 12, 2015) (identifying the EPA's recommended criteria for developing and evaluating alternative emissions limitations applicable during startup and shutdown).

³⁹³ See definitions in 40 CFR part 60, subpart CC.

³⁹⁴ See Final Non-EGU Sectors TSD.

Manufacturing.”³⁹⁵ glass manufacturing furnaces may utilize combustion modifications equivalent to low-NO_x burners and oxy-firing. At proposal, the EPA solicited comments on whether it is feasible or appropriate to require sources with existing glass manufacturing furnaces in affected states that currently utilize these combustion modifications to add or operate a post-combustion modifications control device like SNCR or SCR to further improve their NO_x removal efficiency. The EPA received numerous comments from the glass industry that detailed the differences present in glass furnace designs, operations and finished product that influenced the type of combustion modification or post-combustion modification control device that is feasible for such unit. Several commenters have requested that the EPA focus on establishing an emissions limit rather than specifying the use of a particular control technology given the significant differences across glass furnaces. As a result of the comments received, the EPA is not specifically requiring affected units to install combustion modification and post-combustion controls to meet the finalized emissions limits. The EPA is finalizing the emissions limits as proposed, which may be met with combustion modifications (e.g., low-NO_x burners, oxy-firing), process modifications (e.g., modified furnace, cullet preheat), and/or post-combustion controls (SNCR or SCR) and thus provide sources some flexibility to choose the control technology that works best for their unique circumstances.

Comment: Multiple commenters responded to EPA’s request for comments by stating it is unnecessary and unhelpful for the proposed rule to specify use of particular post-combustion control device. The commenters note that various flat glass furnaces have a variety of combustion and post-combustion control options. Each furnace is different in its design, operations, and finished product produced. The commenters state that it is more appropriate for EPA to establish an emissions limit in the proposed rule than it is for the EPA to specify use of a particular control technology.

Response: In response to these comments, the EPA is not establishing any requirements for affected units to install specific control technologies to meet the emissions limits. The EPA is

finalizing the limits as proposed to offer sources some flexibility to choose the control technology that works best for their unique circumstances.

Compliance Assurance Requirements

The EPA proposed to require owners or operators of an affected facility that is subject to the NO_x emissions standards for glass manufacturing furnaces to install, calibrate, maintain and operate a CEMS for the measurement of NO_x emissions discharged. The EPA also solicited comments on alternative monitoring systems or methods that are equivalent to CEMS to demonstrate compliance with the emissions limits. The EPA received numerous comments from the glass industry expressing concern with any requirement to use CEMS at affected units. After review of the comments received and EPA’s assessment of practices conducted within the glass manufacturing industry, the EPA is finalizing compliance assurance requirements that allow affected glass manufacturing furnaces to demonstrate compliance through annual testing or use CEMS, or similar alternative monitoring system data in lieu of a performance test. The EPA is also establishing recordkeeping provisions that require owners or operators of affected units to conduct parametric monitoring of fuel use and glass production during performance testing to assure continuous compliance on a 30-operating day rolling average.

Comment: Commenters representing the glass industry stated that a requirement to install and operate CEMS would present significant costs and technical complexities in a situation where emissions can be effectively monitored using stack testing rather than continuous monitoring. Commenters also objected to the EPA’s proposal to require CEMS together with semi-annual stack testing. Commenters stated that a requirement to both operate CEMS and conduct semi-annual testing would be unnecessary and excessive and would not provide commensurate benefit unless a facility’s emissions are near or above the proposed emissions limit. Commenters requested that owners or operators of affected units be allowed to use alternative monitoring systems, e.g., parametric emissions monitoring. The commenters stated that parametric monitoring requires less initial and ongoing manpower requirements, has lower capital and operating costs than CEMS, does not require spare parts, and is accurate over a mapped range.

Response: The EPA is establishing compliance assurance requirements that

provide flexibility to owners or operators of affected units. Compliance with the emissions limits in this final rule may be demonstrated through CEMS or via annual performance test and continuous parametric monitoring. If an affected unit does not use CEMS, the final rule requires the owner or operator to monitor and record stack exhaust gas flow rate, hourly production rate, and stack exhaust temperature during the initial performance test and subsequent annual performance tests to assure compliance with the applicable emissions limit. The owner or operator must then continuously monitor and record those parameters to demonstrate continuous compliance with the NO_x emissions limits. Affected units that operate NO_x CEMS meeting specified requirements may use CEMS data in lieu of performance testing and monitoring of operating parameters. To avoid challenges in scheduling and availability of testing firms, the annual performance test required under this final rule does not have to be performed during the ozone season.

5. Boilers at Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, Pulp, Paper, and Paperboard Mills, Iron and Steel and Ferroalloys Manufacturing, and Metal Ore Mining facilities

Applicability

The EPA is finalizing regulatory requirements for the Iron and Steel Mills and Ferroalloy Manufacturing industry, Basic Chemical Manufacturing industry, Petroleum and Coal Products Manufacturing industry, Pulp, Paper, and Paperboard Mills industry, and the Metal Ore Mining industry that apply to boilers that have a design capacity of 100 mmBtu/hr or greater. The Non-EGU Screening Assessment memorandum developed in support of Step 3 of our proposal identified emissions from large boilers in certain industries (i.e., those projected to emit more than 100 tpy of NO_x in 2026) as having adverse impacts on downwind receptors. As discussed in the proposed rule, we developed applicability criteria for boilers based on design capacity (i.e., heat input), rather than on potential emissions, because use of a boiler design capacity of 100 mmBtu/hr reasonably approximates the 100 tpy threshold used in the Non-EGU Screening Assessment memorandum to identify impactful boilers. In this final rule, we are establishing the heat input-based applicability criteria described in our proposal, with some adjustments as explained further in this section. Additionally, we have determined that boilers meeting these applicability

³⁹⁵ EPA, Alternative Control Techniques Document—NO_x Emissions from Glass Manufacturing, EPA-453/R-94-037, June 1994.

criteria exist within the following five industries: Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, Pulp, Paper, and Paperboard Mills, Metal Ore Mining, and Iron and Steel Mills and Ferroalloy Manufacturing.

As we explained in the proposed rule, the potential emissions from industrial boilers with a design capacity of 100 mmBtu/hr or greater burning coal, residual or distillate oil, or natural gas can equal or exceed the 100 tpy threshold that we used to identify

impactful boilers within the Non-EGU Screening Assessment memorandum. We are finalizing NO_x emissions limits that apply to boilers with design capacities of 100 mmBTU/hr or greater located at any of the five identified industries in any of the 20 covered states with non-EGU emissions reduction obligations. In response to comments on our proposed rule, however, the EPA is finalizing a low-use exemption for industrial boilers that operate less than 10 percent per year

and provisions for EPA approval of alternative emissions limits on a case-by-case basis, where specific criteria are met. Additionally, only boilers that combust, on a BTU basis, 90 percent or more of coal, residual or distillate oil, natural gas, or combinations of these fuels are subject to the requirements of these final FIPs.

The EPA has determined that boilers meeting the applicability criteria of this section exist within the five industrial sectors identified in Table VI.C.5–1:

TABLE VI.C.5—1: NON-EGU INDUSTRIES WITH LARGE BOILERS AND ASSOCIATED NAICS CODES

Industry	NAICS code
Basic Chemical Manufacturing	3251xx
Petroleum and Coal Products Manufacturing	3241xx
Pulp, Paper, and Paperboard Mills	3221xx
Iron and Steel and Ferroalloys Manufacturing	3311xx
Metal Ore Mining	2122xx

Comment: Several commenters requested that the EPA establish PTE-based applicability criteria for boilers as it had proposed to do for other non-EGU sectors and stated that using heat input as the basis for determining applicability would result in low-emitting boilers being subject to the final rule’s control requirements. Commenters stated that the EPA should provide a low-use exemption for infrequently run units because these units produce a lower amount of emissions.

Response: The EPA is finalizing applicability criteria for boilers based on boiler design capacity for a number of reasons. First, Federal emissions standards applicable to boilers³⁹⁶ and all of the state RACT rules that we reviewed contain applicability criteria based on boiler design capacity. Second, as explained in the Final Non-EGU Sectors TSD, most boilers with design capacities of 100 mmBTU/hr or greater that are fueled by coal, oil, or gas have the potential to emit 100 tpy or more of NO_x. Thus, use of a boiler design capacity of 100 mmBtu/hr for applicability purposes reasonably approximates the 100 tpy threshold used in the Non-EGU Screening Assessment memorandum to identify impactful boilers. Finally, use of a boiler’s design capacity for applicability purposes facilitates applicability determinations given that a boiler’s design capacity is, in most cases, clearly

indicated by the manufacture on the unit’s nameplate.

In response to the comments expressing concern that infrequently-operated boilers would be captured by the EPA’s proposed applicability criteria, the EPA is finalizing a low-use exemption for industrial boilers that operate less than 10 percent per year on an hourly basis, based on the three most recent years of use and no more than 20 percent in any one of the three years. Such boilers will be exempt from the emissions limits in these FIPs provided they operate less than 10 percent per year, on an hourly basis, based on the three most recent years of use and no more than 20 percent in any one of the three years, but will have recordkeeping obligations. The EPA finds it appropriate to exempt such low-use boilers from the emissions limits in this final rule because the amount of air pollution emitted from a boiler is directly related to its operational hours, and installation of controls on infrequently operated units results in reduced air quality benefits.

Comment: Commenters asked whether the EPA’s proposed emissions limits for boilers would apply to emissions units that burn fuels other than coal, residual or distillate oil, or natural gas. For example, one commenter stated that some biomass boilers start up by co-firing oil or gas and that some NO_x controls such as low-NO_x burners (LNB) cannot be used on biomass boilers. The commenter requested clarification on whether boilers burning biomass would be covered by the EPA’s proposed requirements. Other commenters noted

that some industrial boilers burn natural gas in conjunction with other gaseous fuels, such as hydrogen/methane off-gas and vent gas from various on-site processes, and may not be able to meet the EPA’s proposed 0.08 lb/mmBtu NO_x emissions limit for boilers burning natural gas. One commenter stated that it operated a boiler that burns hazardous waste and is subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, and that this boiler uses natural gas for start-up and at other times to stabilize operations but also combusts other fuels such as liquid waste. The commenter asserted that such boilers should not be covered by the final rule.

Response: In recognition and consideration of comments received on our proposal, the EPA is finalizing requirements for boilers that apply only to boilers burning 90 percent or more coal, residual or distillate oil, or natural gas or combinations of these fuels on a heat-input basis. Public commenters presented information indicating that the burning of fuels other than coal, residual or distillate oil, or natural gas at levels exceeding 10 percent may interfere with the functions of the control technologies that may be necessary to meet the final rule, like SCR. The EPA does not have sufficient information at this time to conclude that units burning more than 10 percent fuels other than coal, residual or distillate oil, or natural gas can operate the necessary controls effectively and at a reasonable cost. Therefore, boilers that burn greater than 10 percent fuels other than coal, residual or distillate oil,

³⁹⁶ See, e.g., 40 CFR 60.44b (subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units).

natural gas, or combinations of these three fuels are not subject to the emissions limits and other requirements of this final rule.

Comment: Some commenters claimed that the EPA cannot include emissions limits for boilers that burn combinations of coal, residual or distillate oil, and natural gas, because the EPA did not propose limits for such boilers. Other commenters suggested it would be appropriate to establish emissions limits for such boilers as long as the EPA provides criteria for establishing such emissions limits.

Response: The EPA disagrees with the claim that boilers burning combinations of coal, residual or distillate oil, or natural gas cannot be covered by the final FIP because the EPA did not propose specific emissions limits for

these boilers and agrees with commenters who stated that the EPA’s proposed emissions limits can be extended to such boilers provided the EPA provides criteria for doing so. The applicability criteria in the final rule cover boilers burning combinations of coal, residual or distillate oil, or natural gas and include a methodology for determining the emissions limits for such units based on a simple formula that correlates the amount of heat input expended while burning each fuel with the corresponding emissions limit for that particular fuel. For example, a boiler with a heat input of 85 percent natural gas and 15 percent distillate oil would be subject to an emissions limit derived by multiplying the natural gas emissions limit by 0.85 and adding to that the distillate oil emissions limit

multiplied by 0.15. Thus calculated, the NO_x emissions limits for boilers burning combinations of coal, residual or distillate oil, or natural gas are consistent with the NO_x emissions limits identified in our proposed rule for each of these individual fuels.

Emissions Limitations and Rationale

The EPA is finalizing all of the proposed NO_x emissions limits for industrial boilers and adding a formula for calculating emissions limits for multi-fueled units as shown in Table VI.C.5–2. The emissions limits apply to boilers with design capacities of 100 mmBtu/hr or greater located at any of the five industries identified in Table II.A–1 within any of the 20 states covered by the non-EGU requirements of this final rule.

TABLE VI.C.5–2—NO_x EMISSIONS LIMITS FOR BOILERS >100 mmBtu/hr
[Based on a 30-day rolling average]

Unit type	Emissions limit (lbs NO _x /mmBtu)
Coal	0.20.
Residual oil	0.20.
Distillate oil	0.12.
Natural gas	0.08.
Multi-fueled unit	Limit derived by formula based on heat input contribution from each fuel.

Additional information on the EPA’s derivation of these proposed emissions rates for boilers is provided in the Final Non-EGU Sectors TSD.

Comment: Some commenters noted that many boilers are already subject to other state and Federal controls, and that programs such as RACT, NSR, BACT, NSPS, and maximum achievable control technology (MACT) are all achieving emissions reductions from boilers.

Response: The EPA acknowledges that some affected units may already be meeting the emissions limits established in this rule as a result of controls installed to comply with other regulatory programs, such as the CAA’s RACT requirements. However, emissions from the universe of boilers subject to the applicability requirements of this final rule are not being uniformly reduced by these programs to the same extent that the limits we are adopting will require, nor for the same reason, which is to mitigate the impact of emissions from upwind sources on downwind locations that are experiencing air quality problems. The EPA has determined that the limits we are finalizing in this action are readily achievable and are already required in practice in many parts of the country.

Regarding RACT controls, some of the sources covered by the final rule are not subject to RACT requirements because RACT is only applicable to sources located in ozone nonattainment areas and in the OTR, and many sources covered by the final rule are not located within such jurisdictions. Regarding sources that are subject to RACT, we note that unlike RACT requirements applicable to sources of VOCs, where a majority of such sources are covered by state RACT rules adopted to conform with uniform “presumptive” limits contained within the EPA’s Control Technique Guidelines (CTGs), in most cases presumptive NO_x emissions limits have not been established for industrial sources of this pollutant. In light of this, NO_x RACT requirements are primarily determined on a state-by-state basis and exhibit a range of stringencies as determined by each state. Additionally, RACT requirements tend to become more stringent with the passage of time as existing control options are improved, and new options become available. Thus, older RACT determinations may not be as stringent as more recent determinations made for similar equipment types. As noted in our proposal, we based our NO_x emissions limits for coal, residual or

distillate oil, and natural gas-fired industrial boilers on RACT limits that are already in place in many areas of the country.

Regarding NSR control requirements, we note that the NSR program was created by the 1977 amendments to the CAA and applies only to new or modified stationary sources. Many of the boilers covered by the applicability requirement of this final rule were initially installed or last modified prior to 1977 and have not undergone NSR analysis, such as a BACT analysis for sources located within an attainment area or a LAER analysis for sources located within nonattainment areas. Additionally, BACT and LAER determinations made many years ago are not likely to be as stringent as more recent determinations.

Regarding NSPS requirements, 40 CFR part 60, subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units, contains NO_x emissions limits for boilers with capacities of 100 mmBTU/hr or greater that were constructed or modified after June 19, 1984, and so boilers constructed or modified prior to that date are not subject to its requirements. Additionally, the limits for coal, residual or distillate oil, and

gas-fired units are not as stringent as more recent limits adopted by states pursuant to RACT control obligations.

Lastly, MACT controls are primarily designed to reduce emissions of hazardous air pollutants, not to reduce NO_x emissions. We anticipate the MACT program's boiler tune-up requirement should reduce NO_x emissions to some extent, but not to the extent that compliance with the limits adopted within this final rule will achieve.

Comment: One commenter noted that a 2017 OTC survey found that boilers, including those used in the paper products, chemical, and petroleum industries, are already required to achieve more stringent limits, and pointed to limits for distillate oil that are lower than what the EPA considered in developing the proposal. The commenter also noted that California's South Coast Air Quality Management District has adopted a facility-wide NO_x emissions limit of 0.03 lb/mmBtu at petroleum refineries. The commenter noted that CEMS data shows a residual oil-fired boiler at the Ravenswood Steam Plant in New York achieves an average NO_x emissions rate of 0.0716 lb NO_x/MMBtu and that CEMS data shows that a gas-fired boiler in Johnsonville, Tennessee, achieves an average NO_x emissions rate of 0.0058 lb NO_x/mmBTU. Regarding coal-fired boilers, the commenter stated that a coal boiler at the Ingredient Incorporated Argo Plant in Illinois achieves an average NO_x emissions rate of 0.1153 lb NO_x/MMBtu with selective non-catalytic control technology, and the Axiall Corporation facility in West Virginia achieves a 0.1162 lb/mmBtu using low-NO_x burner technology with overfire air. The commenter also noted that more than half of the gas-fired boilers included in the air markets program database already emit NO_x at rates below the EPA's proposed emissions rate, and that the RACT/BACT/LAER Clearinghouse (RBLC) shows more stringent limits for gas boilers than the limits the EPA proposed, with many facilities being required to meet a NO_x limit of less than 0.0400 lb/mmBtu.

Response: The EPA's intent was not to set the NO_x emissions limits for coal, residual or distillate oil, and natural gas-fired boilers to match the lowest levels required elsewhere by state or local authorities, but rather to establish limits that are commensurate with broadly applicable RACT limits currently in place in a number of states as noted within our proposal. The limits we selected were not the most stringent of the state RACT rules we reviewed but were relatively close to that value. We

did not select the most stringent limits because such limits may reflect case-specific technological and economic feasibility considerations that do not apply more broadly across the industry. Furthermore, although the EPA acknowledges that some industrial boilers powered by coal, residual or distillate oil, natural gas, or combinations of these fuels can meet very low NO_x emissions limits as noted by the commenter, it is unlikely that all such units could meet these limits given case-specific considerations such as boiler design and operation, some of which limit the types of control technology that may be available to a particular unit.

a. Coal-Fired Industrial Boilers

As we proposed, coal-fired industrial boilers subject to the applicability requirements of this section are required to meet a NO_x emissions limit of 0.2 lb/mmBtu on a 30-day rolling average basis. Various forms of combustion and post-combustion NO_x control technology exist that should enable most facilities to retrofit with equipment to meet this emissions limit. As we explained in our proposal, many states containing ozone nonattainment areas or located within the OTR have already adopted RACT emissions limits similar to or more stringent than the limits in this final rule, and most of those RACT limits apply statewide and extend to boilers located at commercial and institutional facilities, not just to boilers located in the industrial sector.

Comment: One commenter noted that the coal-fired boilers it operates already use combustion controls to reduce NO_x emissions and contended that the effectiveness of SNCR on these boilers is unknown but would likely be on the low end of the control effectiveness range because they experience variable loads, which would compromise the proper functioning of an SNCR control system. The commenter stated that the only way their coal-fired boilers would be able to comply with the EPA's proposed NO_x limit would be to install SCR. The commenter added that for coal-fired industrial boilers with a heat input rating of 100 MMBtu/hr or more, a review of the available RBLC records indicates that out of the 23 RBLC entries identified, nine units (less than half) were subject to an emissions limit at or below 0.2 lb/mmBtu, and eight of these nine units were equipped with SNCR. The commenter stated that based on a review of the available data in the RBLC and given the technical difficulties and low control efficiencies when applying SNCR to swing boilers, the EPA's proposed limit for coal firing does not

appear achievable for industrial coal-fired boilers that experience load swings unless SCR is installed. Other commenters stated that while there have been recent advancements in SNCR technology, such as the setting up of multiple injection grids and the addition of sophisticated CEMs-based feedback loops, implementing SNCR on industrial load-following boilers continues to pose several technical challenges, including lack of achievement of optimal temperature range for the reduction reactions to successfully complete, and inadequate reagent dispersion in the injection region due to boiler design which can lead to significant amounts of unreacted ammonia exhausted to the atmosphere (*i.e.*, large ammonia slip). The commenter noted that at least one pulp mill boiler had to abandon its SNCR system due to problems caused by poor dispersion of the reagent within the boiler, and that SNCR has yet to be successfully demonstrated for a pulp mill boiler with constant swing loads.

Response: To the extent the commenter's concerns pertain primarily to SNCR control technology, we note that the final rule does not mandate the use of any particular type of control technology and that other types of control equipment such as SCR should be examined as a means for meeting the final emissions limits. The EPA acknowledges that some coal-fired industrial boilers subject to this section of the final rule may need to install SCR to meet the NO_x emissions limits. This is reflected in our evaluation of costs for the non-EGU sector contained within the Non-EGU Screening Assessment memorandum and the cost calculations for the final rule discussed in section V and the *Memo to Docket—Non-EGU Applicability Requirements and Estimate Emissions Reductions and Costs*. We note that although the RBLC contains information on emissions limits and control technology for some units, it only provides information on a relatively small number of units subject to NO_x emissions limits and operating NO_x controls. Additionally, our final rule provides an exemption for units that operate infrequently (*i.e.*, "low-use boilers"), and also allows a facility owner or operator to submit a request for a case-by-case alternative emissions limit in cases where compliance with the emissions limit in this final rule is technically impossible or would result in extreme economic hardship. We note that non-EGU boilers share many similarities with EGU boilers, many of which already operate SCR to control NO_x emissions or will be required to

install and operate SCR systems under the requirements for EGUs contained in this final rule. Lastly, we note that information collected during the development of updates to the EPA's MACT requirements for industrial, commercial, and institutional (ICI) boilers indicates that over 150 ICI boilers have installed SCR control systems to reduce their NO_x emissions. This information is available in the docket for this final rule.

All affected units must install and operate NO_x control equipment as necessary to meet the applicable emissions limits in the final rule, except that if the owner or operator requests, and the EPA approves, a case-by-case emissions limit based on a showing of technical impossibility or extreme economic hardship, the affected unit would be required to comply with the EPA-approved case-by-case emissions limit instead.

b. Residual or Distillate Oil-Fired Industrial Boilers

Most oil-fired boilers are fueled by either residual (heavy) oil or distillate (light) oil. We proposed a NO_x emissions limit of 0.2 lb/mmBtu³⁹⁷ for residual oil-fired boilers and proposed a NO_x emissions limit of 0.12 lb/mmBtu for distillate oil-fired boilers. We are finalizing both limits as proposed, based on a 30-day rolling average. As with coal-fired industrial boilers, a number of combustion and post-combustion NO_x control technologies exist that should generally enable facilities meeting the applicability criteria of this section to meet these emissions limits, and the Final Non-EGU Sectors TSD identifies numerous states that have already adopted emissions limits similar to the limits in this final rule. There are relatively few boilers fueled by residual or distillate oil within the industries affected by this final rule that meet the applicability criteria of this section, and we received relatively few comments regarding our proposed emissions limits for them.

c. Natural Gas-Fired Industrial Boilers

We proposed a NO_x emissions limit of 0.08 lb/mmBtu based on a 30-day rolling average for natural gas-fired boilers meeting the applicability criteria of this section, and we are finalizing this emissions limit and averaging time as proposed. As explained in our proposal,

³⁹⁷ Section 52.45(c) of the regulatory text in our proposed rule identified a proposed emissions limit of 0.15 lb/mmBtu for residual oil-fired boilers, but the emissions limit that we intended to propose for this equipment and discussed both in the preamble to the proposed rule and in the TSD supporting the proposed rule was 0.20 lb/mmBtu.

numerous combustion and post-combustion NO_x control technologies exist that should generally enable facilities meeting the applicability criteria of this section to meet this emissions limit. Additionally, many states have already adopted emissions limits similar to the emissions limit in this final rule, and some natural gas-fired industrial boilers may be able to meet the 0.08 lb/mmBtu emissions limit by modifying existing NO_x control equipment installed to meet the requirements in 40 CFR 60.44b (subpart Db of 40 CFR part 60, Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units), which already requires that natural gas-fired units meet a NO_x emissions limit of between 0.1 to 0.2 lbs/MMBtu.

Compliance Assurance Requirements

We proposed compliance provisions for boilers subject to the requirements of this section similar to the emissions monitoring requirements found in 40 CFR 60.45 (subpart D of 40 CFR part 60, Standards of Performance for Fossil-Fuel-Fired Steam Generators). Those requirements include, among other provisions, the performance of an initial compliance test and installation of a CEMS unless the initial performance test indicates the unit's emissions rate is 70 percent or less of the emissions limit in this final rule. We received a number of comments on this portion of our proposal and provide responses to some of these comments in the following paragraphs. Our full responses to comments are provided in the response to comments document included in the docket for this action.

Comment: A number of commenters stated that CEMS monitoring is too expensive and unnecessary for ensuring compliance with the emissions limits for boilers and requested that alternative monitoring techniques be allowed.

Response: The EPA acknowledges that the installation and operation of CEMS systems is more expensive than other monitoring techniques and may not be necessary for smaller sized boilers that typically produce less emissions than larger ones. In response to these comments, we have modified the monitoring requirements in the final rule such that boilers rated with heat-input capacities less than 250 mmBTU/hr can demonstrate compliance by conducting an annual stack test as an alternative to monitoring using a CEMS system and by complying with the provisions of a monitoring plan meeting specific criteria that enables the facility owner or operator to demonstrate continuous compliance with the emissions limits of this final rule.

Comment: One commenter stated that the proposed reporting obligations require the submittal of excess emissions reports, continuous monitoring, and quarterly emissions reports. The commenter suggested that since the NO_x emissions standards only apply during the ozone season (May 1–September 30), the reporting requirements should only apply during the second and third quarters of the year and should require that only emissions and monitoring data from this time period be included in these reports.

Response: In response to these comments, the EPA is finalizing recordkeeping, monitoring, and reporting requirements that are designed to ensure compliance with the applicable emissions limits only during the ozone season. Additionally, the final rule requires annual reports rather than the proposed quarterly reports as annual reports are adequate to determine compliance with the emissions limits during the ozone season.

Comment: A number of commenters stated that some of their boilers that may potentially be subject to a final FIP already have a NO_x CEMS installed and requested that the EPA clarify whether a 30-day initial compliance test is required in such cases.

Response: The EPA's final rule provides that in instances where a boiler meeting the applicability requirements of this section has already installed a NO_x CEMS that meets the requirements for such equipment located within 40 CFR 60.13 or 40 CFR part 75, Continuous Emissions Monitoring, pursuant to a federally enforceable requirement, a 30-day initial compliance test is not required.

Comment: One commenter stated that § 52.45(d) of the EPA's proposed rule included requirements to complete an initial 30-day compliance test within 90 days of installing pollution control equipment but did not specify whether the test must be complete prior to the May 1, 2026, ozone season or by some later date.

Response: In response to this comment, the EPA is finalizing provisions requiring that initial compliance tests occur prior to the May 1, 2026 compliance date.

6. Municipal Waste Combustors Applicability

The EPA is finalizing regulatory requirements that apply to municipal solid waste combustors located in a state subject to the non-EGU requirements of this final rule (*i.e.*, the 20 states with linkages that persist in 2026 as identified in section II.B) and

that combust greater than or equal to 250 tons per day of municipal solid waste (“affected units”). See 40 CFR 52.46(d) for guidelines on calculating municipal waste combustor unit capacity. This applicability threshold was supported by commenters and is consistent with the applicability criteria in 40 CFR part 60, subpart Eb, Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors. State RACT rules for MWCs and the OTC MWC report similarly define large MWC units as units with a combustion capacity greater than or equal to 250 tons per day.

Across the 20 states subject to the non-EGU requirements, this applicability threshold captures 28 MWC facilities with a total of 80 affected units. The identified affected units include mass burn waterwall units, mass burn rotary waterwall units, refuse derived fuel (RDF) units, and one CLEERGAS™ (“Covanta Low Emissions Energy Recovery Gasification”) modular system.³⁹⁸ The EPA analyzed actual emissions from the facilities captured by this threshold and found that on average, a unit with a design capacity of 250 tons per day has a PTE of approximately 138 tons per year,³⁹⁹ which is similar to the PTE threshold applied to other non-EGU sources under this rulemaking.

Emissions Limitations and Rationale

Based on the available information for this industry, including information provided during the public comment period, the OTC MWC Report, a review of State and local RACT rules that apply to MWCs, and active air permits issued to MWCs, the EPA is finalizing the following emissions limits for municipal solid waste combustors.

TABLE VI.C.6–1—NO_x EMISSIONS LIMITS FOR LARGE MUNICIPAL WASTE COMBUSTORS

NO _x Limit (ppmvd) corrected to 7 percent oxygen	Averaging period
110	24-hour.
105	30-day.

At proposal, the EPA noted that the NO_x limits for large MWCs constructed on or before September 20, 1994 under NSPS subpart Cb are found within Tables 1 and 2 of 40 CFR 60.39b and

range from 165 to 250 ppm depending on the combustor design type. The NO_x limits for large MWCs constructed after September 20, 1994 or for which modification or reconstruction is commenced after June 19, 1996 under NSPS subpart Eb are found at 40 CFR 60.52b(d) and are 180 ppm during a unit’s first year of operation and 150 ppm afterwards, applicable across all combustor types. These limits correspond to NO_x emissions rates of 0.31 and 0.26 lb/mmBtu, respectively. In reviewing active air permits for MWCs, the EPA found that most MWCs are meeting emissions limits similar to those reflected in the applicable NSPS.⁴⁰⁰

The EPA also cited the OTC’s MWC report that evaluated the emissions reduction potential of large MWCs located in the OTR from two different control levels, one based on a NO_x concentration of 105 to 110 ppm, and another based on a limit of 130 ppm. The OTC MWC report found that a control level of 105 ppmvd on a 30-day rolling average basis and a 110 ppmvd on a 24-hour block averaging period would reduce NO_x emissions from MWCs by approximately 7,300 tons annually, and that a limit of 130 ppmvd on a 30 day-average could achieve a 4,000 ton reduction. The OTR MWC Report noted that at the time of publication, eight MWC units were already subject to permit limits of 110 ppm, seven in Virginia, and one in Florida. In consideration of control costs, the report cited multiple studies evaluating MWCs similar in design to the large MWCs in the OTR and found NO_x reductions could be achieved at costs ranging from \$2,900 to \$6,600 per ton of NO_x reduced.

To further inform the EPA’s consideration of emissions limits for MWCs, the EPA requested comment on the emissions limit and averaging time MWCs should be required to meet, and specifically whether the EPA should adopt emissions rates of 105 ppmvd on a 30-day rolling averaging basis and 110 ppmvd on a 24-hour block averaging basis.

Comment: The agency received several comments regarding emissions limits and averaging time for MWCs. Many commenters asserted that the EPA should set a 24-hour emissions limit no higher than 110 ppm, noting that recent studies have shown that there are a variety of technologies that can help a wide range of MWC types achieve this limit at costs that are significantly below the \$7,500/ton cost effectiveness

threshold that the EPA identified at proposal. Some commenters confirmed the accuracy of the OTC workgroup’s estimated cost of controls for reducing NO_x emissions from MWCs of \$2,900 to \$6,600 while others stated that the cost of controls is well below \$7,500. One commenter asserted that the EPA should set a 24-hour NO_x emissions limit of 50 ppmvd for MWCs, which could be achieved by the installation of SCR technology. Alternatively, the commenters stated that the EPA should set a 24-hour emissions limit no higher than 110 ppm based on less effective, though still widely available, control technology. Although some commenters stated that MWCs should not be included in the rulemaking, no commenters specifically identified units or categories of units that could not achieve emissions limits of 105 ppmvd on a 30-day rolling averaging basis and 110 ppmvd on a 24-hour block averaging basis.

Response: The EPA recognizes that there have been instances where MWCs have installed SCR and achieved emissions rates of 50 ppmvd on a 24-hr averaging basis and 45 ppmvd on a 30-day rolling averaging basis with cost effectiveness estimates around \$10,296/ton to \$12,779/ton of NO_x reduced. Given uncertainties pertaining to whether SCR can be installed on all types of MWCs, the EPA has decided not to establish emissions limits as low as 50 ppmvd for MWCs using SCR at this time. However, as generally supported by most commenters, the EPA is finalizing emissions limits of 105 ppmvd at 7 percent oxygen (O₂) on a 30-day rolling average and 110 ppmvd at 7 percent O₂ on a 24-hour block average that apply at all times except during periods of startup and shutdown. The EPA recognizes that the final emissions limits for steady-state operations cannot be achieved during periods of startup, shutdown, and malfunction. This is primarily due to the fact that during periods of startup and shutdown, additional ambient air is introduced into the units, resulting in higher oxygen concentrations. Therefore, the EPA is finalizing provisions applicable during periods of startup and shutdown that do not require correction of CEMS data to 7 percent oxygen but do require that such data be measured at stack oxygen content. This approach is consistent with EPA regulations applicable during startup and shutdown periods for other solid-waste incinerators under the NSPS for Commercial and Industrial Solid Waste Incineration Units. See 40 CFR part 60, subparts CCCC and DDDD.

³⁹⁸ See the Final Non-EGU Sectors TSD for additional information on this inventory.

³⁹⁹ See the Final Non-EGU Sectors TSD for additional information on the calculation of PTE for large MWCs.

⁴⁰⁰ For further discussion of the permits reviewed, see the Final Non-EGU Sectors TSD.

Information received from public commenters generally aligned with the results from studies showing that the emissions limits of 105 ppmvd on a 30-day rolling averaging basis and 110 ppmvd on a 24-hour block averaging basis can be reached using ASNCR or low NO_x technology in addition to SNCR.⁴⁰¹ The EPA recognizes that not all units can implement low NO_x technology, including those using Aerial grate technology, those operating RFD units, and those with rotary combustor units. Of the 80 affected MWC units that the EPA identified, nine units across two facilities are classified as rotary combustors, four units at a single facility are classified as RDF, and no units captured are classified as using Aerial grate technology. One affected unit is classified as CLEERGAS gasification while the remaining 64 affected units are classified as mass burn waterwall combustors, which have not been explicitly identified as units unable to install low NO_x technology. For those units unable to install low NO_x technology or SNCR, the EPA has identified ASCNR as an alternative control technology that has been shown to enable units to achieve emissions limits of 105 ppmvd on a 30-day rolling averaging basis and 110 ppmvd on a 24-hour block averaging basis, either as a new retrofit technology or as a significant upgrade to existing SNCR. The EPA finds that the availability of ASNCR or SNCR and low NO_x burners provides sufficient flexibility for MWCs to meet the emissions limits in the final rule, especially considering 74 of the 80 affected units already have SNCR installed. Although there is uncertainty on the cost effectiveness of ASNCR for achieving significant NO_x reductions in small MWCs, small MWCs that combust less than 250 tons per day of municipal solid waste are not included in this rulemaking.

While commenters noted discrepancies across cost effectiveness values for specific types of control technology, no commenters specifically indicated that emissions control technology could not be cost effectively installed on large MWCs to achieve an emissions limit of 105 ppmvd on a 30-day rolling averaging basis and 110 ppmvd on a 24-hour block averaging

⁴⁰¹ The only demonstrated use of low NO_x technology in addition to SNCR at MWC facilities is at Covanta facilities using Covanta's proprietary low NO_x combustion system (LNTM). For the purpose of this rule, EPA is assuming Covanta facilities will take advantage of this technology and others will use ASNCR. However, other iterations of low NO_x technology could become available, or facilities could work with Covanta to apply this technology to their units.

basis. Studies show that these limits can be achieved through a variety of emissions controls, including ASNCR and the addition of low NO_x technology to existing SNCR.⁴⁰² Of the 80 MWC units subject to this rule, 55 units already have SNCR installed, 16 units already have SNCR and low NO_x technology installed, and three units already have ASNCR installed. Applying the cost values provided in the OTC's MWC report to the MWC inventory in section 7 of the Final Non-EGU Sectors TSD, the estimated weighted average cost effectiveness of applying advanced SNCR to units with and without existing SNCR and adding low NO_x technology to eligible units with SNCR was found to be approximately \$7,929.02/ton.⁴⁰³ This value is in line with the control technology costs for other non-EGU sectors and the EGU costs associated with this final rule.

Compliance Assurance Requirements

In this final rule, the EPA is establishing compliance requirements for MWCs similar to the NSPS requirements for large MWCs under 40 CFR part 60, subpart Eb. Those requirements include, among other provisions, the performance of an initial performance test and installation of a CEMS. At proposal, the EPA requested comment on whether it would be appropriate to rely on existing testing, monitoring, recordkeeping, and reporting requirements for MWCs under applicable NSPS or other requirements.

Comment: Some commenters noted that all large MWCs are already required to use CEMS to demonstrate compliance with NO_x limits under the NSPS program. These commenters asserted that the EPA should improve electronic reporting requirements beyond current requirements in the NSPS. The commenters suggested that an owner or operator of an MWC subject to a limit

⁴⁰² See OTC MWC Report at 6–7; Trinity Consultants, *Project Report Covanta Alexandria/ Arlington, Inc., Reasonably Available Control Technology Determination for NO_x* (September 2017); Trinity Consultants, *Project Report Covanta Fairfax, Inc., Reasonably Available Control Technology Determination for NO_x* (September 2017); Babcock Power Environmental, *Waste to Energy NO_x Feasibility Study*, Prepared for: Wheelabrator Technologies Baltimore Waste to Energy Facility Baltimore, MD (February 20, 2020); White, M., Goff, S., Deduck, S., Gohlke, O., *New Process for Achieving Very Low NO_x, Proceedings of the 17th Annual North American Waste-to-Energy Conference, NAWTEC17* (May 2009); Letter from the State of New Jersey to Michael Klein, In Reference to Covanta Energy Group, Inc. Essex County Resource Recovery Facility, Newark Annual Stack Test Program (March 14, 2019).

⁴⁰³ See Final Non-EGU Sectors TSD for more information on these cost effectiveness estimates were generated.

under the final rule should be required to report NO_x CEMS data electronically at least annually to the EPA's CEDRI and any other database that the EPA will utilize when considering revisions to the NSPS for large MWCs. The commenters asserted that MWC operators should be required to report NO_x CEMS data to the EPA's Clean Air Markets database, to allow the public access to MWC CEMS data on a large scale for the first time.

Response: The EPA is finalizing provisions that require MWCs subject to the requirements of this section to install, calibrate, maintain, and operate a CEMS for the measurement of NO_x emissions discharged into the atmosphere from the affected facility. This is consistent with NSPS requirements for large MWCs under 40 CFR part 60, subparts Ea and Eb, and state RACT rules that are applicable to MWCs in many of the states covered under this rulemaking.⁴⁰⁴ Additionally, each emissions unit will be required to conduct an initial performance test. With regard to electronic reporting, the final rule requires performance tests and reports, including CEMS data, to be submitted to CEDRI, as required for all non-EGU industries covered by this final rule.

D. Submitting a SIP

A state may submit a SIP at any time to address CAA requirements that are covered by a FIP, and if the EPA approves the SIP it would replace the FIP, in whole or in part, as appropriate. As discussed in this section, states may opt for one of several alternatives that the EPA has provided to take over all or portions of the FIP. However, as discussed in greater detail further in this section, the EPA also recognizes that states retain the discretion to develop SIPs to replace a FIP under approaches that differ from those the EPA has finalized.

The EPA has established certain specialized provisions for replacing FIPs with SIPs within all the CSAPR trading programs, including the use of so-called "abbreviated SIPs" and "full SIPs," see 40 CFR 52.38(a)(4) and (5) and (b)(4), (5), (8), (9), (11), and (12); 40 CFR 52.39(e), (f), (h), and (i). For a state to remove all FIP provisions through an approved SIP revision, a state would need to address all of the required reductions addressed by the FIP for that state, *i.e.*, reductions achieved through both EGU control and non-EGU control,

⁴⁰⁴ For examples of RACT provisions applicable to MWCs that require CEMS, see Regulations of Connecticut State Agencies section 22a-174-22e; and Virginia Administrative Code section 5-40-6730, subsection (D).

as applicable to that state. Additionally, tribes in Indian country within the geographic scope of this rule may elect to work with EPA under the Tribal Authority Rule to replace the FIP for areas of Indian country, in whole or in part, with a tribal implementation plan or reasonably severable portions of a tribal implementation plan.

Under the FIPs for the 22 states whose EGUs are required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program with the modifications finalized in this rule, EPA continues to offer “abbreviated” and “full” SIP options for states. An “abbreviated SIP” allows a state to submit a SIP revision that establishes state-determined allowance allocation provisions replacing the default FIP allocation provisions but leaving the remaining FIP provisions in place. A “full SIP” allows a state to adopt a trading program meeting certain requirements that allow sources in the state to continue to use the EPA-administered trading program through an approved SIP revision, rather than a FIP. In addition, as under past CSAPR rulemakings, states have the option to adopt state-determined allowance allocations for existing units for the second control period under this rule—in this case, the 2024 control period—through streamlined SIP revisions. See 76 FR 48326–48332 for additional discussion of full and abbreviated SIP options; see also 40 CFR 52.38(b).

Comments: Some commenters alleged that by taking this action, EPA is depriving states of the ability to develop SIPs to implement good neighbor obligations for the 2015 ozone NAAQS or from choosing their own compliance strategies. Commenters also claimed that the EPA cannot require states to implement emissions reductions equivalent to the emissions control stringency that the EPA determined at Step 3 if their proposed SIPs are otherwise shown to be adequate to eliminate significant contribution. Other commenters raised concerns that the trading program enhancements for EGUs made it too uncertain what a state could develop as an approvable replacement SIP. At least one commenter argued that the EPA must give states a single, mass-based emissions budget so that they can understand how to replace the FIP with a SIP.

Response: The EPA disagrees that it is depriving States of the opportunity to replace the FIP with a SIP or preventing states from targeting alternative emissions reductions strategies that can be shown to be equivalent to the FIP. States have always possessed the authority and the opportunity to revise

their SIPs at any point. The EPA has repeatedly emphasized that states are free to develop a SIP revision to replace a transport FIP and submit that to the EPA for approval, and this remains true. See 87 FR 20036, 20051 (April 6, 2022); 86 FR 23054, 23062 (April 30, 2021); 81 FR 74504, 74506 (Oct. 26, 2016). In the FIP proposal, as in prior transport actions, the EPA discussed a number of ways in which states could take over or replace a FIP, see 87 FR 20036, 20149–51 (section VII.D: “Submitting A SIP”); see also *id.* at 20040 (noting as one purpose in proposing the FIP that “this proposal will provide states with as much information as the EPA can supply at this time to support their ability to submit SIP revisions to achieve the emissions reductions the EPA believes necessary to eliminate significant contribution”). The EPA provides further guidance on submitting SIPs in this section. If, and when, the EPA receives a SIP submission that satisfies the requirements of CAA section 110(a)(2)(D)(i)(I) and 110(l), the Agency will take action to approve those SIP submissions and withdraw the FIP.

At the outset, we note that the Agency does not anticipate revisiting its findings at Steps 1 or 2 of the transport framework. Those findings establish that the projected baseline anthropogenic emissions from these states contribute to downwind nonattainment or maintenance receptors in 2023, and, for certain states, that contribution continues through 2026. Those represent critical analytical years for downwind areas as they are the last full ozone season before the Moderate and Serious area attainment dates. Those findings, for those years, establish the basis for an upwind state’s linkage, from which we proceed to evaluate emissions control opportunities and their implementation at Steps 3 and 4.

We cannot prejudge now whether state submissions to replace the EPA’s FIP will be approvable, but we note a number of statutory and implementation considerations states should be aware of if designing a replacement SIP. We have demonstrated that the EPA’s transport FIP is adequate to eliminate significant contribution to downwind air quality problems for purposes of the 2015 ozone NAAQS, and that the FIP does not result in overcontrol. The level of reductions required by the FIP therefore provides an important benchmark for states in evaluating the equivalency of possible replacement SIPs. As discussed in more detail in this section, in order to comply with their obligation under CAA section 110(a)(2)(D)(i)(I), we generally anticipate that states seeking to replace the FIP

with a SIP that takes an alternative approach would need to establish, at a minimum, an equivalent level of emissions reduction to what the FIP requires at Step 3, and any such replacement SIP will need to comply with CAA section 110(l).

The concept of equivalency is important for the state to consider. Under CAA section 110(l), “the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment . . . or any other applicable requirement of this chapter.” Section 110(l) applies to all CAA requirements, including 110(a)(2)(D) requirements relating to interstate transport. The EPA interprets section 110(l) such that states have two main options to make a noninterference demonstration. First, the state could demonstrate that emissions reductions removed from the SIP are replaced with new control measures that achieve equivalent or greater emissions reductions. Thus, a 110(l) analysis would generally need to show that the SIP revision, or, in this case, a potential SIP submission replacing an existing FIP, will not interfere with any area’s ability to continue to attain or maintain the affected NAAQS or other CAA requirements. The EPA further has interpreted section 110(l) as requiring such substitute measures to be quantifiable, permanent, and enforceable, among other considerations. For section 110(l) purposes, “permanent” means the state cannot modify or remove the substitute measure without EPA review and approval. Second, the state could conduct air quality modeling or develop an attainment or maintenance demonstration based on the EPA’s most recent technical guidance to show that, even without the control measure or with the control measure in its modified form, significant contribution from the state would continue to be prohibited as the Act requires. As discussed further in this section, for purposes of interstate ozone transport, such an analysis entails important questions of consistency and equity among states for resolving air quality problems that the EPA would need to carefully evaluate.⁴⁰⁵

⁴⁰⁵ For instance, future circumstances in which the receptor or receptors to which a state is linked come fully into attainment or to which the upwind state’s linkage drops below 1 percent of the NAAQS would likely not, solely on those grounds, be sufficient to relax transport requirements established by the FIP or justify approving a less stringent SIP. First, the emissions reductions achieved by the FIP are part of the reason that a receptor may come into attainment or a linkage may drop below 1 percent of the NAAQS. Simply

In the EPA's experience implementing the CAA criteria pollutant program, reductions arising from the good neighbor provision have been critically important to the improvement of air quality in downwind areas struggling with attainment and maintenance of the NAAQS, and states' reliance on good neighbor FIP reductions will need to be taken into account in any replacement SIP. In order for a nonattainment area to be redesignated to attainment, the CAA requires not only that an area attain the standard, but also the Administrator must determine "that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions." CAA section 107(d)(3)(E)(i) and (iii). Many nonattainment areas across the country that have attained various PM_{2.5} and ozone NAAQS have done so in part due to the imposition of Federal good neighbor emissions control measures, and, per CAA section 107(d)(3)(E)(iii), states have specifically relied on the emissions reductions required by those programs in order to be redesignated to attainment. *See, e.g.*, 84 FR 8422, 8425 (March 8, 2019) (noting that "[a]t least 140 EPA final actions redesignating areas in 20 states to attainment with an ozone NAAQS or a fine particulate matter (PM_{2.5}) NAAQS—because NO_x is a precursor to PM_{2.5} as well as ozone—have relied in part on the NO_x SIP Call's emissions reductions"); *see also Sierra Club v. EPA*, 774 F.3d 383, 397–99 (7th Cir. 2014) (upholding EPA's approval of a redesignation, and specifically EPA's determination that reductions from Federal good neighbor transport trading programs could reasonably be

removing emissions control requirements the moment this occurs is illogical, since those reductions are part of the solution by which the attaining air quality was achieved or the linkage was resolved. *See* CAA section 107(d)(3)(E)(iii) (areas cannot be redesignated unless based on permanent and enforceable reductions); *see also Wisconsin*, 938 F.3d at 324–25 (explaining that upwind states are held to a contribution standard, not a but-for causation standard and thus cannot escape good neighbor obligations on the basis that other emissions "cause" the NAAQS to be exceeded). There is a risk of inconsistency and inequity in removing any requirements in this manner in that any increase in emissions that could occur in one upwind state would likely need to be reviewed in relation to the obligations other upwind states would continue to meet. Further, any such relaxation in upwind state requirements could then unreasonably shift the burden for maintaining air quality onto the downwind states where receptors are located. These issues may entail complex state- or case-specific analyses that would need to be evaluated at the time such a SIP revision is submitted; these issues are not ripe for resolution in this action.

considered "permanent and enforceable" under the statute); *Sierra Club v. EPA*, 793 F.3d 656, 665–68 (6th Cir. 2015) (same). States seeking area redesignations are also required under CAA section 107(d)(3)(E)(iv) to develop revisions to their state implementation plans that provide for maintenance of the NAAQS. In so doing, states develop air quality modeling, in which they project future air quality based on emissions inputs that account for enforceable emissions reductions, or states project emissions in the future relative to emissions in an attainment year, showing that the future emissions (which, again, account for on-the-books, enforceable emissions limits) do not exceed emissions in the baseline attainment year. *See* "Procedures for Processing Requests to Redesignate Areas to Attainment," Memo from John Calcagni to EPA Regions, September 4, 1992, at 9. Reductions required by Federal good neighbor programs may therefore also be relied upon by states seeking area redesignations in the context of how states demonstrate that areas will maintain the NAAQS.

We anticipate that air quality in areas struggling to attain and maintain the 2015 ozone NAAQS will improve due to the emissions reductions required by EPA's FIP. We also anticipate that, consistent with EPA's historical experience implementing the NAAQS and acting on state requests for nonattainment area redesignations, emissions reductions associated with EPA's transport FIP for the 2015 ozone NAAQS are likely to be a critical component in those requests for redesignation. Where states have relied and are relying on the FIP's reductions in order to attain and maintain the NAAQS, EPA will look very critically at any replacement SIP that appears to fall short of equivalent emissions reductions—in terms of the level of reductions or the permanence of those reductions.

Finally, we disagree with commenters that the absence of fixed, mass-based emissions budgets for each state make it impossible to replace the FIP with an equivalent SIP. In the case of the trading program enhancements for EGUs, the EPA recognizes that the dynamic budgeting methodology will generally function to impose a continuous incentive on relevant EGUs to continue to implement the emissions control strategies determined at Step 3. Further, the backstop rate and banking recalibration enhancements also are designed to ensure that EGUs implement emissions controls consistent with Step 3 determinations on a continuous basis throughout each

ozone season. As explained in section V.D.4 of this document, these aspects of the trading program do not in themselves introduce an overcontrol concern. Nonetheless, consistent with the more general principles discussed in this section with respect to the potential bases on which states may replace the FIP with SIPs, we reserve judgment at this time on whether some future demonstration could successfully establish that revision of the FIP or its replacement with a SIP could be acceptable even if the way that significant contribution is eliminated is through means that differ from the trading program enhancements included for EGUs in this action. As discussed further in this section, a state may choose to withdraw its EGUs from the trading program and instead subject those EGUs to daily emissions rates commensurate with installation and optimization of state-of-the-art combustion and post-combustion controls as the EPA determined at Step 3. Likewise, states are free to explore an alternative set of emissions controls on non-EGU industrial sources (or other sources in the state), so long as they can demonstrate that an equivalent amount of emissions is eliminated. In any case, we need not resolve these questions here. The EPA, in promulgating a FIP, is not obligated to identify each way a state could replace it with a SIP revision. Several options are discussed further in this section, and, as always, EPA Regional Offices will work closely with states who wish to explore these options or other alternatives.

1. SIP Option To Modify Allocations for 2024 Under EGU Trading Program

As with the start of past CSAPR rulemakings, the EPA is finalizing the option to allow a state to use a similar process to submit a SIP revision establishing allowance allocations for existing EGU units in the state for the second control period of the new requirements, *i.e.*, in 2024, to replace the EPA-determined default allocations. A state must submit a letter to EPA by August 4, 2023, indicating its intent to submit a complete SIP revision by September 1, 2023. The SIP would provide in an EPA-prescribed format a list of existing units within the state and their allocations for the 2024 control period. If a state does not submit a letter of intent to submit a SIP revision, the EPA-determined default allocations will be recorded by September 5, 2023. If a state submits a timely letter of intent but fails to submit a SIP revision, the EPA-determined default allocations will be recorded by September 15, 2023. If a state submits a timely letter of intent

followed by a timely SIP revision that is approved, the approved SIP allocations will be recorded by March 1, 2024.

The EPA received no comments on the proposed option to modify allowance allocations under the Group 3 trading program for EGUs for the 2024 control period through a SIP revision and is finalizing the provisions as proposed.

2. SIP Option To Modify Allocations for 2025 and Beyond Under EGU Trading Program

For the 2025 control period and later, states in the CSAPR NO_x Ozone Season Group 3 Trading Program can modify the EPA-determined default allocations with an approved SIP revision. For the 2025 control period and later, SIPs can be full or abbreviated SIPs. See 76 FR 48326–48332 for additional discussion of full and abbreviated SIP options; see also 40 CFR 52.38(b).

In this final rule, the EPA is removing the previous regulatory text defining specific options for states to expand CSAPR NO_x Ozone Season Group 3 trading program applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the NO_x SIP Call, large non-EGU boilers and combustion turbines. These options for expanding trading program applicability through SIP revisions have been available to states since the start of the CSAPR trading programs for small EGUs and since the CSAPR Update for large non-EGU boilers and combustion turbines, and no state has chosen to use the SIP process for this purpose. Additionally, the EPA did not receive comment supporting these expansion options during the comment period for this rule. The EPA is finalizing a methodology for updating the affected EGU portion of the budget in this rule, and the regulatory text defining the applicability expansion to non-EGUs did not include a mechanism for updating the incremental non-EGU portion of a state's budget based on changes over time of the non-EGU fleet; therefore, continuation of the option to expand applicability to certain non-EGUs subject to the NO_x SIP Call would be inconsistent with the trading program as applied to EGUs in this rule.

However, the EPA recognizes that states may seek to include non-EGUs covered in this action in an emissions trading program, subject to important considerations to ensure equivalency in emissions reductions is maintained. While the EPA is not offering specific regulatory text to implement an option to expand the trading program applicability, a state could submit a SIP to expand the CSAPR NO_x Ozone

Season Group 3 Trading Program applicability, which the EPA would evaluate on a case-by-case basis. The SIP revision would need to address critical program elements, and include: (1) high-quality baseline data, (2) ongoing Part 75 monitoring, and (3) provisions to update the non-EGU portion of the budget to appropriately reflect changes to the fleet over time.

For states that want to modify the EPA-determined default allocations, the EPA proposed that a state could submit a SIP revision that makes changes only to that provision while relying on the FIP for the remaining provisions of the EGU trading program. This abbreviated SIP option allows states to tailor the FIP to their individual choices while maintaining the FIP-based structure of the trading program. To ensure the availability of allowance allocations for units in any Indian country within a state not covered by the state's CAA implementation planning authority, if the state chose to replace the EPA's default allocations with state-determined allocations, the EPA would continue to administer any portion of each state emissions budget reserved as a new unit set-aside or an Indian country existing unit set-aside.

The SIP submittal deadline for this type of revision is December 1, 2023, if the state intends for the SIP revision to be effective beginning with the 2025 control period. For states that submit this type of SIP revision, the deadline to submit state-determined allocations beginning with the 2025 control period under an approved SIP is June 1, 2024, and the deadline for the EPA to record those allocations is July 1, 2024. Similarly, a state can submit a SIP revision beginning with the 2026 control period and beyond by December 1, 2024, with state allocations for the 2026 control period due June 1, 2025, and EPA recordation of the allocations by July 1, 2025.

The EPA received no comment on the option to replace certain allowance allocation provisions under the Group 3 trading program for EGUs for control periods in 2025 and later years through a SIP revision and is finalizing the provisions generally as proposed, with the exception that any potential expansion of trading program applicability under a SIP revision would be evaluated on a case-by-case basis.

3. SIP Option To Replace the Federal EGU Trading Program With an Integrated State EGU Trading Program

For the 2025 control period and later, states in the CSAPR NO_x Ozone Season Group 3 Trading Program can choose to replace the Federal EGU trading

program with an integrated State EGU trading program through an approved SIP revision. Under this option, a state can submit a SIP revision that makes changes only to modify the EPA-determined default allocations and that adopts identical provisions for the remaining portions of the EGU trading program. This SIP option allows states to replace these FIP provisions with state-based SIP provisions while continuing participation in the larger regional trading program. As with the abbreviated SIP option discussed previously, to ensure the availability of allowance allocations for units in any Indian country within a state not covered by the state's CAA implementation planning authority, if the state chooses to replace the EPA's default allocations with state-determined allocations, the EPA would continue to administer any portion of each state emissions budget reserved as a new unit set-aside or an Indian country existing unit set-aside. Also, for the same reasons discussed with respect to the abbreviated SIP option, the EPA is removing the option for states to expand CSAPR NO_x Ozone Season Group 3 trading program applicability to include EGUs between 15 MWe and 25 MWe or, in the case of states subject to the NO_x SIP Call, large non-EGU boilers and combustion turbines.

Deadlines for this type of SIP revision are the same as the deadlines for abbreviated SIP revisions. For the SIP-based program to start with the 2025 control period, the SIP deadline is December 1, 2023, the deadline to submit state-determined allocations for the 2025 control period under an approved SIP is June 1, 2024, and the deadline for the EPA to record those allocations is July 1, 2024, and so on.

The EPA received no comment on the option to replace the Federal trading program for EGUs with an integrated state trading program for EGUs for control periods in 2025 and later years through a SIP revision and is finalizing the provisions generally as proposed, with the exception that any potential expansion of trading program applicability under a SIP revision would be evaluated on a case-by-case basis.

4. SIP Revisions That Do Not Use the Trading Program

States can submit SIP revisions to replace the FIP that achieve the necessary EGU emissions reductions but do not use the CSAPR NO_x Ozone Season Group 3 Trading Program. For a transport SIP revision that does not use the CSAPR NO_x Ozone Season Group 3 Trading Program, the EPA would evaluate the transport SIP based on the

particular control strategies selected and whether the strategies as a whole provide adequate and enforceable provisions ensuring that the necessary emissions reductions (*i.e.*, reductions equal to or greater than what the Group 3 trading program will achieve) will be achieved. To address the applicable CAA requirements, the SIP revision should include the following general elements: (1) a comprehensive baseline 2023 statewide NO_x emissions inventory (which includes existing control requirements), which should be consistent with the 2023 emissions inventory that the EPA used to calculate the required state budget in this final rule (unless the state can explain the discrepancy); (2) a list and description of control measures to satisfy the state emissions reduction obligation and a demonstration showing when each measure would be implemented to meet the 2023 and successive control periods; (3) fully-adopted state rules providing for such NO_x controls during the ozone season; (4) for EGUs greater than 25 MWe, monitoring and reporting under 40 CFR part 75, and for other units, monitoring and reporting procedures sufficient to demonstrate that sources are complying with the SIP (*see* 40 CFR part 51, subpart K (“source surveillance” requirements)); and (5) a projected inventory demonstrating that state measures along with Federal measures will achieve the necessary emissions reductions in time to meet the 2023 and successive compliance deadlines (*e.g.*, enforceable reductions commensurate with installation of SCR on coal-fired EGUs by the 2027 ozone season). The SIPs must meet procedural requirements under the Act, such as the requirements for public hearing, be adopted by the appropriate state board or authority, and establish by a practically enforceable regulation or permit(s) a schedule and date for each affected source or source category to achieve compliance. Once the state has made a SIP submission, the EPA will evaluate the submission(s) for completeness before acting on the SIP. EPA’s criteria for determining completeness of a SIP submission are codified at 40 CFR part 51, appendix V.

For further background information on considerations for replacing a FIP with a SIP, *see* the discussion in the final CSAPR rulemaking (76 FR 48326).

5. SIP Revision Requirements for Non-EGU or Industrial Source Control Requirements

EPA’s promulgation of a non-EGU transport FIP would in no way affect the ability of states to submit, for review and approval, a SIP that replaces the

requirements of the FIP with state requirements. To replace the non-EGU portion of the FIP in a state, the state’s SIP must provide adequate provisions to prohibit NO_x emissions that contribute significantly to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. The state SIP submittal must demonstrate that the emissions reductions required by the SIP would continue to ensure that significant contribution from that state has been eliminated through permanent and enforceable measures. The non-EGU requirements of the FIP would remain in place in each covered state until a state’s SIP has been approved by the EPA to replace the FIP.

The most straightforward method for a state to submit a presumptively approvable SIP revision to replace the non-EGU portion of the FIPs for the state would be to provide a SIP that includes emissions limits at an equivalent or greater level of stringency than is specified for non-EGU sources meeting the applicability criteria and associated compliance assurance provisions for each of the unit types identified in section VI.C of this document.

Comment: One commenter stated that they believed EPA’s assertion in the proposal that any SIP submittal would have to achieve equal or greater reductions for non-EGUs than the FIP was unlawful. The commenter asserted that a state’s ability to replace the FIP must be tied to whether it has addressed the underlying nonattainment/maintenance concerns by reducing significant contribution from sources in the state below the significance threshold, (as opposed to whether it prohibits equivalent emissions to the FIP).

Response: The EPA recognizes that states may select emissions reductions strategies that differ from the emissions limitations included in the proposed non-EGU FIP; this is discussed in response to comments earlier in this section. For example, some states may desire to include non-EGUs in a trading program. This may be possible subject to taking into account a number of considerations as discussed earlier in this section to ensure equivalency between the different approaches. But the state must still demonstrate that the replacement SIP provides an equivalent or greater amount of emissions reductions as the proposed FIP to be presumptively approvable. The EPA anticipates that such emissions reductions strategies would have to achieve reductions equivalent to or beyond those emissions reductions already projected to occur in EPA’s

emissions projections and air quality modeling conducted at Steps 1 and 2. Such reductions must also be achieved by the 2026 ozone season.

EPA further acknowledges that a demonstration of equivalency using other control strategies is complicated by the fact that the final emissions limits for non-EGU sources are generally unit-specific and expressed in a variety of forms; comparative analysis with alternative control requirements to determine equivalency would need to take this into account. Similarly, we recognize that the emissions trading program for EGUs in this action includes a number of enhancements to ensure that the Step 3 determination of which emissions are “significant” and must be eliminated continues to be implemented over time. Although there is not a fixed, mass-based emissions budget established for each state in this action, there are other objective metrics that could guide states in developing replacement SIPs. For example, for non-EGUs, states may choose to conduct an analysis of their industrial stationary sources and present an alternative set of emissions limits applying to specific units that it believes would achieve an equivalent level of emissions reduction. States could apply cost-effectiveness thresholds for emissions control technologies that could be applied to establish that some alternative emissions control strategy results in equivalent or greater improvement at downwind receptors. The EPA anticipates that such a comparison may entail review of both baseline emissions information and growth projections between the different sets of units to ensure that a truly equivalent or greater degree of emissions reduction is achieved; additionality and emissions shifting potential may also need to be considered. We note that the CAMx policy case run for 2026 provides a benchmark for assessing the level of air quality improvement anticipated at receptors with implementation of the FIP. This data may be of use to states as part of a demonstration that a replacement SIP achieves an equivalent or greater level of air quality improvement to the FIP; however, the use of such modeling in such a demonstration would need to be more fully evaluated at the time of such a SIP revision.

In all cases, a SIP submitted by a state to replace the non-EGU components of the FIPs would very likely need to rely on permanent and practically enforceable controls measures that are included in the SIP and, once approved by the EPA, rendered federally enforceable. So-called “demonstration-

only” or “non-regulatory” SIPs would very likely be insufficient; see discussion in response to comments earlier in this section. Further, the EPA anticipates that states would bear the burden of establishing that the state’s alternative approach achieves at least an equivalent level of emissions reduction as the FIP.

E. Title V Permitting

This final rule, like CSAPR, the CSAPR Update, and the Revised CSAPR Update does not establish any permitting requirements independent of those under Title V of the CAA and the regulations implementing Title V, 40 CFR parts 70 and 71.⁴⁰⁶ All major stationary sources of air pollution and certain other sources are required to apply for title V operating permits that include emissions limitations and other conditions as necessary to ensure compliance with the applicable requirements of the CAA, including the requirements of the applicable SIP. CAA sections 502(a) and 504(a), 42 U.S.C. 7661a(a) and 7661c(a). The “applicable requirements” that must be addressed in title V permits are defined in the title V regulations (40 CFR 70.2 and 71.2 (definition of “applicable requirement”).

The EPA anticipates that, given the nature of the units subject to this final rule, most if not all of the sources at which the units are located are already subject to title V permitting requirements and already possess a title V operating permit. For sources subject to title V, the interstate transport requirements for the 2015 ozone NAAQS that are applicable to them under the FIPs finalized in this action would be “applicable requirements” under title V and therefore must be addressed in the title V permits. For example, EGU requirements concerning designated representatives, monitoring, reporting, and recordkeeping, the requirement to hold allowances covering emissions, the compliance assurance provisions, and liability, and for non-EGUs, the emissions limits and compliance requirements are, to the extent relevant to each source, “applicable requirements” that must be addressed in the permits.

Consistent with EPA’s approach under CSAPR, the CSAPR Update and the Revised CSAPR Update, the applicable requirements resulting from the FIPs generally will have to be incorporated into affected sources’ existing title V permits either pursuant

⁴⁰⁶ Part 70 addresses requirements for state title V programs, and part 71 governs the Federal title V program.

to the provisions for reopening for cause (40 CFR 70.7(f) and 71.7(f)), significant modifications (40 CFR 70.7(e)(4)) or the standard permit renewal provisions (40 CFR 70.7(c) and 71.7(c)).⁴⁰⁷ For sources newly subject to title V that are affected sources under the FIPs, the initial title V permit issued pursuant to 40 CFR 70.7(a) should address the final FIP requirements.

As was the case in the CSAPR, the CSAPR Update and the Revised CSAPR Update, the new and amended FIPs impose no independent permitting requirements and the title V permitting process will impose no additional burden on sources already required to be permitted under title V.

1. Title V Permitting Considerations for EGUs

Title V of the CAA establishes the basic requirements for state title V permitting programs, including, among other things, provisions governing permit applications, permit content, and permit revisions that address applicable requirements under final FIPs in a manner that provides the flexibility necessary to implement market-based programs such as the trading programs established in CSAPR, the CSAPR Update, the Revised CSAPR Update and this final rule. 42 U.S.C. 7661a(b); 40 CFR 70.6(a)(8) & (10); 40 CFR 71.6(a)(8) & (10).

In CSAPR, the CSAPR Update and the Revised CSAPR Update, the EPA established standard requirements governing how sources covered by those rules would comply with title V and its regulations.⁴⁰⁸ 40 CFR 97.506(d), 97.806(d) and 97.1006(d). For any new or existing sources subject to this rule, identical title V compliance provisions will apply with respect to the CSAPR NO_x Ozone Season Group 3 Trading Program. For example, the title V regulations provide that a permit issued under title V must include “[a] provision stating that no permit revision

⁴⁰⁷ A permit is reopened for cause if any new applicable requirements (such as those under a FIP) become applicable to an affected source with a remaining permit term of 3 or more years. If the remaining permit term is less than 3 years, such new applicable requirements will be added to the permit during permit renewal. See 40 CFR 70.7(f)(1)(i) and 71.7(f)(1)(i).

⁴⁰⁸ The EPA has also issued a guidance document and template that includes instructions for how to incorporate the applicable requirements into a source’s Title V permit. See Memorandum dated May 13, 2015, from Anna Marie Wood, Director, Air Quality Policy Division, and Reid P. Harvey, Director, Clean Air Market Division, EPA, to Regional Air Division Directors, Subject: “Title V Permit Guidance and Template for the Cross-State Air Pollution Rule” (“2015 Title V Guidance”), available at https://www.epa.gov/sites/default/files/2016-10/documents/csapr_title_v_permit_guidance.pdf.

shall be required under any approved . . . emissions trading and other similar programs or processes for changes that are provided for in the permit.” 40 CFR 70.6(a)(8) and 71.6(a)(8). Consistent with these provisions in the title V regulations, in CSAPR, the CSAPR Update and the Revised CSAPR Update, the EPA included a provision stating that no permit revision is necessary for the allocation, holding, deduction, or transfer of allowances. 40 CFR 97.506(d)(1), 97.806(d)(1) and 97.1006(d)(1). This provision is also included in each title V permit for an affected source. This final rule maintains the approach taken under CSAPR, the CSAPR Update and the Revised CSAPR Update that allows allowances to be traded (or allocated, held, or deducted) without a revision to the title V permit of any of the sources involved.

Similarly, this final rule would also continue to support the means by which a source in the final trading program can use the title V minor modification procedure to change its approach for monitoring and reporting emissions, in certain circumstances. Specifically, sources may use the minor modification procedure so long as the new monitoring and reporting approach is one of the prior-approved approaches under CSAPR, the CSAPR Update and the Revised CSAPR Update (*i.e.*, approaches using a continuous emissions monitoring system under subparts B and H of 40 CFR part 75, an excepted monitoring system under appendices D and E to 40 CFR part 75, a low mass emissions excepted monitoring methodology under 40 CFR 75.19, or an alternative monitoring system under subpart E of 40 CFR part 75), and the permit already includes a description of the new monitoring and reporting approach to be used. See 40 CFR 97.506(d)(2), 97.806(d)(2) and 97.1006(d)(2); 40 CFR 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B). As described in EPA’s 2015 Title V Guidance, sources may comply with this requirement by including a table of all of the approved monitoring and reporting approaches under CSAPR, the CSAPR Update and the Revised CSAPR Update trading programs in which the source is required to participate, and the applicable requirements governing each of those approaches.⁴⁰⁹ Inclusion of such a table in a source’s title V permit therefore allows a covered unit that seeks to change or add to its chosen monitoring and recordkeeping approach to easily comply with the regulations

⁴⁰⁹ *Id.*

governing the use of the title V minor modification procedure.

Under CSAPR, the CSAPR Update and the Revised CSAPR Update, to employ a monitoring or reporting approach different from the prior-approved approaches discussed previously, unit owners and operators must submit monitoring system certification applications to the EPA establishing the monitoring and reporting approach actually to be used by the unit, or, if the owners and operators choose to employ an alternative monitoring system, to submit petitions for that alternative to the EPA. These applications and petitions are subject to the EPA review and approval to ensure consistency in monitoring and reporting among all trading program participants. EPA's responses to any petitions for alternative monitoring systems or for alternatives to specific monitoring or reporting requirements are posted on EPA's website.⁴¹⁰ The EPA maintains the same approach for the trading program in this final rule.

2. Title V Permitting Considerations for Industrial Stationary Sources

For non-EGU sources, affected sources will need to work with their local, state, or tribal permitting authority to determine if the new applicable requirements should be incorporated into their existing title V permit under the reopening for cause, significant modification, or permit renewal procedures of the approved permitting program. Title V permits for existing sources will need to be updated to include the applicable requirements of this final rule and any necessary preconstruction permits obtained in order to comply with this final rule.

F. Relationship to Other Emissions Trading and Ozone Transport Programs

1. NO_x SIP Call

Sources in states affected by both the NO_x SIP Call for the 1979 ozone NAAQS and the requirements established in this final rule for the 2015 ozone NAAQS will be required to comply with the requirements of both rules. With respect to EGUs larger than 25 MW, in this rule the EPA is requiring NO_x ozone season emissions reductions from these sources in many of the NO_x SIP Call states, and at greater stringency than required by the NO_x SIP Call, by requiring the EGUs to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program. The emissions reductions required under this rule are therefore sufficient to satisfy the

⁴¹⁰ <https://www.epa.gov/airmarkets/part-75-petition-responses>.

emissions reduction requirements under the NO_x SIP Call for these large EGUs.

With respect to the large non-EGU boilers and combustion turbines that formerly participated in the NO_x Budget Trading Program under the NO_x SIP Call, the EPA provided options under both the CSAPR Update and the Revised CSAPR Update for states to address these sources' ongoing NO_x SIP Call requirements by expanding applicability of the relevant CSAPR trading programs for ozone season NO_x emissions to include the sources, and no state chose to use these options. As discussed in sections VI.D.2 and VI.D.3, in this rule the EPA is removing the previous regulatory text defining specific options for states to expand trading program applicability to include these sources and instead will evaluate any SIP revisions seeking to include these sources in the Group 3 trading program on a case-by-case basis.⁴¹¹

2. Acid Rain Program

This rule does not affect any SO₂ and NO_x requirements under the Acid Rain Program, which are established separately under 40 CFR parts 72 through 78 and will continue to apply independently of this rule's provisions. Sources subject to the Acid Rain Program will continue to be required to comply with all requirements of that program, including the requirement to hold sufficient allowances issued under the Acid Rain Program to cover their SO₂ emissions after the end of each control period.

3. Other CSAPR Trading Programs

This rule does not substantively affect any provisions of the CSAPR NO_x Annual, CSAPR SO₂ Group 1, CSAPR SO₂ Group 2, CSAPR NO_x Ozone Season Group 1, or CSAPR NO_x Ozone Season Group 2 trading programs for sources that continue to participate in those programs. Sources subject to any of the CSAPR trading programs will continue to be required to comply with all requirements of all such trading programs to which they are subject, including the requirement to hold sufficient allowances issued under the respective programs to cover emissions after the end of each control period.

The EPA also notes that where a state's good neighbor obligations with respect to the 1997 ozone NAAQS or the 2008 ozone NAAQS have previously

⁴¹¹ Only one NO_x SIP Call state—Tennessee—continues to participate in the Group 2 trading program, and the EPA has already approved other SIP provisions addressing the ongoing NO_x SIP Call obligations for Tennessee's large non-EGU boilers and combustion turbines. See 84 FR 7998 (March 6, 2019); 86 FR 12092 (March 2, 2021).

been met by participation of the state's large EGUs in the CSAPR NO_x Ozone Season Group 2 Trading Program (or earlier by the CSAPR NO_x Ozone Season Group 1 Trading Program), the EPA will deem those obligations to be satisfied by the participation of the same sources in the CSAPR NO_x Ozone Season Group 3 Trading Program. Specifically, for all states covered by the Group 3 trading program under this rule except Minnesota, Nevada, and Utah, participation of the state's EGUs in the Group 3 trading program will be deemed to satisfy not only the EGU-related portion of the state's good neighbor obligations with respect to the 2015 ozone NAAQS but also the state's good neighbor obligations with respect to the 2008 ozone NAAQS. In addition, for Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Oklahoma, and Wisconsin, participation of the state's EGUs in the Group 3 trading program will also be deemed to satisfy the state's good neighbor obligations with respect to the 1997 ozone NAAQS.⁴¹²

VII. Environmental Justice Analytical Considerations and Stakeholder Outreach and Engagement

Consistent with EPA's commitment to integrating environmental justice in the agency's actions, and following the directives set forth in multiple Executive orders, the Agency has analyzed the impacts of this final rule on communities with environmental justice concerns and engaged with stakeholders representing these communities to seek input and feedback. Executive Order 12898 is discussed in section X.J of this final rule and analytical results are available in Chapter 7 of the *RIA*. This analysis is being provided for informational purposes only.

A. Introduction

Executive Order 12898 directs 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.⁴¹³ Additionally, Executive

⁴¹² For the remaining state transitioning from the Group 2 trading program to the Group 3 trading program under this rule—Texas—as well as the remaining states that transitioned from the Group 2 trading program to the Group 3 trading program under the Revised CSAPR Update—Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia—participation of the states' EGUs in the Group 2 trading program as required by the CSAPR Update was addressing good neighbor obligations of the states with respect to only the 2008 ozone NAAQS, not the 1997 ozone NAAQS. See 81 FR 74523–74526.

⁴¹³ 59 FR 7629, February 16, 1994.

Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions.⁴¹⁴ The EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”⁴¹⁵ 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.

B. Analytical Considerations

The EPA’s environmental justice (EJ) technical guidance⁴¹⁶ states that:

The analysis of potential EJ concerns for regulatory actions should address three questions:

1. Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern in the baseline?
2. Are there potential EJ concerns associated with environmental stressors affected by the regulatory action for population groups of concern for the regulatory option(s) under consideration?
3. For the regulatory option(s) under consideration, are potential EJ concerns created or mitigated compared to the baseline?

To address these questions in the EPA’s first quantitative EJ analysis in the context of a transport rule, the EPA developed a unique analytical approach that considers the purpose and specifics of the final rulemaking, as well as the nature of known and potential exposures and impacts. However, due to data limitations, it is possible that our analysis failed to identify disparities that may exist, such as potential environmental justice characteristics (*e.g.*, residence of historically red lined areas), environmental impacts (*e.g.*, other ozone metrics), and more granular spatial resolutions (*e.g.*, neighborhood scale) that were not evaluated.

For the final rule, we employ two types of analytics to respond to the previous three questions: proximity analyses and exposure analyses. Both types of analyses can inform whether there are potential EJ concerns for population groups of concern in the baseline (question 1).⁴¹⁷ In contrast, only the exposure analyses, which are based on future air quality modeling, can inform whether there will be potential EJ concerns after implementation of the regulatory options under consideration (question 2) and whether potential EJ concerns will be created or mitigated compared to the baseline (question 3). While the exposure analysis can respond to all three questions, several caveats should be noted. For example, the air pollutant exposure metrics are limited to those used in the benefits assessment. For ozone, that is the maximum daily 8-hour average, averaged across the April through September warm season (AS–MO3) and for PM_{2.5} that is the annual average. This ozone metric likely smooths potential daily ozone gradients and is not directly relatable to the National Ambient Air Quality Standard (NAAQS), whereas the PM_{2.5} metric is more similar to the long term PM_{2.5} standard. The air quality modeling estimates are also based on state level emissions data paired with facility-level baseline emissions, and provided at a resolution of 12km². Additionally, here we focus on air quality changes due to this final rulemaking and infer post-policy exposure burden impacts.

Exposure analytic results are provided in two formats: aggregated and distributional. The aggregated results provide an overview of potential ozone exposure differences across populations at the national- and state-levels, while the distributional results show detailed information about ozone concentration changes experienced by everyone within each population.

In Chapter 7 of the *RIA* we utilize the two types of analytics to address the three EJ questions by quantitatively evaluating: (1) the proximity of affected facilities to potentially disadvantaged populations (section 7.3); and (2) the potential for disproportionate ozone and PM_{2.5} concentrations in the baseline and concentration changes after rule implementation across different demographic groups (section 7.4). Each of these analyses depends on mutually exclusive assumptions, was performed to answer separate questions, and is

associated with unique limitations and uncertainties.

Baseline demographic proximity analyses can be relevant for identifying populations that may be exposed to local pollutants, such as NO₂ emitted from affected sources in this final rule. However, such analyses are less useful here as they do not account for the potential impacts of this final rule on long-range concentration changes. Baseline demographic proximity analysis presented in the *RIA* suggest that larger percentages of Hispanics, African Americans, people below the poverty level, people with less educational attainment, and people linguistically isolated are living within 5 km and 10 km of an affected EGU, compared to national averages. It also finds larger percentages of African Americans, people below the poverty level, and with less educational attainment living within 5 km and 10 km of an affected non-EGU facility. Relating these results to question 1 from section 7.2 of the *RIA*, we conclude that there may be potential EJ concerns associated with directly emitted pollutants that are affected by the regulatory action (*e.g.*, NO₂) for certain population groups of concern in the baseline. However, as proximity to affected facilities does not capture variation in baseline exposure across communities, nor does it indicate that any exposures or impacts will occur, these results do not in themselves demonstrate disproportionate impacts of affected facilities in the baseline and should not be interpreted as a direct measure of exposure or impact.

Whereas proximity analyses are limited to evaluating the representativeness of populations residing nearby affected facilities, the ozone and PM_{2.5} exposure analyses can provide insight into all three EJ questions. Even though both the proximity and exposure analyses can potentially improve understanding of baseline EJ concerns (question 1), the two should not be directly compared. This is because the demographic proximity analysis does not include air quality information and is based on current, not future, population information.

The baseline analysis of ozone and PM_{2.5} concentration burden responds to question 1 from EPA’s environmental justice technical guidance document more directly than the proximity analyses, as it evaluates a form of the environmental stressor targeted by the regulatory action. Baseline ozone and PM_{2.5} analyses show that certain populations, such as Hispanics, Asians, those linguistically isolated, those less

⁴¹⁴ 86 FR 7009, January 20, 2021.

⁴¹⁵ <https://www.epa.gov/environmentaljustice>.

⁴¹⁶ U.S. Environmental Protection Agency (EPA), 2015. Guidance on Considering Environmental Justice During the Development of Regulatory Actions.

⁴¹⁷ The baseline for proximity analyses is current population information (*e.g.*, 2021), whereas the baseline for ozone exposure analyses are the future years in which the regulatory options will be implemented (*e.g.*, 2023 and 2026).

educated, and children may experience somewhat higher ozone and PM_{2.5} concentrations compared to the national average. Therefore, also in response to question 1, there likely are potential environmental justice concerns associated with ozone and PM_{2.5} exposures affected by the regulatory action for population groups of concern in the baseline. However, these baseline exposure results have not been fully explored and additional analyses are likely needed to understand potential implications. In addition, we infer that disparities in the ozone and PM_{2.5} concentration burdens are likely to persist after implementation of the regulatory action or alternatives under consideration due to similar modeled concentration reductions across population demographics (question 2).

Question 3 asks whether potential EJ concerns will be created or mitigated as compared to the baseline. Due to the very small differences observed in the distributional analyses of post-policy ozone and PM_{2.5} exposure impacts across populations, we do not find evidence that potential EJ concerns related to ozone and PM_{2.5} concentrations will be created or mitigated as compared to the baseline.⁴¹⁸

C. Outreach and Engagement

Prior to proposal, the EPA hosted an outreach webinar with environmental justice stakeholders to share information about the proposed rule and solicit feedback about potential environmental justice considerations. The webinar was attended by representatives of state governments, federally recognized tribes, environmental NGOs, higher education institutions, industry, and the EPA.⁴¹⁹ Participants were invited to comment on pre-proposal environmental justice considerations during the webinar or submit written comments to a pre-proposal non-regulatory docket.

After proposal, the EPA opened a public comment period to invite the

public to submit written comments to the regulatory docket for this rulemaking.⁴²⁰ The EPA also invited the public to participate in a public hearing held on April 21, 2022. A transcript of the public hearing is available in the docket for this rulemaking.

Additionally, on March 31, 2022, the EPA hosted an informational webinar with non-governmental groups and environmental justice stakeholders to answer questions and share information about the proposed rule. A record of this webinar, including the informational power point shared at the webinar is available in the docket for this rulemaking.

VIII. Costs, Benefits, and Other Impacts of the Final Rule

In the *RIA* for the Federal Good Neighbor Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standards, the EPA estimated the health and climate benefits, compliance costs, and emissions changes that may result from the final rule for the analysis period 2023 to 2042. The estimated health and climate benefits and compliance costs are presented in detail in this *RIA*. The EPA notes that for EGUs the estimated benefits and compliance costs are directly associated with fully operating existing SCRs during ozone season; fully operating existing SNCRs during ozone season; installing state-of-the-art combustion controls; imposing a backstop emissions rate on certain units that lack SCR controls; and installing SCR and SNCR post-combustion controls. The EPA also notes that for non-EGUs the estimated health benefits and compliance costs are directly associated with installing controls to meet the NO_x emissions requirements presented in section I.B of this document.

For EGUs, the EPA analyzed this action's emissions budgets using uniform control stringency represented by \$1,800 per ton of NO_x (2016\$) in 2023 and \$11,000 per ton of NO_x

(2016\$) in 2026. The EPA also analyzed a more and a less stringent alternative. The more and less stringent alternatives differ from the rule in that they set different NO_x ozone season emissions budgets for the affected EGUs and different dates for large, coal-fired EGUs' compliance with the backstop emissions rate.

For non-EGUs, the EPA developed an analytical framework to determine which industries and emissions unit types to include in a proposed Transport FIP for the 2015 ozone NAAQS transport obligations. A February 28, 2022 memorandum, titled "Screening Assessment of Potential Emissions Reductions, Air Quality Impacts, and Costs from Non-EGU Emissions Units for 2026," documents the analytical framework used to identify industries and emissions unit types included in the proposed FIP. To further evaluate the industries and emissions unit types identified and to establish the proposed emissions limits, the EPA reviewed Reasonably RACT rules, NSPS rules, NESHAP rules, existing technical studies, rules in approved SIP submittals, consent decrees, and permit limits. That evaluation is detailed in the Proposed Non-EGU Sectors TSD prepared for the proposed FIP. The EPA is retaining the industries and many of the emissions unit types included in the proposal in this final action. For the non-EGU industries, in the final rule we made some minor changes to the non-EGU emissions units covered, the applicability criteria, as well as provided for facility-wide emissions averaging for engines and for a low-use exemption to eliminate the need to install controls on low-use boilers.

Table VIII–1 provides the projected 2023 through 2027, 2030, 2035, and 2042 EGU NO_x, SO₂, PM_{2.5}, and CO₂ emissions reductions for the evaluated regulatory control alternatives. For additional information on emissions changes, see Table 4–6 and Table 4–7 in Chapter 4 of the *RIA*.

TABLE VIII–1—EGU OZONE SEASON NO_x EMISSIONS CHANGES AND ANNUAL EMISSIONS REDUCTIONS (TONS) FOR NO_x, SO₂, PM_{2.5}, AND CO₂ FOR THE REGULATORY CONTROL ALTERNATIVES FROM 2023–2042

	Final rule	Less stringent alternative	More stringent alternative
2023:			
NO _x (ozone season)	10,000	10,000	10,000
NO _x (annual)	15,000	15,000	15,000
SO ₂ (annual)	1,000	3,000	1,000
CO ₂ (annual, thousand metric tons)			

⁴¹⁸Please note, exposure results should not be extrapolated to other air pollutant. Detailed environmental justice analytical results can be found in Chapter 7 of the *RIA*.

⁴¹⁹This does not constitute EPA's tribal consultation under E.O. 13175, which is described in section X.I.F of this rule.

⁴²⁰Comments and responses regarding environmental justice considerations are available in Section 6 of the *RTC* document for this rulemaking.

TABLE VIII-1—EGU OZONE SEASON NO_x EMISSIONS CHANGES AND ANNUAL EMISSIONS REDUCTIONS (TONS) FOR NO_x, SO₂, PM_{2.5}, AND CO₂ FOR THE REGULATORY CONTROL ALTERNATIVES FROM 2023–2042—Continued

	Final rule	Less stringent alternative	More stringent alternative
PM _{2.5} (annual)			
2024:			
NO _x (ozone season)	21,000	10,000	33,000
NO _x (annual)	25,000	15,000	57,000
SO ₂ (annual)	19,000	5,000	59,000
CO ₂ (annual, thousand metric tons)	10,000	4,000	20,000
PM _{2.5} (annual)	1,000		1,000
2025:			
NO _x (ozone season)	32,000	10,000	56,000
NO _x (annual)	35,000	15,000	99,000
SO ₂ (annual)	38,000	7,000	118,000
CO ₂ (annual, thousand metric tons)	21,000	8,000	40,000
PM _{2.5} (annual)	2,000	1,000	2,000
2026:			
NO _x (ozone season)	25,000	8,000	49,000
NO _x (annual)	29,000	12,000	88,000
SO ₂ (annual)	29,000	5,000	104,000
CO ₂ (annual, thousand metric tons)	16,000	6,000	34,000
PM _{2.5} (annual)	1,000		2,000
2027:			
NO _x (ozone season)	19,000	6,000	43,000
NO _x (annual)	22,000	9,000	78,000
SO ₂ (annual)	21,000	4,000	91,000
CO ₂ (annual, thousand metric tons)	10,000	3,000	28,000
PM _{2.5} (annual)	1,000		2,000
2030:			
NO _x (ozone season)	34,000	33,000	31,000
NO _x (annual)	62,000	59,000	50,000
SO ₂ (annual)	93,000	98,000	51,000
CO ₂ (annual, thousand metric tons)	26,000	23,000	8,000
PM _{2.5} (annual)	1,000	1,000	
2035:			
NO _x (ozone season)	29,000	30,000	27,000
NO _x (annual)	46,000	46,000	41,000
SO ₂ (annual)	21,000	19,000	15,000
CO ₂ (annual, thousand metric tons)	16,000	15,000	8,000
PM _{2.5} (annual)	1,000	1,000	
2042:			
NO _x (ozone season)	22,000	22,000	22,000
NO _x (annual)	23,000	22,000	21,000
SO ₂ (annual)	15,000	15,000	7,000
CO ₂ (annual, thousand metric tons)	9,000	8,000	4,000
PM _{2.5} (annual)			

Emissions changes for NO_x, SO₂, and PM_{2.5} are in tons.

Table VIII-2 provides a summary of the ozone season NO_x emissions for non-EGUs for the 20 states subject to the non-EGU emissions requirements

starting in 2026, along with the estimated ozone season NO_x reductions for 2026 for the rule and the less and more stringent alternatives. The analysis

in the RIA assumes that the estimated reductions in 2026 will be the same in later years.

TABLE VIII-2—OZONE SEASON NO_x EMISSIONS AND EMISSIONS REDUCTIONS (TONS) FOR NON-EGUS FOR THE FINAL RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES

State	2019 Ozone season emissions ^a	Final rule—ozone season NO _x reductions	Less stringent—ozone season NO _x reductions	More stringent—ozone season NO _x reductions
AR	8,790	1,546	457	1,690
CA	16,562	1,600	1,432	4,346
IL	15,821	2,311	751	2,991
IN	16,673	1,976	1,352	3,428
KY	10,134	2,665	583	3,120
LA	40,954	7,142	1,869	7,687
MD	2,818	157	147	1,145
MI	20,576	2,985	760	5,087
MO	11,237	2,065	579	4,716
MS	9,763	2,499	507	2,650

TABLE VIII-2—OZONE SEASON NO_x EMISSIONS AND EMISSIONS REDUCTIONS (TONS) FOR NON-EGUS FOR THE FINAL RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES—Continued

State	2019 Ozone season emissions ^a	Final rule—ozone season NO _x reductions	Less stringent—ozone season NO _x reductions	More stringent—ozone season NO _x reductions
NJ	2,078	242	242	258
NV ⁴²¹	2,544	0	0	0
NY	5,363	958	726	1,447
OH	18,000	3,105	1,031	4,006
OK	26,786	4,388	1,376	5,276
PA	14,919	2,184	1,656	4,550
TX	61,099	4,691	1,880	9,963
UT	4,232	252	52	615
VA	7,757	2,200	978	2,652
WV	6,318	1,649	408	2,100
Totals	302,425	44,616	16,786	67,728

^aThe 2019 ozone season emissions are calculated as 5/12 of the annual emissions from the following two emissions inventory files: nonegu_SmokeFlatFile_2019NEI_POINT_20210721_controlupdate_13sep2021_v0 and oilgas_SmokeFlatFile_2019NEI_POINT_20210721_controlupdate_13sep2021_v0.

For EGUs, the EPA analyzed ozone season NO_x emissions reductions and the associated costs to the power sector using the Integrated Planning Model (IPM) and its underlying data and inputs. For non-EGUs, the EPA prepared an assessment summarized in the memorandum titled *Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs*, and the memorandum includes estimated emissions reductions by state for the rule.⁴²¹

Table VIII-3 reflects the estimates of the changes in the cost of supplying electricity for the regulatory control alternatives for EGUs and estimates of

complying with the emissions requirements for non-EGUs. The costs presented in Table VIII-3 do not include monitoring and reporting costs, which EPA summarizes in section X.B.2 of this document. The monitoring and reporting costs presented in section X.B.2 are \$0.35 million per year for EGUs and \$3.8 million per year for non-EGUs. For EGUs, compliance costs are negative in 2026. While seemingly counterintuitive, estimating negative compliance costs in a single year is possible given IPM's objective function is to minimize the discounted net present value (NPV) of a stream of annual total cost of generation over a multi-decadal time period. As such the model may undertake a compliance pathway that pushes higher costs later

into the forecast period, since future costs are discounted more heavily than near term costs. This can result in a policy scenario showing single year costs that are lower than the Baseline, but over the entire forecast horizon, the policy scenario shows higher costs.⁴²² For a detailed description of these cost trends, please see Chapter 4, section 4.5.2, of the RIA. For a detailed description of the methods and results from the memorandum titled *Summary of Final Rule Applicability Criteria and Emissions Limits for Non-EGU Emissions Units, Assumed Control Technologies for Meeting the Final Emissions Limits, and Estimated Emissions Units, Emissions Reductions, and Costs*, see Chapter 4, sections 4.4 and 4.5.4 of the RIA.

TABLE VIII-3—TOTAL ESTIMATED COMPLIANCE COSTS (MILLION 2016\$), 2023–2042

	Final rule	Less-stringent alternative	More-stringent alternative
2023:			
EGUs	57	56	49
Non-EGUs			
Total	57	56	49
2024:			
EGUs	(5)	(35)	840
Non-EGUs			
Total	(5)	(35)	840
2025:			
EGUs	(5)	(35)	840
Non-EGUs			
Total	(5)	(35)	840
2026:			

⁴²¹We are not aware of existing non-EGU emissions units in Nevada that meet the applicability criteria for non-EGUs in the final rule. If any such units in fact exist, they would be subject to the requirements of the rule just as in any other state. In addition, any new emissions unit in

Nevada that meets the applicability criteria in the final rule will be subject to the final rule's requirements. See section III.B.1.d.

⁴²²As a sensitivity, the EPA re-calculated costs assuming annual costs cannot be negative. This

resulted in annualized 2023–42 costs under the final rule increasing from \$448.6 million to \$449.5 million (less than 1%) and did not change the conclusions of the RIA. See Section 4.5.2 of the RIA for more information.

TABLE VIII-3—TOTAL ESTIMATED COMPLIANCE COSTS (MILLION 2016\$), 2023–2042—Continued

	Final rule	Less-stringent alternative	More-stringent alternative
EGUs	(5)	(35)	840
Non-EGUs	570	140	1,300
Total	570	110	2,100
2027:			
EGUs	24	(47)	760
Non-EGUs	570	140	1,300
Total	600	97	2,000
2028:			
EGUs	24	(47)	760
Non-EGUs	570	140	1,300
Total	600	97	2,000
2029:			
EGUs	24	(47)	760
Non-EGUs	570	140	1,300
Total	600	97	2,000
2030:			
EGUs	710	770	840
Non-EGUs	570	140	1,300
Total	1,300	920	2,100
2031:			
EGUs	710	770	840
Non-EGUs	570	140	1,300
Total	1,300	920	2,100
2032:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2033:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2034:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2035:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2036:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2037:			
EGUs	820	850	590
Non-EGUs	570	140	1,300
Total	1,400	990	1,900
2038:			
EGUs	820	830	600
Non-EGUs	570	140	1,300
Total	1,400	970	1,900
2039:			
EGUs	820	830	600
Non-EGUs	570	140	1,300
Total	1,400	970	1,900
2040:			
EGUs	820	830	600

TABLE VIII-3—TOTAL ESTIMATED COMPLIANCE COSTS (MILLION 2016\$), 2023–2042—Continued

	Final rule	Less-stringent alternative	More-stringent alternative
Non-EGUs	570	140	1,300
Total	1,400	970	1,900
2041:			
EGUs	820	830	600
Non-EGUs	570	140	1,300
Total	1,400	970	1,900
2042:			
EGUs	820	830	600
Non-EGUs	570	140	1,300
Total	1,400	970	1,900

Tables VIII-4 and VIII-5 report the estimated economic value of avoided premature deaths and illness in each year relative to the baseline along with

the 95 percent confidence interval. In each of these tables, for each discount rate and regulatory control alternative, two benefits estimates are presented

reflecting alternative ozone and PM_{2.5} mortality risk estimates. For additional information on these benefits, see Chapter 5 of the *RIA*.

TABLE VIII-4—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED OZONE-RELATED PREMATURE MORTALITY AND ILLNESS FOR THE FINAL RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES IN 2023
[95 Percent confidence interval; millions of 2016\$]^{a b}

Disc rate	Pollutant	Final rule	Less stringent alternative	More stringent alternative
3%	Ozone Benefits	\$100 [\$27 to \$220] ^c and \$820 [\$91 to \$2,100] ^d .	\$100 [\$27 to \$220] ^c and \$810 [\$91 to \$2,100] ^d .	\$110 [\$28 to \$230] ^c and \$840 [\$94 to \$2,200] ^d .
7%	Ozone Benefits	\$93 [\$17 to 210] ^c and \$730 [\$75 to \$1,900] ^d .	\$93 [\$17 to \$210] ^c and \$730 [\$75 to \$1,900] ^d .	\$96 [\$18 to \$210] ^c and \$750 [\$77 to \$2,000] ^d .

^a Values rounded to two significant figures. 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.
^b We estimated ozone benefits for changes in NO_x for the ozone season. This table does not include benefits from reductions for non-EGUs because reductions from these sources are not expected prior to 2026 when the final standards would apply to these sources.
^c Using the pooled short-term ozone exposure mortality risk estimate.
^d Using the long-term ozone exposure mortality risk estimate.

TABLE VIII-5—ESTIMATED DISCOUNTED ECONOMIC VALUE OF AVOIDED OZONE AND PM_{2.5}-RELATED PREMATURE MORTALITY AND ILLNESS FOR THE FINAL RULE AND THE LESS AND MORE STRINGENT ALTERNATIVES IN 2026
[95% Confidence interval; millions of 2016\$]^{a b}

Disc rate	Pollutant	Final rule	Less stringent alternative	More stringent alternative
3%	Ozone Benefits	\$1,100 [\$280 to \$2,400] ^c and \$9,400 [\$1,000 to \$25,000] ^d .	\$420 [\$110 to \$900] ^c and \$3,400 [\$380 to \$8,900] ^d .	\$1,900 [470 to \$4,000] ^c and \$15,000 [\$1,700 to \$40,000] ^d .
	PM Benefits	\$2,000 [\$220 to \$5,300] and \$4,400 [\$430 to \$12,000].	\$530 [\$57 to \$1,400] and \$1,100 [\$110 to \$3,100].	\$6,400 [\$690 to \$17,000] and \$14,000 [\$1,300 to \$37,000].
	Ozone plus PM Benefits.	\$3,200 [\$500 to \$7,700] ^c and \$14,000 [\$1,500 to \$36,000] ^d .	\$950 [\$160 to \$2,300] ^c and \$4,600 [\$490 to \$12,000] ^d .	\$8,300 [\$1,200 to \$21,000] ^c and \$29,000 [\$3,000 to \$77,000] ^d .
7%	Ozone Benefits	\$1,000 [\$180 to \$2,300] ^c and \$8,400 [\$850 to \$22,000] ^d .	\$380 [\$68 to \$850] ^c and \$3,100 [\$310 to \$8,100] ^d .	\$1,700 [\$300 to \$3,800] ^c and \$14,000 [\$1,400 to \$36,000] ^d .
	PM Benefits	\$1,800 [\$190 to \$4,700] and \$3,900 [\$380 to \$11,000].	470 [\$50 to \$1,200] and \$1,000 [\$100 to \$2,800].	\$5,800 [\$600 to \$15,000] and \$12,000 [\$1,200 to \$33,000].
	Ozone plus PM Benefits.	\$2,800 [\$370 to \$7,000] ^c and \$12,000 [\$1,200 to \$33,000] ^d .	\$850 [\$120 to \$2,100] ^c and \$4,100 [\$410 to \$11,000] ^d .	\$7,500 [\$910 to \$19,000] ^c and \$26,000 [\$2,600 to \$69,000] ^d .

^a Values rounded to two significant figures. 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.
^b We estimated changes in NO_x for the ozone season and annual changes in PM_{2.5} and PM_{2.5} precursors in 2026.
^c Sum of ozone mortality estimated using the pooled short-term ozone exposure risk estimate and the Di et al. (2017) long-term PM_{2.5} exposure mortality risk estimate.
^d Sum of the Turner et al. (2016) long-term ozone exposure risk estimate and the Di et al. (2017) long-term PM_{2.5} exposure mortality risk estimate.

In Tables VIII-6, VIII-7, and VIII-8, the EPA presents a summary of the monetized health and climate benefits, costs, and net benefits of the rule and the more and less stringent alternatives for 2023, 2026, and 2030, respectively. There are important water quality

benefits and health benefits associated with reductions in concentrations of air pollutants other than ozone and PM_{2.5} that are not quantified. Discussion of the non-monetized health, welfare, and water quality benefits is found in Chapter 5 of the *RIA*. In this action,

monetized climate benefits are presented for purposes of providing a complete economic impact analysis under E.O. 12866 and other relevant Executive orders. The estimates of GHG emissions changes and the monetized benefits associated with those changes

is not part of the record basis for this action, which is taken to implement the good neighbor provision, CAA section 110(a)(2)(D)(i)(I), for the 2015 ozone NAAQS.

TABLE VIII-6—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL RULE AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2023 FOR THE U.S.

[3% Discount rate for benefits, millions of 2016\$]^{a b}

	Final rule	Less stringent alternative	More stringent alternative
Health Benefits ^c	\$100 and \$820	\$100 and \$810	\$110 and \$840.
Climate Benefits	\$5	\$4	\$5.
Total Benefits	\$100 and \$820	\$100 and \$820	\$110 and \$840.
Costs ^d	\$57	\$56	\$49.
Net Benefits	\$48 and \$760	\$48 and \$760	\$66 and \$800.

^a We focus results to provide a snapshot of costs and benefits in 2023, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c The health benefits are associated with two point estimates from two different epidemiologic studies. For the purposes of presenting the values in this table the health and climate benefits are discounted at 3 percent.

^d The costs presented in this table are 2023 annual estimates for each alternative analyzed. For EGUs, an NPV of costs was calculated using a 3.76 percent real discount rate consistent with the rate used in IPM's objective function for cost-minimization. For further information on the discount rate use, please see Chapter 4, Table 4-8 in the RIA.

TABLE VIII-7—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL RULE AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2026 FOR THE U.S.

[3% Discount rate for benefits, millions of 2016\$]^{a b}

	Final rule	Less stringent alternative	More stringent alternative
Health Benefits ^c	\$3,200 and \$14,000	\$950 and \$4,600	\$8,300 and \$29,000.
Climate Benefits	\$1,100	\$420	\$2,100.
Total Benefits	\$4,300 and \$15,000	\$1,400 and \$5,000	\$10,000 and \$31,000.
Costs ^d	\$570	\$110	\$2,100.
Net Benefits	\$3,700 and \$14,000	\$1,300 and \$4,900	\$8,300 and \$29,000.

^a We focus results to provide a snapshot of costs and benefits in 2026, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c The health benefits are associated with two point estimates from two different epidemiologic studies. For the purposes of presenting the values in this table the health and climate benefits are discounted at 3 percent.

^d The costs presented in this table are 2026 annual estimates for each alternative analyzed. For EGUs, an NPV of costs was calculated using a 3.76 percent real discount rate consistent with the rate used in IPM's objective function for cost-minimization. For further information on the discount rate use, please see Chapter 4, Table 4-8 in the RIA.

TABLE VIII-8—MONETIZED BENEFITS, COSTS, AND NET BENEFITS OF THE FINAL RULE AND LESS AND MORE STRINGENT ALTERNATIVES FOR 2030 FOR THE U.S.

[3% Discount rate for benefits, millions of 2016\$]^{a b}

	Final rule	Less stringent alternative	More stringent alternative
Health Benefits ^c	\$3,400 and \$15,000	\$1,000 and \$4,900	\$9,000 and \$31,000.
Climate Benefits	\$1,500	\$1,300	\$500.
Total Benefits	\$4,900 and \$16,000	\$2,300 and \$6,200	\$9,500 and \$31,000.
Costs ^d	\$1,300	\$920	\$2,100.
Net Benefits	\$3,600 and \$15,000	\$1,400 and \$5,300	\$7,400 and \$29,000.

^a We focus results to provide a snapshot of costs and benefits in 2030, using the best available information to approximate social costs and social benefits recognizing uncertainties and limitations in those estimates.

^b Rows may not appear to add correctly due to rounding.

^c The health benefits are associated with two point estimates from two different epidemiologic studies. For the purposes of presenting the values in this table the health and climate benefits are discounted at 3 percent.

^d The costs presented in this table are 2030 annual estimates for each alternative analyzed. For EGUs, an NPV of costs was calculated using a 3.76 percent real discount rate consistent with the rate used in IPM's objective function for cost-minimization. For further information on the discount rate use, please see Chapter 4, Table 4-8 in the RIA.

In addition, Table VIII-9 presents estimates of the present value (PV) of the monetized benefits and costs and the equivalent annualized value (EAV), an estimate of the annualized value of

the net benefits consistent with the present value, over the twenty-year period of 2023 to 2042. The estimates of the PV and EAV are calculated using discount rates of 3 and 7 percent as

recommended by OMB's Circular A-4 and are presented in 2016 dollars discounted to 2023.

TABLE VIII-9—MONETIZED ESTIMATED HEALTH AND CLIMATE BENEFITS, COMPLIANCE COSTS, AND NET BENEFITS OF THE FINAL RULE AND LESS AND MORE STRINGENT ALTERNATIVES, 2023 THROUGH 2042

[Millions 2016\$, discounted to 2023]

	3 Percent discount rate		7 Percent discount rate	
	PV	EAV	PV	EAV
Health benefits				
Final Rule	\$200,000	\$13,000	\$130,000	\$12,000
Less Stringent Alternative	67,000	4,500	40,000	3,800
More Stringent Alternative	410,000	28,000	240,000	23,000
Climate Benefits^a				
Final Rule	15,000	970	15,000	970
Less Stringent Alternative	11,000	770	11,000	770
More Stringent Alternative	14,000	920	14,000	920
Compliance Costs				
Final Rule	14,000	910	9,400	770
Less Stringent Alternative	8,700	590	5,300	500
More Stringent Alternative	25,000	1,700	17,000	1,600
Net Benefits				
Final Rule	200,000	13,000	140,000	12,000
Less Stringent Alternative	70,000	4,700	42,000	4,000
More Stringent Alternative	400,000	27,000	240,000	22,000

^a Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO₂) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate). For presentational purposes in this table, the climate benefits associated with the average SC-CO₂ at a 3-percent discount rate are used in the columns displaying results of other costs and benefits that are discounted at either a 3-percent or 7-percent discount rate.

As shown in Table VIII-9, the PV of the monetized health benefits of this rule, discounted at a 3-percent discount rate, is estimated to be about \$200 billion (\$200,000 million), with an EAV of about \$13 billion (\$13,000 million). At a 7-percent discount rate, the PV of the monetized health benefits is estimated to be \$130 billion (\$130,000 million), with an EAV of about \$12 billion (\$12,000 million). The PV of the monetized climate benefits of this rule, discounted at a 3-percent discount rate, is estimated to be about \$15 billion (\$15,000 million), with an EAV of about \$970 million. The PV of the monetized compliance costs, discounted at a 3-percent rate, is estimated to be about \$14 billion (\$14,000 million), with an EAV of about \$910 million. At a 7-percent discount rate, the PV of the compliance costs is estimated to be about \$9.4 billion (\$9,400 million), with an EAV of about \$770 million.

In addition to the analysis of costs and benefits as described above, for the final rule, the EPA was able to conduct a full-scale photochemical grid modeling run of the effects of the “final rule” emissions control scenario in 2026. This modeling can be used to estimate the impacts on projected 2026 ozone design values that are expected from the combined EGU and non-EGU

control emissions reductions in this final rule. These results do not replace the AQAT-generated estimates used for our Step 3 determinations, and the EPA needed to continue to use AQAT for Step 3 determinations in order to characterize various potential control scenarios to inform these regulatory determinations. Nonetheless, though they differ slightly from the AQAT-generated air quality estimates of the final rule control scenario conducted for purposes of our Step 3 analysis (as presented in section V.D of this document), these results using full-scale photochemical grid modeling complement those estimates and confirm in all cases the regulatory conclusions reached applying AQAT.⁴²³ Appendix 3A of the *RIA* presents the full results of the projected impacts of the final rule control scenario on ozone levels using CAMx. To briefly summarize, the largest reductions in

⁴²³ Note that the EPA’s “overcontrol” analysis relies primarily on a “Step 3” control scenario rather than the “full geography” scenario. The CAMx modeling described here captures the effects of the rule as a whole and so is more akin to the “full geography” scenario, which the EPA does not believe is the appropriate method for conducting overcontrol analysis. Nonetheless, as explained in the Ozone Transport Policy Analysis Final Rule TSD, the results under either scenario establish no overcontrol, and the CAMx results presented here do not call those conclusions into question.

ozone design values at identified receptors are predicted to occur in the Houston-Galveston-Brazoria, Texas area. In this area the reductions from the final rule case range from 0.7 to 0.9 ppb. At most of the receptors in both the Dallas/Ft Worth and the New York/Coastal Connecticut areas the reductions in ozone range from 0.4 to 0.5 ppb. At receptors in Indiana, Michigan, and Wisconsin near the shoreline of Lake Michigan, ozone is projected to decline by 0.3 to 0.4 ppb, but by as much as 0.5 ppb at the receptor in Muskegon, MI. Reductions of 0.1 ppb are predicted in the urban and near-urban receptors in Chicago. In the West, ozone reductions just under 0.2 ppb are predicted at receptors in Denver with slightly greater reductions, just above 0.2 ppb, at receptors in Salt Lake City. At receptors in Phoenix, California, El Paso/Las Cruces, and southeast New Mexico the reductions in ozone are predicted to be less than 0.1 ppb.

IX. Summary of Changes to the Regulatory Text for the Federal Implementation Plans and Trading Programs for EGUs

This section describes the amendments to the regulatory text that implement the findings and remedy discussed elsewhere in this rule with respect to EGUs. The primary CFR

amendments are revisions to the FIP provisions addressing states' good neighbor obligations related to ozone in 40 CFR part 52 as well as the revisions to the regulations for the CSAPR NO_x Ozone Season Group 3 Trading Program in 40 CFR part 97, subpart GGGGG. In conjunction with the amendments to the Group 3 trading program, the monitoring, recordkeeping, and reporting regulations in 40 CFR part 75 are being amended to reflect the addition of certain new reporting requirements associated with the amended trading program and the administrative appeal provisions in 40 CFR part 78 are being amended to identify certain additional types of appealable decisions of the EPA Administrator under the amended trading program. The provisions to address the transition of the EGUs in certain states from the Group 2 trading program to the Group 3 trading program are implemented in part through revisions to the regulations noted previously and in part through revisions to the regulations for the Group 2 trading program in 40 CFR part 97, subpart EEEEE.

In addition to these primary amendments, certain revisions are being made to the regulations for the other CSAPR trading programs in 40 CFR part 97, subparts AAAAA through EEEEE, for conformity with the amended provisions of the Group 3 trading program, as discussed in section VI.B.13. Documents have been included in the docket for this rule showing all of the revisions in redline-strikeout format.

A. Amendments to FIP Provisions in 40 CFR Part 52

The CSAPR, CSAPR Update, and Revised CSAPR Update FIP requirements related to ozone season NO_x emissions are set forth in 40 CFR 52.38(b) as well as other sections of part 52 specific to each covered state. The existing text of § 52.38(b)(1) identifies the trading program regulations in 40 CFR part 97, subparts BBBB, EEEEE, and GGGG, as constituting the relevant FIP provisions relating to seasonal NO_x emissions and transported ozone pollution. Because in this rulemaking the EPA is establishing new or amended FIP requirements not only for the types of EGUs covered by the trading programs but also for certain types of industrial sources, an amendment to § 52.38(b)(1) clarifies that the trading programs constitute the FIP provisions only for the sources meeting the applicability requirements of the trading programs. A parallel clarification is being added to §§ 52.38(a)(1) and

52.39(a) with respect to the CSAPR FIP requirements relating to annual NO_x emissions, SO₂ emissions, and transported fine particulate pollution.

The states whose EGU sources are required to participate in the CSAPR NO_x Ozone Season Group 1, Group 2, and Group 3 trading programs under the FIPs established in CSAPR, the CSAPR Update, and the Revised CSAPR Update, as well as the control periods for which those requirements apply, are identified in § 52.38(b)(2). The amendments to this paragraph expand the applicability of the Group 3 trading program to sources in the ten additional states that the EPA is adding to the Group 3 trading program starting with the 2023 control period and end the applicability of the Group 2 trading program (with the exception of certain provisions) for sources in seven of the ten states after the 2022 control period, as discussed in section VI.B.2.⁴²⁴ The paragraphs within § 52.38(b)(2) are being renumbered to clarify the organization of the provisions and to facilitate cross-references from other regulatory provisions. Regarding the two states currently participating in the Group 2 trading program through approved SIP revisions that replaced the previous FIPs issued under the CSAPR Update (Alabama and Missouri), a provision indicating that the EPA will no longer administer the state trading programs adopted under those SIP revisions after the 2022 control period is being added at § 52.38(b)(16)(ii)(B).

In the Revised CSAPR Update, the EPA established several options for states to revise their SIPs to modify or replace the FIPs applicable to their sources while continuing to use the Group 3 trading program as the mechanism for meeting the states' good neighbor obligations. As in effect before this rule, § 52.38(b)(10), (11), and (12) established options to replace allowance allocations for the 2022 control period, to adopt an abbreviated SIP revision for control periods in 2023 or later years, and to adopt a full SIP revision for control periods in 2023 or later years, respectively.⁴²⁵ As discussed in section VI.D, the EPA is retaining these SIP revision options and is making them available for all states covered by the Group 3 trading program after the geographic expansion. The option under

⁴²⁴ Like the previous text of § 52.38(b)(2), the final amended text expressly encompasses sources in Indian country within the respective states' borders.

⁴²⁵ Revisions to the deadlines for states with approved SIP revisions to submit their state-determined allowance allocations to the EPA for subsequent recordation were finalized in an earlier final rule in this docket. See 87 FR 52473 (August 26, 2022).

§ 52.38(b)(10) to replace allowance allocations for a single control period is being amended to be available for the 2024 control period, with attendant revisions to the years and dates shown in § 52.38(b)(10) (multiple paragraphs) and (b)(17)(i) as well as the Group 3 trading program regulations, as discussed in section IX.B. The options under § 52.38(b)(11) and (12) to adopt abbreviated or full SIP revisions are being amended to be available starting with the 2025 control period, with attendant revisions to § 52.38(b)(11)(iii), (b)(12)(iii), and (b)(17)(ii).⁴²⁶ The removal of the previous options for states to expand applicability of the trading programs for ozone season NO_x emissions to certain non-EGUs and smaller EGUs, discussed in sections VI.D.2 and VI.D.3, is accomplished by the removal or revision of multiple paragraphs of § 52.38(b), including most notably the removal of § 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i)–(ii), (b)(9)(i)–(ii), (b)(11)(i)–(iii), and (b)(12)(i)–(iii).

The changes with respect to set-asides and the treatment of units in Indian country discussed in section VI.B.9, although implemented largely through amendments to the Group 3 trading program regulations, are also implemented in part through amendments to § 52.38(b)(11) and (12). First, the text in § 52.38(b)(11)(iii)(A) and (b)(12)(iii)(A) identifying the portion of each state trading budget for which a state may establish state-determined allowance allocations is being revised to exclude any allowances in a new unit set-aside or Indian country existing unit set-aside. Second, the text in § 52.38(b)(12)(vi) identifying provisions that states may not adopt into their SIPs (because the provisions concern regulation of sources in Indian country not subject to a state's CAA implementation planning authority) are being revised to include the provisions of the amended Group 3 trading program addressing allocation and recordation of allowances from all types of set-asides. Finally, the text in § 52.38(b)(12)(vii) authorizing the EPA to modify the previous approval of a SIP revision with regard to the assurance provisions "if and when a covered unit is located in Indian country" are being revised to account for the fact that at least one covered unit is already located in Indian country not subject to a state's CAA planning authority.

The transitional provisions discussed in sections VI.B.12.b and VI.B.12.c to

⁴²⁶ No state currently in the Group 3 trading program has submitted a SIP revision to make use of these options in control periods before the control periods in which the options can be used under the amended provisions.

convert certain 2017–2022 Group 2 allowances to Group 3 allowances and to recall certain 2023–2024 Group 2 allowances, although promulgated as amendments to the Group 2 trading program regulations, will necessarily be implemented after the end of the 2022 control period. Amendments clarifying that these provisions continue to apply to the relevant sources and holders of allowances notwithstanding the transition of certain states out of the Group 2 trading program after the 2022 control period are being added at § 52.38(b)(14)(iii). Cross-references clarifying that the EPA’s allocations of the converted Group 3 allowances are not subject to modification through SIP revisions are also being added to the existing provisions at

§ 52.38(b)(11)(iii)(D) and (b)(12)(iii)(D). The general FIP provisions applicable to all states covered by this rule as set forth in § 52.38(b)(2) are being replicated in the state-specific subparts of 40 CFR part 52 for each of the ten states that the EPA is adding to the Group 3 trading program.⁴²⁷ In each such state-specific CFR subpart, provisions are being added indicating that sources in the state are required to participate in the CSAPR NO_x Ozone Season Group 3 Trading Program with respect to emissions starting in 2023. Provisions are also being added repeating the substance of § 52.38(b)(13)(i), which generally provides that the Administrator’s full and unconditional approval of a full SIP revision correcting the same SIP deficiency that is the basis for a FIP promulgated in this rulemaking would cause the FIP to no longer apply to sources subject to the state’s CAA implementation planning authority, and § 52.38(b)(14)(ii), which generally provides the EPA with authority to complete recordation of EPA-determined allowance allocations for any control period for which EPA has already started such recordation notwithstanding the approval of a state’s SIP revision establishing state-determined allowance allocations.

For each of the seven states that the EPA is removing from the Group 2 trading program, the provisions of the state-specific CFR subparts indicating that sources in the state are required to participate in that trading program are being revised to end that requirement with respect to emissions after 2022, and a further provision is being added

repeating the substance of § 52.38(b)(14)(iii), which identifies certain provisions that continue to apply to sources and allowances notwithstanding discontinuation of a trading program with respect to a particular state.⁴²⁸ In addition, for the five states that during their time in the Group 2 trading program have not exercised the option to adopt full SIP revisions to replace the FIPs issued under the CSAPR Update (all but Alabama and Missouri), obsolete provisions concerning the unexercised SIP revision option are being removed.

No amendments with respect to FIP requirements for EGUs are being made to the state-specific CFR subparts for the twelve states whose sources currently participate in the Group 3 trading program⁴²⁹ except as needed to update cross-references or to implement the changes related to the treatment of Indian country, as discussed in section IX.D.

B. Amendments to Group 3 Trading Program and Related Regulations

To implement the geographic expansion of the Group 3 trading program and the revised trading budgets that are being established under the new and amended FIPs in this rulemaking, several sections of the Group 3 trading program regulations are being amended. Revisions identifying the applicable control periods, deadlines for certification of monitoring systems, and deadlines for commencement of quarterly reporting for sources not previously covered by the Group 3 trading program are being made at §§ 97.1006(c)(3)(i), 97.1030(b)(1), and 97.1034(d)(2)(i), respectively. Revisions identifying the new or revised budgets and new unit set-asides for the control periods after 2022 for all covered states are being made at § 97.1010(a)(1) and (c)(2), respectively.

Each of the enhancements to the Group 3 trading program discussed in section VI.B is also implemented primarily through revisions to the trading program regulations. The dynamic budget-setting process discussed in sections VI.B.1.b.i and VI.B.4 is implemented at § 97.1010(a)(2) through (4), and the associated revised process for determining variability

limits and assurance levels discussed in section VI.B.5 is implemented at § 97.1010(e). The Group 3 allowance bank recalibration process discussed in sections VI.B.1.b.ii and VI.B.6 is implemented at § 97.1026(d). The backstop daily NO_x emissions rate component of the primary emissions limitation discussed in sections VI.B.1.c.i and VI.B.7 is implemented at §§ 97.1006(c)(1)(i) and 97.1024(b)(1) and (3), accompanied by the addition of a definition of “backstop daily NO_x emissions rate” and modification of the definition of “CSAPR NO_x Ozone Season Group 3 allowance” in §§ 97.1002 and 97.1006(c)(6). The secondary emissions limitation for sources found responsible for exceedances of the assurance levels discussed in sections VI.B.1.c.ii and VI.B.8 is implemented at §§ 97.1006(c)(1)(iii) and (iv) and (c)(3)(ii) and 97.1025(c), accompanied by the addition of a definition of “CSAPR NO_x Ozone Season Group 3 secondary emissions limitation” in § 97.1002.

The changes relating to set-asides, the treatment of Indian country, and unit-level allowance allocations discussed in section VI.B.9 of this document are implemented through revisions to multiple paragraphs of §§ 97.1010, 97.1011, and 97.1012, as well as limited revisions to §§ 97.1002 (definition of “allocate or allocation”) and 97.1006(b)(2). In § 97.1010, paragraphs (b), (c), and (d) address the amounts for each control period of the Indian country existing unit set-asides, new unit set-asides, and Indian country new unit set-asides, respectively.⁴³⁰ Paragraphs (b) and (d) reflect the establishment of Indian country existing unit set-asides starting with the 2023 control period and the discontinuation of Indian country new unit set-asides after the 2022 control period.

A newly added definition at § 97.1002 for “coal-derived fuel” (based on the existing definition in 40 CFR 72.2) helps in implementation of both the backstop daily NO_x emissions rate provisions and the unit-level allocation provisions by clarifying that the provisions apply without regard to how any coal combusted by a unit might have been processed before combustion. Another newly added definition at § 97.1002 for “historical control period” helps in implementation of the dynamic budget-setting provisions, the secondary emissions limitation provisions, and the

⁴³⁰ The former § 97.1011(c), which addresses the relationships of set-asides and variability limits to state trading budgets, is being relocated to § 97.1011(f).

⁴²⁷ See §§ 52.54(b) (Alabama), 52.184(a) (Arkansas), 52.1240(d) (Minnesota), 52.1824(a) (Mississippi), 52.1326(b) (Missouri), 52.1492 (Nevada), 52.1930(a) (Oklahoma), 52.2283(d) (Texas), 52.2356 (Utah), and 52.2587(e) (Wisconsin).

⁴²⁸ See §§ 52.54(b) (Alabama), 52.184(a) (Arkansas), 52.1824(a) (Mississippi), 52.1326(b) (Missouri), 52.1930(a) (Oklahoma), 52.2283(d) (Texas), and 52.2587(e) (Wisconsin).

⁴²⁹ See §§ 52.731(b) (Illinois), 52.789(b) (Indiana), 52.940(b) (Kentucky), 52.984(d) (Louisiana), 52.1084(b) (Maryland), 52.1186(e) (Michigan), 52.1584(e) (New Jersey), 52.1684(b) (New York), 52.1882(b) (Ohio), 52.2040(b) (Pennsylvania), 52.2440(b) (Virginia), and 52.2540(b) (West Virginia).

unit-level allocation provisions by facilitating references to data reported by a unit for periods before the unit's entry into the Group 3 trading program.

The revisions to § 97.1011 refocus the section exclusively on allocation to "existing" units from the portion of each state emissions budget not reserved in a new unit set-aside or Indian country new unit set-aside. In § 97.1011(a), the provision formerly in § 97.1011(a)(1) requiring allocations to existing units to be made in the amounts provided in NODAs issued by the EPA is being split into two separate provisions, with paragraph (a)(1) applying to existing units in the state and areas of Indian country covered by the state's CAA implementation planning authority and paragraph (a)(2) applying to existing units in areas of Indian country not covered by the state's CAA implementation planning authority.⁴³¹ This split will facilitate the submission and approval of SIP revisions by states interested in submitting state-determined allowance allocations for the units over which they exercise CAA implementation authority, while leaving allocations to any units outside their authority to be addressed either by the EPA or by the relevant tribe under an approved tribal implementation plan. The process for determining default allocations to existing units of allowances from state trading budgets starting with the 2026 control period is set forth in revised § 97.1011(b), while the former provisions of § 97.1011(b), which concern timing and notice procedures for allocations to new units, are being relocated to § 97.1012. The provisions addressing incorrectly allocated allowances at § 97.1011(c) are being streamlined by relocating the portions applicable to new units to § 97.1012(c). In addition, as discussed in section VI.B.9.d, § 97.1011(c)(5) is being revised to provide that, starting with the 2024 control period, any incorrectly allocated allowances recovered after May 1 of the year following the control period will not be reallocated to other units in the

state but instead would be transferred to a surrender account.

The revisions to § 97.1012 retain the section's current focus on allocations to "new" units, generally combining the former provisions at § 97.1012 with the former provisions at § 97.1011(b) and (c) that address new units. The text of multiple paragraphs in both § 97.1012(a) and (b) is being revised as needed to reflect the change in treatment of Indian country discussed in section VI.B.9.a, under which the new unit set-asides will be used to provide allowance allocations to new units both in non-Indian country and Indian country within the borders of the respective states for control periods starting in 2023.⁴³² The timing and notice provisions in § 97.1012(a)(13) and (b)(13) are relocated from former § 97.1011(b)(1) and (2). The text of § 97.1012(c), addressing incorrect allocations to new units, is largely relocated from § 97.1011(c) (which addresses incorrect allocations to existing units) and reflects a parallel revision addressing the disposition of recovered allowances, as discussed in section VI.B.9.d.

The amendments to § 97.1021 implement two distinct sets of changes discussed in sections VI.B.9 and VI.D.1. First, revisions to § 97.1021(b) through (e) replace the previous schedule for recording Group 3 allowances for the 2023 and 2024 control periods established in the August 2022 Recordation Rule with an updated recordation schedule tailored to the effective date of this rule. The updated schedule also eliminates the unused former option for states to provide state-determined allowance allocations for the 2022 control period and establishes a substantively equivalent new option for states to provide state-determined allowance allocations for the 2024 control period. Second, revisions to § 97.1021(g) through (j) begin recordation for Indian country existing unit set-asides starting with allocations for the 2023 control period, modify the text to eliminate references to state-determined allocations of allowances from new unit set-asides, and end recordation for Indian country new unit set-asides after allocations for the 2022 control period.

⁴³² Revisions are also being made to the text of § 97.1012(a) and (b) for the control periods in 2021 and 2022 consistent with the revisions to the parallel provisions in the regulations for the other CSAPR trading programs, generally calling for allocations to units in areas of Indian country subject to a state's CAA implementation planning authority to be made from the new unit set-asides instead of from the Indian country new unit set-asides.

⁴³¹ An additional provision currently in § 97.1011(a)(1), which clarifies that an allocation or lack of allocation to a unit in a NODA does not constitute a determination by the EPA that the unit is or is not a CSAPR NO_x Ozone Season Group 3 unit, is being relocated to § 97.1011(a)(3). The former § 97.1011(a)(2), which provides for certain existing units that cease operations to receive allocations for their first five control periods of non-operation and provides for the allowances for subsequent control periods to be allocated to the relevant state's new unit set-asides, is inconsistent with the proposed revisions to the set-asides and the default allowance allocation process, as discussed in section VI.B.9, and is being removed as obsolete.

Implementation of the revisions to the Group 3 trading program is also accomplished in part through amendments to regulations in other CFR parts. In 40 CFR part 75, which contains detailed monitoring, recordkeeping, and reporting requirements applicable to sources covered by the Group 3 trading program, the additional recordkeeping and reporting requirements discussed in section VI.B.10 of this document are implemented through the addition of §§ 75.72(f) and 75.73(f)(1)(ix) and (x) and revisions to § 75.75, and the procedures for calculating daily total heat input and daily total NO_x emissions and the procedures for apportioning NO_x mass emissions monitored at a common stack among the individual units using the common stack are being added at sections 5.3.3, 8.4(c), and 8.5.3 of appendix F to part 75. In 40 CFR part 78, which contains the administrative appeal procedures applicable to decisions of the EPA Administrator under the Group 3 trading program, § 78.1(b)(19) is being amended to add calculation of the dynamic budgets to the list of administrative decisions under the trading program regulations that will be appealable under those procedures.

C. Transitional Provisions

As discussed in section VI.B.12, the EPA is establishing several transitional provisions for sources entering the Group 3 trading program. The provisions discussed in section VI.B.12.a of this document, concerning the prorating of state emissions budgets, assurance levels, and unit-level allocations for the 2023 control period, are implemented through the Group 3 trading program regulations. Specifically, the state emissions budgets for the 2023 control period will be prorated according to procedures set out at § 97.1010(a)(1)(ii). Variability limits for the 2023 control period, and the resulting assurance levels, will be computed under § 97.1010(e) from the prorated state emissions budgets. Unit-level allocations to existing units for the 2023 control period will be computed from the prorated state emissions budgets according to procedures substantively the same as the procedures codified in § 97.1011(b) for calculating default allocations to existing units for later control periods, as discussed in section VI.B.9.b, and will be announced in the notice of data availability issued under § 97.1011(a)(1) and (2) for the 2023 through 2025 control periods.

The remaining transitional provisions are being implemented through the Group 2 trading program regulations.

The creation of an additional Group 3 allowance bank for the 2023 control period through the conversion of banked 2017–2022 Group 2 allowances as discussed in section VI.B.12.b of this document is implemented at § 97.826(e).⁴³³ Related provisions addressing the use of Group 3 allowances to satisfy after-arising compliance obligations under the Group 2 trading program or the Group 1 trading program are implemented at §§ 97.826(f)(2) and 97.526(e)(3), respectively, and related provisions addressing recordation of late-arising allocations of Group 1 allowances are implemented at § 97.526(d)(2)(iii). The recall of Group 2 allowances previously issued for the 2023 and 2024 control periods as discussed in section VI.B.12.c of this document is implemented at § 97.811(e).

Decisions of the Administrator related to the allowance bank creation provisions and the allowance recall provisions are identified as appealable decisions under 40 CFR part 78 through revisions to § 78.1(b)(17)(viii) and (ix).

D. Clarifications and Conforming Revisions

As discussed in section VI.B.13 of this document, the EPA is revising the provisions regarding allowance allocations for units in Indian country in all the CSAPR trading programs so that instead of distinguishing among units based on whether they are or are not located in Indian country, the revised provisions distinguish among units based on whether they are or are not covered by a state's CAA implementation planning authority. The revisions are implemented in multiple paragraphs of §§ 97.411(b), 97.412, 97.511(b), 97.512, 97.611(b), 97.612, 97.711(b), 97.712, 97.811(b), and 97.812. The associated revisions to states' options regarding SIP revisions to establish state-determined allowance allocations for units covered by their CAA implementation planning authority are implemented in multiple paragraphs of §§ 52.38(a) and (b) and 52.39 as well as the state-specific subparts of 40 CFR part 52.

Certain other revisions to the regulatory text in the FIP and trading program regulations are minor simplifications and clarifications. First, in the Group 2 trading program regulations, the paragraphs in § 97.810 setting forth the amounts of state emissions budgets, new unit set-asides,

Indian country new unit set-asides, and variability limits for states that the EPA is transitioning out of the Group 2 trading program are being modified to indicate that the amounts are applicable under that program only for control periods through 2022.

Second, as noted in sections VI.D.2 and VI.D.3, the existing options for states subject to the NO_x SIP Call to expand applicability of the Group 2 trading program to include certain non-EGUs and smaller EGUs are being eliminated. While the most directly affected provisions are the provisions setting forth the SIP options at § 52.38(b)(4), (5), (8), (9), (12), and (13), as discussed in section IX.A of this document, the changes also render references to “base” units and “base” sources in the regulations for the Group 2 trading program and the Group 3 trading program obsolete. Removal of the references to “base” units and “base” sources affects multiple paragraphs of §§ 97.802, 97.806, 97.825, 97.1002, 97.1006, and 97.1025.

Third, to clarify the regulatory text, the EPA is removing the language in the Group 3 trading program regulations that formerly appeared at §§ 97.1002 (definition of “common designated representative’s assurance level”), 97.1006(c)(2)(iii), 97.1010(d), and 97.1011(a)(1) referencing supplemental amounts of allowances issued for the 2021 control period and associated increments to the 2021 assurance levels (each state’s assurance level increment was described as 21 percent of the state’s supplemental amount of allowances). In place of the removed language, the EPA is restating the amounts of the 2021 state emissions budgets in § 97.1010(a)(1)(i) so as to include the supplemental amounts of allowances and is restating the amounts of the 2021 variability limits in § 97.1010(e)(1) so as to include the associated assurance level increments. The revised language is substantively equivalent to and simpler than the previous language.

Fourth, in 40 CFR part 75, the EPA is removing obsolete text in § 75.73(c) and (f) to clarify the context for other text being added to the section, as discussed in section IX.B of this document.

Fifth, in 40 CFR part 52, the EPA is adding §§ 52.38(a)(7)(iii) and 52.39(k)(3) to clarify in §§ 52.38 and 52.39 that the Allowance Management System housekeeping provisions added by the Revised CSAPR Update at §§ 97.426(c), 97.626(c), and 97.726(c) in the regulations for the CSAPR NO_x Annual, SO₂ Group 1, and SO₂ Group 2 trading programs, respectively, continue to apply after the sources in a given state

have been removed from the programs, consistent with the text of the latter provisions.

Finally, the EPA is updating cross-references throughout 40 CFR parts 52 and 97 for consistency with the other amendments being made in this rulemaking.

X. Statutory and Executive Orders Reviews

Additional information about these statutes and Executive orders (“E.O.”) can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action within the scope of section 3(f)(1) of Executive Order 12866 that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to 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, which is contained in the “Regulatory Impact Analysis for Final Federal Good Neighbor Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard” [EPA–452–R–23–001], is available in the docket and is briefly summarized in section VIII of this document.

B. Paperwork Reduction Act (PRA)

1. Information Collection Request for Electric Generating Units

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2709.01. The EPA has placed a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The EPA is finalizing an information collection request (ICR), related specifically to electric generating units (EGU), for the Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards. The rule would amend the Cross-State Air Pollution Rule (CSAPR) NO_x Ozone Season Group 3 trading program addressing seasonal NO_x emissions in various states. Under the amendments, all EGU sources in the original twelve Group 3 states (Illinois, Indiana,

⁴³³ The provision formerly at § 97.826(e)(1) is being relocated to § 97.826(f)(1), and the provision formerly at § 97.826(e)(2) is being removed as no longer necessary.

Kentucky, Louisiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia) would remain. Additionally, EGU sources in seven states (Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin) currently covered by the CSAPR NO_x Ozone Season Group 2 Trading Program would transition from the Group 2 program to the revised Group 3 trading program beginning with the 2023 ozone season. Further, sources in three states not currently covered by any CSAPR NO_x ozone season trading program would join the revised Group 3 trading program: Minnesota, Nevada, and Utah. In total, EGU sources in 22 states would now be covered by the Group 3 program.

There is an existing ICR (OMB Control Number 2060-0667), that includes information collection requirements placed on EGU sources for the six Cross-State Air Pollution Rule (CSAPR) trading programs addressing sulfur dioxide (SO₂) emissions, annual nitrogen oxides (NO_x) emissions, or seasonal NO_x emissions in various sets of states, and the Texas SO₂ trading program which is modeled after CSAPR. This ICR accounts for the additional respondent burden related to the amendments to the CSAPR NO_x Ozone Group 3 trading program.

The principal information collection requirements under the CSAPR and Texas trading programs relate to the monitoring and reporting of emissions and associated data in accordance with 40 CFR part 75. Other information collection requirements under the programs concern the submittal of information necessary to allocate and transfer emissions allowances and the submittal of certificates of representation and other typically one-time registration forms.

Affected sources under the CSAPR and Texas trading programs are generally stationary, fossil fuel-fired boilers and combustion turbines serving generators larger than 25 megawatts (MW) producing electricity for sale. Most of these affected sources are also subject to the Acid Rain Program (ARP). The information collection requirements under the CSAPR and Texas trading programs and the ARP substantially overlap and are fully integrated. The burden and costs of overlapping requirements are accounted for in the ARP ICR (OMB Control Number 2060-0258). Thus, this ICR accounts for information collection burden and costs under the CSAPR NO_x Ozone Season Group 3 trading program that are incremental to the burden and costs

already accounted for in both the ARP and CSAPR ICRs.

For most sources already reporting data under the CSAPR NO_x Ozone Season Group 3 or the CSAPR NO_x Ozone Group 2 trading programs, the reporting requirements will remain identical so there will be no incremental burden or cost. Certain sources currently reporting data will be subject to additional emissions reporting requirements under the rule requiring these sources to make a one-time monitoring plan and DAHS update. These sources include those with a common stack configuration and/or those that are large, coal-fired EGUs. Additionally, sources with a common stack configuration have the option to install additional monitoring equipment to measure emissions at each individual unit within the facility, and for purposes of estimating information collection costs and burden, the EPA assumes certain sources will utilize this option. Finally, the assessment of incremental cost and burden are required for those sources in the three states not currently reporting data under a CSAPR NO_x Ozone Season program. Sources in Minnesota are already reporting data for the CSAPR NO_x Annual program with almost identical information collection requirements, requiring only a one-time monitoring plan and DAHS update. Most of the affected sources in Nevada and Utah are already reporting data as part of the Acid Rain Program, thus only requiring a monitoring plan and DAHS update as well. There are a small number of sources in Nevada and Utah that do not report emissions data to the EPA under 40 CFR part 75 and will need to implement a Part 75 monitoring methodology which includes burdens related to installation, certification, and necessary updates.

Respondents/affected entities: Industry respondents are stationary, fossil fuel-fired boilers and combustion turbines serving electricity generators subject to the CSAPR and Texas trading programs, as well as non-source entities voluntarily participating in allowance trading activities. Potential state respondents are states that can elect to submit state-determined allowance allocations for sources located in their states.

Respondent's obligation to respond: Industry respondents: voluntary and mandatory (sections 110(a) and 301(a) of the Clean Air Act).

Estimated number of respondents: The EPA estimates that there would be 120 industry respondents.

Frequency of response: on occasion, quarterly, and annually.

Total estimated additional burden: 2,289 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated additional cost: \$356,623 (per year); includes \$182,379 annualized capital or operation & maintenance costs.

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. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

2. Information Collection Request for Non-Electric Generating Units

The information collection activities in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2705.02. The EPA has filed a copy of the non-EGU ICR in the docket for this rule, and it is briefly summarized here.

ICR No. 2705.02 is a new request and it addresses the burden associated with new regulatory requirements under the final rule. Owners and operators of certain non-Electric Generating Unit (non-EGU) industry stationary sources will potentially modify or install new emissions controls and associated monitoring systems to meet the nitrogen oxides (NO_x) emissions limits of this final rule. The burden in this ICR reflects the new monitoring, calibrating, recordkeeping, reporting and testing activities required of covered industrial sources. This information is being collected to assure compliance with the final rule. In accordance with the Clean Air Act Amendments of 1990, any monitoring information to be submitted by sources is a matter of public record. Information received and identified by owners or operators as confidential business information (CBI) and approved as CBI by the EPA, in accordance with 40 CFR chapter I, part 2, subpart B, shall be maintained appropriately (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

Respondents/affected entities: The respondents/affected entities are the owners/operators of certain non-EGU

industry sources in the following industry sectors: furnaces in Glass and Glass Product Manufacturing; boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing; kilns in Cement and Cement Product Manufacturing; reciprocating internal combustion engines in Pipeline Transportation of Natural Gas; and boilers in Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and combustors and incinerators in Solid Waste Combustors and Incinerators.

Respondent's obligation to respond: Voluntary and mandatory. (Sections 110(a) and 301(a) of the Clean Air Act.) All data that is recorded or reported by respondents is required by the final rule, titled "Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards."

Estimated number of respondents: 3,328.

Frequency of response: The specific frequency for each information collection activity within the non-EGU ICR is shown at the end of the ICR document in Tables 1 through 18. In general, the frequency varies across the monitoring, recordkeeping, and reporting activities. Some recordkeeping such as work plan preparation is a one-time activity whereas pipeline engine maintenance recordkeeping is conducted quarterly. Reporting frequency is on an annual basis.

Total estimated burden: 11,481 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$3,823,000 (average per year); includes \$2,400,000 annualized capital or operation & maintenance costs.

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. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses, which includes EGUs and non-EGUs and are described in more detail below. In 2026,

the EPA identified a total of 29 small entities affected by the rule. Of these, 2 small entities may experience costs of greater than 1 percent of revenues. In 2026 for EGUs, the EPA identified 19 small entities. The EPA's decision to exclude units smaller than 25 MW capacity from the final rule, and exclusion of uncontrolled units smaller than 100 MW from backstop emissions rates significantly reduced the burden on small entities by reducing the number of affected small entity-owned units. Further, in 2026 for non-EGUs, there are ten small entities, and two small entities are estimated to have a cost-to-sales impact between 1.7 and 2.4 percent of their revenues.

The Agency has not determined that a significant number of small entities potentially affected by the rule will have compliance costs greater than 1 percent of annual revenues during the compliance period. The EPA has concluded that there will be no significant economic impact on a substantial number of small entities (No SISNOSE) for this rule overall. Details of this analysis are presented in Chapter 6 of the *RIA*, which is in the public docket.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no unfunded Federal mandate for State, local, or Tribal governments as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any State, local, or Tribal government. This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of \$100 million or more in any one year for the private sector. Accordingly, the costs and benefits associated with this action are discussed in section VIII of this preamble and in the *RIA*, which is in the docket for this rule. Additional details are presented in the *RIA*. This action is not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments.

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 final action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA is finalizing a finding that interstate transport of ozone precursor emissions from 23 upwind states (Alabama, Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, West Virginia, and Wisconsin) is significantly contributing to downwind nonattainment or interfering with maintenance of the 2015 ozone NAAQS in other states. The EPA is promulgating FIP requirements to eliminate interstate transport of ozone precursors from these 23 states. Under CAA section 301(d)(4), the EPA is extending FIP requirements to apply in Indian country located within the upwind geography of the final rule, including Indian reservation lands and other areas of Indian country over which the EPA or a tribe has demonstrated that a tribe has jurisdiction. The EPA's determinations in this regard are described further in section III.C.2 of this document, *Application of Rule in Indian Country and Necessary or Appropriate Finding*. The EPA finds that all covered existing and new EGU and non-EGU sources that are located in the "301(d) FIP" areas within the geographic boundaries of the covered states, and which would be subject to this rule if located within areas subject to state CAA planning authority, should be included in this rule. To the EPA's knowledge, only one covered existing EGU or non-EGU source is located within the 301(d) FIP areas: the Bonanza Power Plant, an EGU source, located on the Uintah and Ouray Reservation, geographically located within the borders of Utah. This final action has tribal implication because of the extension of FIP requirements into Indian country and because, in general, tribes have a vested interest in how this final rule would affect air quality.

The EPA hosted an environmental justice webinar on October 26, 2021, that was attended by state regulatory authorities, environmental groups, federally recognized tribes, and small business stakeholders. The EPA issued tribal consultation letters addressed to 574 tribes in February 2022 after the proposed rule was signed. The EPA received no further requests to facilitate

additional tribal consultation for the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it implements a previously promulgated health-based Federal standard. This action’s health and risk assessments are contained in Chapter 5 and 6 of the *RIA*. The EPA believes that the ozone-related benefits, PM_{2.5}-related benefits, and CO₂-related benefits from this final rule will further improve children’s health. Additionally, the ozone and PM_{2.5} EJ exposure analyses in Chapter 7 of the *RIA* suggests that nationally, children (ages 0–17) will experience at least as great a reduction in ozone and PM_{2.5} exposures as adults (ages 18–64) in 2023 and 2026 under all regulatory alternatives of this rulemaking.

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 has prepared a Statement of Energy Effects for the final regulatory control alternative as follows. The Agency estimates a 1 percent change in retail electricity prices on average across the contiguous U.S. in the 2025 run year, a 4 percent reduction (28 GWh) in coal-fired electricity generation, a 2 percent increase (21 GWh) in natural gas-fired electricity generation, and a 1 percent increase (8 GWh) in renewable electricity generation as a result of this final rule. The EPA projects that utility power sector delivered natural gas prices will change by less than 1 percent in 2025. Details of the estimated energy effects are presented in Chapter 4 of the *RIA*, which is in the public docket.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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 populations and/or Indigenous peoples. The documentation for this decision is contained in section VII of this document, *Environmental Justice Analytical Considerations and Stakeholder Outreach and Engagement*, and in Chapter 7, *Environmental Justice Impacts* of the *RIA*, which is in the public document. Briefly, proximity demographic analyses found larger percentages of Hispanics, African Americans, people below the poverty level, people with less educational attainment, and people linguistically isolated are living within 5 km and 10 km of an affected EGU, compared to national averages. It also finds larger percentages of African Americans, people below the poverty level, and with less educational attainment living within 5 km and 10 km of an affected non-EGU facility. Considering the known limitations of proximity analyses, including the inability to assess policy-specific impacts, we also performed analysis of baseline EJ ozone and PM_{2.5} exposures. Baseline ozone and PM_{2.5} exposure analyses show that certain populations, such as Hispanics, Asians, those linguistically isolated, those less educated, and children may experience disproportionately higher ozone and PM_{2.5} exposures as compared to the national average. American Indians may also experience disproportionately higher ozone concentrations than the reference group.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. Specifically, we do not find evidence that potential EJ concerns related to ozone or PM_{2.5}

exposures will be meaningfully exacerbated or mitigated in the regulatory alternatives under consideration as compared to the baseline. We infer that baseline disparities in the ozone and PM_{2.5} concentration burdens are likely to persist after implementation of the regulatory action or alternatives under consideration, due to similar modeled concentration reductions across population demographics. Importantly, the action described in this rule is expected to lower ozone and PM_{2.5} in many areas, including in ozone nonattainment areas, and thus mitigate some pre-existing health risks across all populations evaluated.

The EPA additionally identified and addressed environmental justice concerns by providing the public, including those communities disproportionately impacted by the burdens of pollution, opportunities for meaningful engagement with the EPA on this action through outreach activities conducted by the Agency. The information supporting this Executive order review is contained in section VII of this document.

K. Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. Because this action falls within the definition provided by 5 U.S.C. 804(2), the rule’s effective date is consistent with 5 U.S.C. 801(a)(3).

L. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).⁴³⁴

⁴³⁴ In deciding whether to invoke the exception by making and publishing a finding that an action is based on a determination of nationwide scope or effect, the Administrator takes into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C.

This rulemaking is “nationally applicable” within the meaning of CAA section 307(b)(1). In this final action, the EPA is applying a uniform legal interpretation and common, nationwide analytical methods with respect to the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of pollution (*i.e.*, “good neighbor” requirements) to promulgate FIPs that satisfy these requirements for the 2015 ozone NAAQS. Based on these analyses, the EPA is promulgating FIPs for 23 states located across a wide geographic area in eight of the ten EPA regions and ten Federal judicial circuits. Given that this action addresses implementation of the good neighbor requirements of CAA section 110(a)(2)(D)(i)(I) in a large number of states located across the country, and given the interdependent nature of interstate pollution transport and the common core of knowledge and analysis involved in promulgating these FIPs, this is a “nationally applicable” action within the meaning of CAA section 307(b)(1).

In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1). In this final action, the EPA is interpreting and applying section 110(a)(2)(d)(i)(I) of the CAA for the 2015 ozone NAAQS based on a common core of nationwide policy judgments and technical analysis concerning the interstate transport of pollutants throughout the continental U.S. In particular, the EPA is applying here the same, nationally consistent 4-step framework for assessing good neighbor obligations for the 2015 ozone NAAQS that it has applied in other nationally applicable rulemakings, such as CSAPR, the CSAPR Update, and the Revised CSAPR Update. The EPA is relying on the results from nationwide photochemical grid modeling using a 2016 base year and 2023 projection year as the primary basis for its assessment of air quality conditions and pollution contribution levels at Step 1 and Step 2 of that 4-step framework and applying a nationally uniform approach to the identification of nonattainment and maintenance receptors across the entire

Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

geographic area covered by this final rule.⁴³⁵

The Administrator finds that this is a matter on which national uniformity in judicial resolution of any petitions for review is desirable, to take advantage of the D.C. Circuit’s administrative law expertise, and to facilitate the orderly development of the basic law under the Act. The Administrator also finds that consolidated review of this action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different states, and that a nationally consistent approach to the CAA’s mandate concerning interstate transport of ozone pollution constitutes the best use of agency resources. The EPA’s responses to comments on the appropriate venue for petitions for review are contained in section 1.10 of the *RTC* document.

For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by August 4, 2023.

This action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, “the promulgation or revision of an implementation plan by the Administrator under [CAA section 110(c)].” 42 U.S.C. 7407(d)(1)(B). This action, among other things, promulgates new Federal implementation plans pursuant to the authority of section 110(c). To the extent any portion of this final action is not expressly identified under section 307(d)(1)(B), the Administrator determines that the provisions of section 307(d) apply to such final action. *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to “such other actions as the Administrator may determine”).

⁴³⁵ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. *See* H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.A.N. 1402–03.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 75

Environmental protection, Administrative practice and procedure, Air pollution control, Continuous emissions monitoring, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 78

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Electric power plants, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, parts 52, 75, 78, and 97 of title 40 of the Code of Federal Regulations are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

- 2. Amend § 52.38 by:
- a. In paragraph (a)(1), removing “(NO_x), except” and adding in its place “(NO_x) for sources meeting the applicability criteria set forth in subpart AAAAA, except”;
 - b. In paragraph (a)(3) introductory text:
 - i. Removing “(a)(2)(i) or (ii)” and adding in its place “(a)(2)”; and
 - ii. Removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;
 - c. In paragraph (a)(3)(i), removing “State and” and adding in its place

“State and areas of Indian country within the borders of the State subject to the State’s SIP authority and that”;

■ d. In paragraph (a)(4) introductory text, removing “for the State’s sources, and” and adding in its place “with regard to sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority, and”;

■ e. Revising table 1 to paragraph (a)(4)(i)(B);

■ f. In paragraph (a)(4)(ii), removing “deadlines for submission of allocations or auction results under paragraphs (a)(4)(i)(B) and (C)” and adding in its place “deadline for submission of allocations or auction results under paragraph (a)(4)(i)(B)”;

■ g. In paragraph (a)(5) introductory text, removing “State (but not sources in any Indian country within the borders of the State), regulations” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, regulations”;

■ h. Revising table 2 to paragraph (a)(5)(i)(B);

■ i. In paragraph (a)(5)(iv), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;

■ j. In paragraph (a)(5)(v), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority, the”;

■ k. In paragraph (a)(5)(vi), removing “deadlines for submission of allocations or auction results under paragraphs (a)(5)(i)(B) and (C)” and adding in its place “deadline for submission of allocations or auction results under paragraph (a)(5)(i)(B)”;

■ l. Revising paragraphs (a)(6) and (a)(7)(ii);

■ m. Adding paragraph (a)(7)(iii);

■ n. In paragraphs (a)(8)(i) and (ii), removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;

■ o. In paragraph (a)(8)(iii), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”;

■ p. In paragraph (b)(1), removing “(year), except” and adding in its place “(year) for sources meeting the applicability criteria set forth in

subparts BBBBB, EEEEE, and GGGGG, except”;

■ q. Redesignating paragraphs (b)(2)(i) and (ii) as paragraphs (b)(2)(i)(A) and (B), respectively, paragraphs (b)(2)(iii) and (iv) as paragraphs (b)(2)(ii)(A) and (B), respectively, and paragraph (b)(2)(v) as paragraph (b)(2)(iii)(A);

■ r. In newly redesignated paragraph (b)(2)(ii)(A), removing “Alabama, Arkansas, Iowa, Kansas, Mississippi, Missouri, Oklahoma, Tennessee, Texas, and Wisconsin.” and adding in its place “Iowa, Kansas, and Tennessee.”;

■ s. Adding paragraphs (b)(2)(ii)(C) and (b)(2)(iii)(B) and (C);

■ t. In paragraph (b)(3) introductory text:

■ i. Removing “or (ii)”;

■ ii. Removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;

■ u. In paragraph (b)(3)(i), removing “State and” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority and that”;

■ v. Revising paragraph (b)(4) introductory text;

■ w. Removing and reserving paragraph (b)(4)(i);

■ x. Revising table 3 to paragraph (b)(4)(ii)(B) and paragraphs (b)(4)(iii) and (b)(5) introductory text;

■ y. Removing and reserving paragraph (b)(5)(i);

■ z. Revising table 4 to paragraph (b)(5)(ii)(B);

■ aa. In paragraph (b)(5)(v), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;

■ bb. In paragraph (b)(5)(vi), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority, the”;

■ cc. Revising paragraphs (b)(5)(vii), (b)(7) introductory text, (b)(7)(i), and (b)(8) introductory text;

■ dd. Removing and reserving paragraphs (b)(8)(i) and (ii);

■ ee. Revising paragraph (b)(8)(iii)(A), table 5 to paragraph (b)(8)(iii)(B), and paragraphs (b)(8)(iv) and (b)(9) introductory text;

■ ff. Removing and reserving paragraphs (b)(9)(i) and (ii);

■ gg. Revising paragraph (b)(9)(iii)(A) and table 6 to paragraph (b)(9)(iii)(B);

■ hh. In paragraph (b)(9)(vi), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of

the State not subject to the State’s SIP authority”;

■ ii. Revising paragraphs (b)(9)(vii) and (viii), (b)(10) introductory text, (b)(10)(i) and (ii), (b)(10)(v)(A) and (B), and (b)(11) introductory text;

■ jj. Removing and reserving paragraphs (b)(11)(i) and (ii);

■ kk. In paragraph (b)(11)(iii) introductory text, removing “§§ 97.1011(a) and (b)(1) and 97.1012(a)” and adding in its place “§ 97.1011(a)(1)”;

■ ll. Revising paragraph (b)(11)(iii)(A);

■ mm. In paragraph (b)(11)(iii)(B):

■ i. Removing “§ 97.1011(a)” and adding in its place “§ 97.1011(a)(1)”;

■ ii. Adding “and” after the semicolon;

■ nn. Removing and reserving paragraph (b)(11)(iii)(C);

■ oo. Revising paragraphs (b)(11)(iii)(D), (b)(11)(iv), and (b)(12) introductory text;

■ pp. Removing and reserving paragraphs (b)(12)(i) and (ii);

■ qq. In paragraph (b)(12)(iii) introductory text, removing “§§ 97.1011(a) and (b)(1) and 97.1012(a)” and adding in its place “§ 97.1011(a)(1)”;

■ rr. Revising paragraph (b)(12)(iii)(A);

■ ss. In paragraph (b)(12)(iii)(B):

■ i. Removing “§ 97.1011(a)” and adding in its place “§ 97.1011(a)(1)”;

■ ii. Adding “and” after the semicolon;

■ tt. Removing and reserving paragraph (b)(12)(iii)(C);

■ uu. Revising paragraphs (b)(12)(iii)(D), (b)(12)(vi) through (viii), (b)(13) introductory text, and (b)(13)(i);

■ vv. In paragraph (b)(13)(ii), removing “regulations, including any sources made subject to such regulations pursuant to paragraph (b)(9)(ii) or (b)(12)(ii) of this section, the” and adding in its place “regulations the”;

■ ww. In paragraph (b)(14)(i)(F), removing “§ 97.825(b)” and adding in its place “§§ 97.806(c)(2) and (3) and 97.825(b)”;

■ xx. In paragraph (b)(14)(i)(G), removing “§ 97.826(e)” and adding in its place “§ 97.826(f)”;

■ yy. Revising paragraphs (b)(14)(ii) and (iii);

■ zz. In paragraph (b)(15)(i), removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;

■ aaa. Revising paragraph (b)(15)(ii);

■ bbb. In paragraph (b)(15)(iii), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”;

- ccc. In paragraph (b)(16)(i)(A), removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;
- ddd. Revising paragraphs (b)(16)(i)(B) and (C);
- eee. Redesignating paragraph (b)(16)(ii) as paragraph (b)(16)(ii)(A),

and, in newly redesignated paragraph (b)(16)(ii)(A), removing “(b)(2)(iv)” and adding in its place “(b)(2)(ii)(B)”;

- fff. Adding paragraph (b)(16)(ii)(B); and
- ggg. Revising paragraphs (b)(17)(i) through (iii).

The revisions and additions read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

- (a) * * *
- (4) * * *
- (i) * * *
- (B) * * *

TABLE 1 TO PARAGRAPH (a)(4)(i)(B)

Year of the control period for which CSAPR NO _x Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

- * * * * *
- (5) * * *
- (i) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (a)(5)(i)(B)

Year of the control period for which CSAPR NO _x Annual allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(6) *Withdrawal of CSAPR FIP provisions relating to NO_x annual emissions.* Except as provided in paragraph (a)(7) of this section, following promulgation of an approval by the Administrator of a State’s SIP revision as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section for sources in the State and Indian country within the borders of the State subject to the State’s SIP authority, the provisions of paragraph (a)(2)(i) of this section will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority, unless the Administrator’s approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State’s SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the

State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State’s obligation unless provided otherwise in the Administrator’s approval of the SIP revision.

(7) * * *

(ii) Notwithstanding the provisions of paragraph (a)(6) of this section, if, at the time of any approval of a State’s SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_x Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart AAAAA authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

(iii) Notwithstanding any discontinuation pursuant to paragraph

(a)(2)(ii) or (a)(6) of this section of the applicability of subpart AAAAA of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State’s SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR NO_x Annual allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of § 97.426(c) of this chapter (concerning the transfer of CSAPR NO_x Annual allowances between certain Allowance Management System accounts under common control).

(B) [Reserved]

* * * * *

- (b) * * *
- (2) * * *
- (ii) * * *

(C) The provisions of subpart EEEEE of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring in 2017 through 2022 only, except as provided in paragraph (b)(14)(iii) of this section: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.

(iii) * * *

(B) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the

borders of such States with regard to emissions occurring in 2023 and each subsequent year: Alabama, Arkansas, Mississippi, Missouri, Oklahoma, Texas, and Wisconsin.

(C) The provisions of subpart GGGGG of part 97 of this chapter apply to sources in each of the following States and Indian country located within the borders of such States with regard to emissions occurring on and after August 4, 2023, and in each subsequent year: Minnesota, Nevada, and Utah.

* * * * *

(4) *Abbreviated SIP revisions replacing certain provisions of the*

Federal CSAPR NO_x Ozone Season Group 1 Trading Program. A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart BBBBB of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

* * * * *

(ii) * * *
(B) * * *

TABLE 3 TO PARAGRAPH (b)(4)(ii)(B)

Year of the control period for which CSAPR NO _x Ozone Season Group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(iii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(4)(ii) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(4)(ii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(4)(ii) of this section.

(5) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 1 Trading Programs.* A State listed in paragraph (b)(2)(i)(A) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section with regard to sources in the State and areas of Indian

country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Ozone Season Group 1 Trading Program set forth in §§ 97.502 through 97.535 of this chapter, except that the SIP revision:

* * * * *

(ii) * * *
(B) * * *

TABLE 4 TO PARAGRAPH (b)(5)(ii)(B)

Year of the control period for which CSAPR NO _x Ozone Season group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(vii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(5)(ii) through (v) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(5)(ii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(5)(ii) of this section.

* * * * *

(7) *State-determined allocations of CSAPR NO_x Ozone Season Group 2 allowances for 2018.* A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_x Ozone Season Group 2 allowance allocation provisions replacing the provisions in § 97.811(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2018, a list of CSAPR

NO_x Ozone Season Group 2 units and the amount of CSAPR NO_x Ozone Season Group 2 allowances allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and that commenced commercial operation before January 1, 2015;

* * * * *

(8) *Abbreviated SIP revisions replacing certain provisions of the Federal CSAPR NO_x Ozone Season Group 2 Trading Program.* A State listed in paragraph (b)(2)(ii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart EEEEE of part 97 of this chapter with regard to sources in the State and areas of Indian country

within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

* * * * *

(iii) * * *
(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 2 allowances for any such control period

not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_x Ozone Season Group 2 allowances already allocated and recorded by the Administrator;

(B) * * *

TABLE 5 TO PARAGRAPH (b)(8)(iii)(B)

Year of the control period for which CSAPR NO _x Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2019 or 2020	June 1, 2018.
2021 or 2022	June 1, 2019.
2023 or 2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(8)(iii) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(8)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(8)(iii) of this section.

(9) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 2 Trading Programs.* A State listed in paragraph (b)(2)(ii) of this section may

adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Ozone Season Group 2 Trading Program set forth in §§ 97.802 through 97.835 of this chapter, except that the SIP revision:

* * * * *

(iii) * * *

(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 2 allowances for any such control period not exceeding the amount, under §§ 97.810(a) and 97.821 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 2 trading budget minus the sum of the Indian country new unit set-aside and the amount of any CSAPR NO_x Ozone Season Group 2 allowances already allocated and recorded by the Administrator;

(B) * * *

TABLE 6 TO PARAGRAPH (b)(9)(iii)(B)

Year of the control period for which CSAPR NO _x Ozone Season Group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2019 or 2020	June 1, 2018.
2021 or 2022	June 1, 2019.
2023 or 2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(vii) Provided that, if and when any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude the provisions in §§ 97.802 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.806(c)(2), and 97.825 of this chapter and the portions of other provisions of subpart EEEEE of part 97 of this chapter referencing §§ 97.802, 97.806(c)(2), and

97.825 and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(9)(iii) through (vi) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(9)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(9)(iii) of this section.

(10) *State-determined allocations of CSAPR NO_x Ozone Season Group 3 allowances for 2024.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as CSAPR NO_x Ozone Season Group 3 allowance allocation provisions replacing the provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2024, a list of CSAPR NO_x Ozone Season Group 3 units and the amount of CSAPR NO_x Ozone Season Group 3 allowances

allocated to each unit on such list, provided that the list of units and allocations meets the following requirements:

(i) All of the units on the list must be units that are in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and that commenced commercial operation before January 1, 2021;

(ii) The total amount of CSAPR NO_x Ozone Season Group 3 allowance allocations on the list must not exceed the amount, under § 97.1010 of this chapter for the State and the control period in 2024, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside and the new unit set-aside;

* * * * *

(v) * * *
(A) By August 4, 2023, the State must notify the Administrator electronically in a format specified by the Administrator of the State's intent to submit to the Administrator a complete SIP revision meeting the requirements of paragraphs (b)(10)(i) through (iv) of this section by September 1, 2023; and

(B) The State must submit to the Administrator a complete SIP revision described in paragraph (b)(10)(v)(A) of this section by September 1, 2023.

(11) *Abbreviated SIP revisions replacing certain provisions of the Federal CSAPR NO_x Ozone Season Group 3 Trading Program.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, regulations replacing specified provisions of subpart GGGGG of part 97 of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, and not substantively replacing any other provisions, as follows:

* * * * *

(iii) * * *
(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside, the new unit set-aside, and the amount of any CSAPR NO_x Ozone Season Group 3 allowances already allocated and recorded by the Administrator;

* * * * *

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(11)(iii)(B) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter; and

(iv) Provided that the State must submit a complete SIP revision meeting the requirements of paragraph (b)(11)(iii) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(11)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(11)(iii) of this section.

(12) *Full SIP revisions adopting State CSAPR NO_x Ozone Season Group 3 Trading Programs.* A State listed in paragraph (b)(2)(iii) of this section may adopt and include in a SIP revision, and the Administrator will approve, as correcting the deficiency in the SIP that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, regulations that are substantively identical to the provisions of the CSAPR NO_x Ozone Season Group 3 Trading Program set forth in §§ 97.1002 through 97.1035 of this chapter, except that the SIP revision:

* * * * *

(iii) * * *
(A) Requires the State or the permitting authority to allocate and, if applicable, auction a total amount of CSAPR NO_x Ozone Season Group 3 allowances for any such control period not exceeding the amount, under §§ 97.1010 and 97.1021 of this chapter for the State and such control period, of the CSAPR NO_x Ozone Season Group 3 trading budget minus the sum of the Indian country existing unit set-aside, the new unit set-aside, and the amount of any CSAPR NO_x Ozone Season Group 3 allowances already allocated and recorded by the Administrator;

* * * * *

(D) Does not provide for any change, after the submission deadlines in paragraph (b)(12)(iii)(B) of this section, in the allocations submitted to the Administrator by such deadlines and does not provide for any change in any allocation determined and recorded by

the Administrator under subpart GGGGG of part 97 of this chapter or § 97.526(d) or § 97.826(d) or (e) of this chapter;

* * * * *

(vi) Must not include any of the requirements imposed on any unit in areas of Indian country within the borders of the State not subject to the State's SIP authority in the provisions in §§ 97.1002 through 97.1035 of this chapter and must not include the provisions in §§ 97.1011(a)(2), 97.1012, and 97.1021(g) through (j) of this chapter, all of which provisions will continue to apply under any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision;

(vii) Provided that, if before the Administrator's approval of the SIP revision any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority before the Administrator's approval of the SIP revision, the SIP revision must exclude the provisions in §§ 97.1002 (definitions of "common designated representative", "common designated representative's assurance level", and "common designated representative's share"), 97.1006(c)(2), and 97.1025 of this chapter and the portions of other provisions of subpart GGGGG of part 97 of this chapter referencing §§ 97.1002, 97.1006(c)(2), and 97.1025, and further provided that, if and when after the Administrator's approval of the SIP revision any covered unit is located in areas of Indian country within the borders of the State not subject to the State's SIP authority, the Administrator may modify his or her approval of the SIP revision to exclude these provisions and may modify any portion of the CSAPR Federal Implementation Plan that is not replaced by the SIP revision to include these provisions; and

(viii) Provided that the State must submit a complete SIP revision meeting the requirements of paragraphs (b)(12)(iii) through (vi) of this section by December 1 of the year before the year of the deadline for submission of allocations or auction results under paragraph (b)(12)(iii)(B) of this section applicable to the first control period for which the State wants to make allocations or hold an auction under paragraph (b)(12)(iii) of this section.

(13) *Withdrawal of CSAPR FIP provisions relating to NO_x ozone season emissions; satisfaction of NO_x SIP Call requirements.* Following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the

CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(i), and (b)(3) and (4) of this section, paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section, or paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section for sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority—

(i) Except as provided in paragraph (b)(14) of this section, the provisions of paragraph (b)(2)(i), (ii), or (iii) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority, unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision; and

* * * * *

(14) * * *

(ii) Notwithstanding the provisions of paragraph (b)(13)(i) of this section, if, at the time of any approval of a State's SIP revision under this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 1 allowances under subpart BBBBBB of part 97 of this chapter, or allocations of CSAPR NO_x Ozone Season Group 2 allowances under subpart EEEEE of part 97 of this chapter, or allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(iii) Notwithstanding any discontinuation pursuant to paragraph (b)(2)(i)(B), (b)(2)(ii)(B) or (C), or (b)(13)(i) of this section of the applicability of subpart BBBBBB or EEEEE of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State

subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR NO_x Ozone Season Group 1 allowances and CSAPR NO_x Ozone Season Group 2 allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(A) The provisions of §§ 97.526(c) and 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 1 allowances and CSAPR NO_x Ozone Season Group 2 allowances between certain Allowance Management System accounts under common control);

(B) The provisions of §§ 97.526(d) and 97.826(d) and (e) of this chapter (concerning the conversion of unused CSAPR NO_x Ozone Season Group 1 allowances allocated for specified control periods to different amounts of CSAPR NO_x Ozone Season Group 2 allowances or CSAPR NO_x Ozone Season Group 3 allowances and the conversion of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for specified control periods to different amounts of CSAPR NO_x Ozone Season Group 3 allowances); and

(C) The provisions of § 97.811(d) and (e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all CSAPR NO_x Ozone Season Group 2 allowances allocated for specified control periods and recorded in specified Allowance Management System accounts).

(15) * * *

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(4) of this section as replacing the CSAPR NO_x Ozone Season Group 1 allowance allocation provisions in §§ 97.511(a) and (b)(1) and 97.512(a) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2017 or any subsequent year: [none].

* * * * *

(16) * * *

(i) * * *

(B) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(8) of this section as replacing the CSAPR NO_x Ozone Season Group 2 allowance allocation provisions in §§ 97.811(a) and (b)(1) and 97.812(a) of this chapter with

regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2019 or any subsequent year: New York.

(C) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(9) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(ii), and (b)(7) and (8) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: Alabama, Indiana, and Missouri.

(ii) * * *

(B) Notwithstanding any provision of subpart EEEEE of part 97 of this chapter or any State's SIP, with regard to any State listed in paragraph (b)(2)(ii)(C) of this section and any control period that begins after December 31, 2022, the Administrator will not carry out any of the functions set forth for the Administrator in subpart EEEEE of part 97 of this chapter, except §§ 97.811(e) and 97.826(c) and (e) of this chapter, or in any emissions trading program provisions in a State's SIP approved under paragraph (b)(8) or (9) of this section.

(17) * * *

(i) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(10) of this section as replacing the CSAPR NO_x Ozone Season Group 3 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2024: [none].

(ii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(11) of this section as replacing the CSAPR NO_x Ozone Season Group 3 allowance allocation provisions in § 97.1011(a)(1) of this chapter with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for the control period in 2025 or any subsequent year: [none].

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (b)(12) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (b)(1), (b)(2)(iii), and (b)(10) and (11) of this section with regard to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority: [none].

- 3. Amend § 52.39 by:
 - a. In paragraph (a), removing “(SO₂), except” and adding in its place “(SO₂) for sources meeting the applicability criteria set forth in subparts CCCCC and DDDDD, except”;
 - b. In paragraph (d) introductory text, removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;
 - c. In paragraph (d)(1), removing “State and” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority and that”;
 - d. In paragraph (e) introductory text, removing “for the State’s sources, and” and adding in its place “with regard to sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority, and”;
 - e. Revising table 1 to paragraph (e)(1)(ii);
 - f. In paragraph (e)(2), removing “deadlines for submission of allocations or auction results under paragraphs (e)(1)(ii) and (iii)” and adding in its place “deadline for submission of allocations or auction results under paragraph (e)(1)(ii)”;
 - g. In paragraph (f) introductory text, removing “State (but not sources in any Indian country within the borders of the State), regulations” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, regulations”;
 - h. Revising table 2 to paragraph (f)(1)(ii);
 - i. In paragraph (f)(4), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;
 - j. In paragraph (f)(5), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the

- borders of the State not subject to the State’s SIP authority, the”;
- k. In paragraph (f)(6), removing “deadlines for submission of allocations or auction results under paragraphs (f)(1)(ii) and (iii)” and adding in its place “deadline for submission of allocations or auction results under paragraph (f)(1)(ii)”;
- l. In paragraph (g) introductory text:
 - i. Removing “(c)(1) or (2)” and adding in its place “(c)”;
 - ii. Removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;
 - m. In paragraph (g)(1), removing “State and” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority and that”;
 - n. In paragraph (h) introductory text, removing “for the State’s sources, and” and adding in its place “with regard to sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority, and”;
 - o. Revising table 3 to paragraph (h)(1)(ii);
 - p. In paragraph (h)(2), removing “deadlines for submission of allocations or auction results under paragraphs (h)(1)(ii) and (iii)” and adding in its place “deadline for submission of allocations or auction results under paragraph (h)(1)(ii)”;
 - q. In paragraph (i) introductory text, removing “State (but not sources in any Indian country within the borders of the State), regulations” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, regulations”;
 - r. Revising table 4 to paragraph (i)(1)(ii);
 - s. In paragraph (i)(4), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;

- t. In paragraph (i)(5), removing “Indian country within the borders of the State, the” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority, the”;
- u. In paragraph (i)(6), removing “deadlines for submission of allocations or auction results under paragraphs (i)(1)(ii) and (iii)” and adding in its place “deadline for submission of allocations or auction results under paragraph (i)(1)(ii)”;
- v. Revising paragraphs (j) and (k)(2);
- w. Adding paragraph (k)(3);
- x. In paragraphs (l)(1) and (2), removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”;
- y. In paragraph (l)(3), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”;
- z. In paragraphs (m)(1) and (2), removing “the State and” and adding in its place “sources in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for”; and
- aa. In paragraph (m)(3), removing “State (but not sources in any Indian country within the borders of the State):” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority:”.

The revisions and addition read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

- * * * * *
- (e) * * *
- (1) * * *
- (ii) * * *

TABLE 1 TO PARAGRAPH (e)(1)(ii)

Year of the control period for which CSAPR SO ₂ group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (f) * * *
 (1) * * *

TABLE 2 TO PARAGRAPH (f)(1)(ii)

Year of the control period for which CSAPR SO ₂ group 1 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (h) * * *
 (1) * * *

TABLE 3 TO PARAGRAPH (h)(1)(ii)

Year of the control period for which CSAPR SO ₂ group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * * (ii) * * *
 (i) * * *
 (1) * * *

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

Year of the control period for which CSAPR SO ₂ group 2 allowances are allocated or auctioned	Deadline for submission of allocations or auction results to the administrator
2017 or 2018	June 1, 2016.
2019 or 2020	June 1, 2017.
2021 or 2022	June 1, 2018.
2023	June 1, 2019.
2024	June 1, 2020.
2025 or any year thereafter	June 1 of the year before the year of the control period.

* * * * *

(j) *Withdrawal of CSAPR FIP provisions relating to SO₂ emissions.* Except as provided in paragraph (k) of this section, following promulgation of an approval by the Administrator of a State's SIP revision as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section or paragraphs (a), (c)(1), (g), and (h) of this section for sources in the State and Indian country within the borders of the State subject to the State's SIP authority, the provisions of paragraph (b) or (c)(1) of this section, as applicable, will no longer apply to sources in the State and areas of Indian country within the borders of the State subject to the State's SIP authority,

unless the Administrator's approval of the SIP revision is partial or conditional, and will continue to apply to sources in areas of Indian country within the borders of the State not subject to the State's SIP authority, provided that if the CSAPR Federal Implementation Plan was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision.

(k) * * *

(2) Notwithstanding the provisions of paragraph (j) of this section, if, at the time of any approval of a State's SIP revision under this section, the

Administrator has already started recording any allocations of CSAPR SO₂ Group 1 allowances under subpart CCCCC of part 97 of this chapter, or allocations of CSAPR SO₂ Group 2 allowances under subpart DDDDD of part 97 of this chapter, to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(3) Notwithstanding any discontinuation pursuant to paragraph

(c)(2) or (j) of this section of the applicability of subpart CCCCC or DDDDD of part 97 of this chapter to the sources in a State and areas of Indian country within the borders of the State subject to the State's SIP authority with regard to emissions occurring in any control period, the following provisions shall continue to apply with regard to all CSAPR SO₂ Group 1 allowances and CSAPR SO₂ Group 2 allowances at any time allocated for any control period to any source or other entity in the State and areas of Indian country within the borders of the State subject to the State's SIP authority and shall apply to all entities, wherever located, that at any time held or hold such allowances:

(i) The provisions of §§ 97.626(c) and 97.726(c) of this chapter (concerning the transfer of CSAPR SO₂ Group 1 allowances and CSAPR SO₂ Group 2 allowances between certain Allowance Management System accounts under common control).

(ii) [Reserved]

* * * * *

■ 4. Add §§ 52.40 through 52.46 to subpart A to read as follows:

Sec.

* * * * *

52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?

52.41 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Pipeline Transportation of Natural Gas Industry?

52.42 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Cement and Concrete Product Manufacturing Industry?

52.43 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Iron and Steel Mills and Ferroalloy Manufacturing Industry?

52.44 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Glass and Glass Product Manufacturing Industry?

52.45 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, the Pulp, Paper, and Paperboard Mills Industries, Metal Ore Mining, and the Iron and Steel and Ferroalloy Manufacturing Industries?

52.46 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of

nitrogen oxides from Municipal Waste Combustors?

* * * * *

§ 52.40 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from sources not subject to the CSAPR ozone season trading program?

(a) *Purpose.* This section establishes Federal Implementation Plan requirements for new and existing units in the industries specified in paragraph (b) of this section to eliminate significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone National Ambient Air Quality Standards in other states pursuant to 42 U.S.C. 7410(a)(2)(D)(i)(I).

(b) *Definitions.* The terms used in this section and §§ 52.41 through § 52.46 are defined as follows:

Calendar year means the period between January 1 and December 31, inclusive, for a given year.

Existing affected unit means any affected unit for which construction commenced before August 4, 2023.

New affected unit means any affected unit for which construction commenced on or after August 4, 2023.

Operator means any person who operates, controls, or supervises an affected unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such affected unit.

Owner means any holder of any portion of the legal or equitable title in an affected unit.

Potential to emit means the maximum capacity of a unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a unit.

Rolling average means the weighted average of all data, meeting quality assurance and quality control (QA/QC) requirements in this part or otherwise normalized, collected during the applicable averaging period. The period of a rolling average stipulates the frequency of data averaging and reporting. To demonstrate compliance with an operating parameter a 30-day rolling average period requires calculation of a new average value each operating day and shall include the

average of all the hourly averages of the specific operating parameter. For demonstration of compliance with an emissions limit based on pollutant concentration, a 30-day rolling average is comprised of the average of all the hourly average concentrations over the previous 30 operating days. For demonstration of compliance with an emissions limit based on lbs-pollutant per production unit, the 30-day rolling average is calculated by summing the hourly mass emissions over the previous 30 operating days, then dividing that sum by the total production during the same period.

(c) *General requirements.* (1) The NO_x emissions limitations or emissions control requirements and associated compliance requirements for the following listed source categories not subject to the CSAPR ozone season trading program constitute the Federal Implementation Plan provisions that relate to emissions of NO_x during the ozone season (defined as May 1 through September 30 of a calendar year):

§§ 52.41 for engines in the Pipeline Transportation of Natural Gas Industry, 52.42 for kilns in the Cement and Concrete Product Manufacturing Industry, 52.43 for reheat furnaces in the Iron and Steel Mills and Ferroalloy Manufacturing Industry, 52.44 for furnaces in the Glass and Glass Product Manufacturing Industry, 52.45 for boilers in the Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills industries, and 52.46 for Municipal Waste Combustors.

(2) The provisions of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 apply to affected units located in each of the following States, including Indian country located within the borders of such States, beginning in the 2026 ozone season and in each subsequent ozone season: Arkansas, California, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, and West Virginia.

(3) The testing, monitoring, recordkeeping, and reporting requirements of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 only apply during the ozone season, except as otherwise specified in these sections. Additionally, if an owner or operator of an affected unit chooses to conduct a performance or compliance test outside of the ozone season, all recordkeeping, reporting, and notification requirements associated

with that test shall apply, without regard to whether they occur during the ozone season.

(d) *Requests for extension of compliance.* (1) The owner or operator of an existing affected unit under § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that cannot comply with the applicable requirements in those sections by May 1, 2026, due to circumstances entirely beyond the owner or operator's control, may request an initial compliance extension to a date certain no later than May 1, 2027. The extension request must contain a demonstration of necessity consistent with the requirements of paragraph (d)(3) of this section.

(2) If, after the EPA has granted a request for an initial compliance extension, the source remains unable to comply with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 by the extended compliance date due to circumstances entirely beyond the owner or operator's control, the owner or operator may apply for a second compliance extension to a date certain no later than May 1, 2029. The extension request must contain an updated demonstration of necessity consistent with the requirements of paragraph (d)(3) of this section.

(3) Each request for a compliance extension shall demonstrate that the owner or operator has taken all steps possible to install the controls necessary for compliance with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 by the applicable compliance date and shall:

(i) Identify each affected unit for which the owner or operator is seeking the compliance extension;

(ii) Identify and describe the controls to be installed at each affected unit to comply with the applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46;

(iii) Identify the circumstances entirely beyond the owner or operator's control that necessitate additional time to install the identified controls;

(iv) Identify the date(s) by which on-site construction, installation of control equipment, and/or process changes will be initiated;

(v) Identify the owner or operator's proposed compliance date. A request for an initial compliance extension under paragraph (d)(1) of this section must specify a proposed compliance date no later than May 1, 2027, and state whether the owner or operator anticipates a need to request a second compliance extension. A request for a second compliance extension under paragraph (d)(2) of this section must

specify a proposed compliance date no later than May 1, 2029, and identify additional actions taken by the owner or operator to ensure that the affected unit(s) will be in compliance with the applicable requirements in this section by that proposed compliance date;

(vi) Include all information obtained from control technology vendors demonstrating that the identified controls cannot be installed by the applicable compliance date;

(vii) Include any and all contract(s) entered into for the installation of the identified controls or an explanation as to why no contract is necessary or obtainable; and

(viii) Include any permit(s) obtained for the installation of the identified controls or, where a required permit has not yet been issued, a copy of the permit application submitted to the permitting authority and a statement from the permitting authority identifying its anticipated timeframe for issuance of such permit(s).

(4) Each request for a compliance extension shall be submitted via the Compliance and Emissions Data Reporting Interface (CEDRI) or analogous electronic submission system provided by the EPA no later than 180 days prior to the applicable compliance date. Until an extension has been granted by the Administrator under this section, the owner or operator of an affected unit shall comply with all applicable requirements of this section and shall remain subject to the May 1, 2026 compliance date or the initial extended compliance date, as applicable. A denial will be effective as of the date of denial.

(5) The owner or operator of an affected unit who has requested a compliance extension under this paragraph (d)(5) and is required to have a title V permit shall apply to have the relevant title V permit revised to incorporate the conditions of the extension of compliance. The conditions of a compliance extension granted under this paragraph (d)(5) will be incorporated into the affected unit's title V permit according to the provisions of an EPA-approved state operating permit program or the Federal title V regulations in 40 CFR part 71, whichever apply.

(6) Based on the information provided in any request made under paragraph (d) of this section or other information, the Administrator may grant an extension of time to comply with applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 consistent with the provisions of paragraph (d)(1) or (2) of this section. The decision to grant an extension will

be provided by notification via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will identify each affected unit covered by the extension; specify the termination date of the extension; and specify any additional conditions that the Administrator deems necessary to ensure timely installation of the necessary controls (e.g., the date(s) by which on-site construction, installation of control equipment, and/or process changes will be initiated).

(7) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator of an affected unit who has requested a compliance extension under this paragraph (d)(7) whether the submitted request is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information.

(8) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA, which shall be publicly available, to the owner or operator of a decision to grant or intention to deny a request for a compliance extension within 60 calendar days after providing written notification pursuant to paragraph (d)(7) of this section that the submitted request is complete.

(9) Before denying any request for an extension of compliance, the Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator in writing of the Administrator's intention to issue the denial, together with:

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the owner or operator to present via the CEDRI or analogous electronic submission system provided by the EPA, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(10) The Administrator's final decision to deny any request for an extension will be provided via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will set forth the specific grounds on which the denial is based. The final decision will be made within 60 calendar days after presentation of additional information

or argument (if the request is complete), or within 60 calendar days after the deadline for the submission of additional information or argument under paragraph (d)(9)(ii) of this section, if no such submission is made.

(11) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Clean Air Act (CAA or the Act).

(e) *Requests for case-by-case emissions limits.* (1) The owner or operator of an existing affected unit under § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that cannot comply with the applicable requirements in those sections due to technical impossibility or extreme economic hardship may submit to the Administrator, by August 5, 2024, a request for approval of a case-by-case emissions limit. The request shall contain information sufficient for the Administrator to confirm that the affected unit is unable to comply with the applicable emissions limit, due to technical impossibility or extreme economic hardship, and to establish an appropriate alternative case-by-case emissions limit for the affected unit. Until a case-by-case emissions limit has been approved by the Administrator under this section, the owner or operator shall remain subject to all applicable requirements in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46. A denial will be effective as of the date of denial.

(2) Each request for a case-by-case emissions limit shall include, but not be limited to, the following:

(i) A demonstration that the affected unit cannot achieve the applicable emissions limit with available control technology due to technical impossibility or extreme economic hardship.

(A) A demonstration of technical impossibility shall include:

(1) Uncontrolled NO_x emissions for the affected unit established with a CEMS, or stack tests obtained during steady state operation in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii)(2), or 65.158(a)(2) and available at the EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by the EPA through notice-and-comment rulemaking; and

(2) A demonstration that the affected unit cannot meet the applicable

emissions limit even with available control technology, including:

(i) Stack test data or other emissions data for the affected unit; or

(ii) A third-party engineering assessment demonstrating that the affected unit cannot meet the applicable emissions limit with available control technology.

(B) A demonstration of extreme economic hardship shall include at least three vendor estimates of the costs of installing control technology necessary to meet the applicable emissions limit and other information that demonstrates, to the satisfaction of the Administrator, that the cost of complying with the applicable emissions limit would present an extreme economic hardship relative to the costs borne by other comparable sources in the industry.

(ii) An analysis of available control technology options and a proposed case-by-case emissions limit that represents the lowest emissions limitation technically achievable by the affected unit without causing extreme economic hardship relative to the costs borne by other comparable sources in the industry. The owner or operator may propose additional measures to reduce NO_x emissions, such as operational standards or work practice standards.

(iii) Calculations of the NO_x emissions reduction to be achieved through implementation of the proposed case-by-case emissions limit and any additional proposed measures, the difference between this NO_x emissions reduction level and the NO_x emissions reductions that would have occurred if the affected unit complied with the applicable emissions limitations in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46, and a description of the methodology used for these calculations.

(3) The owner or operator of an affected unit who has requested a case-by-case emissions limit under this paragraph (e)(3) and is required to have a title V permit shall apply to have the relevant title V permit revised to incorporate the case-by-case emissions limit. Any case-by-case emissions limit approved under this paragraph (e)(3) will be incorporated into the affected unit's title V permit according to the provisions of an EPA-approved state operating permit program or the Federal title V regulations in 40 CFR part 71, whichever apply.

(4) Based on the information provided in any request made under this paragraph (e)(4) or other information, the Administrator may approve a case-by-case emissions limit that will apply to an affected unit in lieu of the

applicable emissions limit in § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46. The decision to approve a case-by-case emissions limit will be provided via the CEDRI or analogous electronic submission system provided by the EPA in paragraph (d) of this section and publicly available, and will identify each affected unit covered by the case-by-case emissions limit.

(5) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA in paragraph (d) of this section to the owner or operator of an affected unit who has requested a case-by-case emissions limit under this paragraph (e)(5) whether the submitted request is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original request and within 60 calendar days after receipt of any supplementary information.

(6) The Administrator will provide notification via the CEDRI or analogous electronic submission system described by the EPA in paragraph (d) of this section, which shall be publicly available, to the owner or operator of a decision to approve or intention to deny the request within 60 calendar days after providing notification pursuant to paragraph (e)(5) of this section that the submitted request is complete.

(7) Before denying any request for a case-by-case emissions limit, the Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA to the owner or operator in writing of the Administrator's intention to issue the denial, together with:

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the owner or operator to present via the CEDRI or analogous electronic submission system provided by the EPA, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(8) The Administrator's final decision to deny any request for a case-by-case emissions limit will be provided by notification via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will set forth the specific grounds on which the denial is based. The final decision will be made within 60 calendar days after presentation of additional information or argument (if the request is complete), or within 60 calendar days after the deadline for the

submission of additional information or argument under paragraph (e)(7)(ii) of this section, if no such submission is made.

(9) The approval of a case-by-case emissions limit under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(f) *Recordkeeping requirements.* (1) The owner or operator of an affected unit subject to the provisions of this section or § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 shall maintain files of all information (including all reports and notifications) required by these sections recorded in a form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. At minimum, the most recent 2 years of data shall be retained on site. The remaining 3 years of data may be retained off site. Such files may be maintained on microfilm, on a computer, on computer floppy disks, on magnetic tape disks, or on microfiche.

(2) Any records required to be maintained by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 that are submitted electronically via the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to the EPA as part of an on-site compliance evaluation.

(g) *CEDRI reporting requirements.* (1) You shall submit the results of the performance test following the procedures specified in paragraphs (g)(1)(i) through (iii) of this section:

(i) Data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test. Submit the results of the performance test to the EPA via the CEDRI or analogous electronic reporting approach provided by the EPA to report data required by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The data must be submitted in a file format generated using the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(ii) Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test. The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(iii)(A) The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Although we do not expect persons to assert a claim of CBI, if you wish to assert a CBI claim for some of the information submitted under paragraph (g)(1) or (2) of this section, you should submit a complete file, including information claimed to be CBI, to the EPA.

(B) The file must be generated using the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website.

(C) Clearly mark the part or all of the information that you claim to be CBI. Information not marked as CBI may be authorized for public release without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

(D) The preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services. 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 in this paragraph (g), should include clear CBI markings and be flagged to the attention of Lead of 2015 Ozone Transport FIP. 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.

(E) If you cannot transmit the file electronically, you may send CBI information through the postal service to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Lead of 2015 Ozone Transport FIP. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

(F) All CBI claims must be asserted at the time of submission. Anything submitted using CEDRI cannot later be claimed CBI. Furthermore, under CAA section 114(c), emissions data is not entitled to confidential treatment, and the EPA is required to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

(G) You must submit the same file submitted to the CBI office with the CBI omitted to the EPA via the EPA's CDX as described in paragraphs (g)(1) and (2) of this section.

(2) Annual reports must be submitted via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46.

(3) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (g)(3)(i) through (vii) of this section.

(i) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(ii) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(iii) The outage may be planned or unplanned.

(iv) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(v) You must provide to the Administrator a written description identifying:

(A) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(vi) The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(vii) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(4) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with that reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (g)(4)(i) through (v) of this section.

(i) You may submit a claim if a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning five business days prior to the date the submission is due. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected unit, its contractors, or any entity controlled by the affected unit that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (e.g., hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected unit (e.g., large scale power outage).

(ii) You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or has caused a delay in reporting.

(iii) You must provide to the Administrator:

(A) A written description of the force majeure event;

(B) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(C) A description of measures taken or to be taken to minimize the delay in reporting; and

(D) The date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported.

(iv) The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(v) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

§ 52.41 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Pipeline Transportation of Natural Gas Industry?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means an engine meeting the applicability criteria of this section.

Cap means the total amount of NO_x emissions, in tons per day on a 30-day rolling average basis, that is collectively allowed from all of the affected units covered by a Facility-Wide Averaging Plan and is calculated as the sum each affected unit's NO_x emissions at the emissions limit applicable to such unit under paragraph (c) of this section, converted to tons per day in accordance with paragraph (d)(3) of this section.

Emergency engine means any stationary reciprocating internal combustion engine (RICE) that meets all of the criteria in paragraphs (i) and (ii) of this definition. All emergency stationary RICE must comply with the requirements specified in paragraph (b)(1) of this section in order to be considered emergency engines. If the engine does not comply with the requirements specified in paragraph (b)(1), it is not considered an emergency engine under this section.

(i) The stationary engine is operated to provide electrical power or mechanical work during an emergency situation. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc.

(ii) The stationary RICE is operated under limited circumstances for purposes other than those identified in paragraph (i) of this definition, as specified in paragraph (b)(1) of this section.

Facility means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code as described in the Standard Industrial Classification Manual, 1987). For purposes of this section, a facility may

not extend beyond the 20 states identified in § 52.40(b)(2).

Four stroke means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

ISO conditions means 288 Kelvin (15 °C), 60 percent relative humidity, and 101.3 kilopascals pressure.

Lean burn means any two-stroke or four-stroke spark ignited reciprocating internal combustion engine that does not meet the definition of a rich burn engine.

Local Distribution Companies (LDCs) are companies that own or operate distribution pipelines, but not interstate pipelines or intrastate pipelines, that physically deliver natural gas to end users and that are within a single state that are regulated as separate operating companies by State public utility commissions or that operate as independent municipally-owned distribution systems. LDCs do not include pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

Local Distribution Company (LDC) custody transfer station means a metering station where the LDC receives a natural gas supply from an upstream supplier, which may be an interstate transmission pipeline or a local natural gas producer, for delivery to customers through the LDC's intrastate transmission or distribution lines.

Nameplate rating means the manufacturer's maximum design capacity in horsepower (hp) at the installation site conditions. Starting from the completion of any physical change in the engine resulting in an increase in the maximum output (in hp) that the engine is capable of producing on a steady state basis and during continuous operation, such increased maximum output shall be as specified by the person conducting the physical change.

Natural gas means a fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) or non-hydrocarbons, composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous state under ISO conditions. Natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process

which might result in highly variable CO₂ content or heating value.

Natural gas-fired means that greater than or equal to 90% of the engine's heat input, excluding recirculated or recuperated exhaust heat, is derived from the combustion of natural gas.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

Natural gas production facility means all equipment at a single stationary source directly associated with one or more natural gas wells upstream of the natural gas processing plant. This equipment includes, but is not limited to, equipment used for storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and flowline.

Operating day means a 24-hour period beginning at 12:00 midnight during which any fuel is combusted at any time in the engine.

Pipeline transportation of natural gas means the movement of natural gas through an interconnected network of compressors and pipeline components, including the compressor and pipeline network used to transport the natural gas from processing plants over a distance (intrastate or interstate) to and from storage facilities, to large natural gas end-users, and prior to delivery to a "local distribution company custody transfer station" (as defined in this section) of an LDC that provides the natural gas to end-users. *Pipeline transportation of natural gas* does not include natural gas production facilities, natural gas processing plants, or the portion of a compressor and pipeline network that is upstream of a natural gas processing plant.

Reciprocating internal combustion engine (RICE) means a reciprocating engine in which power, produced by heat and/or pressure that is developed in the engine combustion chambers by the burning of a mixture of air and fuel, is subsequently converted to mechanical work.

Rich burn means any four-stroke spark ignited reciprocating internal combustion engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Internal combustion engines originally manufactured as rich burn engines but modified with passive emissions control

technology for nitrogen oxides (NO_x) (such as pre-combustion chambers) will be considered lean burn engines. Existing affected unit where there are no manufacturer's recommendations regarding air/fuel ratio will be considered rich burn engines if the excess oxygen content of the exhaust at full load conditions is less than or equal to 2 percent.

Spark ignition means a reciprocating internal combustion engine utilizing a spark plug (or other sparking device) to ignite the air/fuel mixture and with operating characteristics significantly similar to the theoretical Otto combustion cycle.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Two stroke means a type of reciprocating internal combustion engine which completes the power cycle in a single crankshaft revolution by combining the intake and compression operations into one stroke (one-half revolution) and the power and exhaust operations into a second stroke. This system requires auxiliary exhaust scavenging of the combustion products and inherently runs lean (excess of air) of stoichiometry.

(b) *Applicability.* You are subject to the requirements under this section if you own or operate a new or existing natural gas-fired spark ignition engine, other than an emergency engine, with a nameplate rating of 1,000 hp or greater that is used for pipeline transportation of natural gas and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s).

(1) For purposes of this section, the owner or operator of an emergency stationary RICE must operate the RICE according to the requirements in paragraphs (b)(1)(i) through (iii) of this section to be treated as an emergency stationary RICE. In order for stationary RICE to be treated as an emergency RICE under this subpart, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for up to 50 hours per year, as described in paragraphs (b)(1)(i) through (iii), is prohibited. If you do not operate the RICE according to the requirements in paragraphs (b)(1)(i) through (iii), the RICE will not be considered an emergency engine under this section and must meet all requirements for affected units in this section.

(i) There is no time limit on the use of emergency stationary RICE in emergency situations.

(ii) The owner or operator may operate your emergency stationary RICE

for maintenance checks and readiness testing for a maximum of 100 hours per calendar year, provided that the tests are recommended by a Federal, state, or local government agency, the manufacturer, the vendor, or the insurance company associated with the engine. Any operation for non-emergency situations as allowed by paragraph (b)(1)(iii) of this section counts as part of the 100 hours per calendar year allowed by paragraph (b)(1)(ii) of this section. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records confirming that Federal, state, or local standards require maintenance and testing of emergency RICE beyond 100 hours per calendar year. Any approval of a petition for additional hours granted by the Administrator under 40 CFR part 63, subpart ZZZZ, shall constitute approval by the Administrator of the same petition under this paragraph (b)(1)(ii).

(iii) Emergency stationary RICE may be operated for up to 50 hours per calendar year in non-emergency situations. The 50 hours of operation in non-emergency situations are counted as part of the 100 hours per calendar year for maintenance and testing provided in paragraph (b)(1)(ii) of this section.

(2) If you own or operate a natural gas-fired two stroke lean burn spark ignition engine manufactured after July 1, 2007 that is meeting the applicable emissions limits in 40 CFR part 60, subpart JJJJ, table 1, the engine is not an affected unit under this section and you do not have to comply with the requirements of this section.

(3) If you own or operate a natural gas-fired four stroke lean or rich burn spark ignition engine manufactured after July 1, 2010, that is meeting the applicable emissions limits in 40 CFR part 60, subpart JJJJ, table 1, the engine is not an affected unit under this section and you do not have to comply with the requirements of this section.

(c) *Emissions limitations.* If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) Natural gas-fired four stroke rich burn spark ignition engine: 1.0 grams per hp-hour (g/hp-hr);

(2) Natural gas-fired four stroke lean burn spark ignition engine: 1.5 g/hp-hr; and

(3) Natural gas-fired two stroke lean burn spark ignition engine: 3.0 g/hp-hr.

(d) *Facility-Wide Averaging Plan.* If you are the owner or operator of a facility containing more than one affected unit, you may submit a request via the CEDRI or analogous electronic submission system provided by the EPA to the Administrator for approval of a proposed Facility-Wide Averaging Plan as an alternative means of compliance with the applicable emissions limits in paragraph (c) of this section. Any such request shall be submitted to the Administrator on or before October 1st of the year prior to each emissions averaging year. The Administrator will approve a proposed Facility-Wide Averaging Plan submitted under this paragraph (d) if the Administrator determines that the proposed Facility-Wide Averaging Plan meets the requirements of this paragraph (d), will provide total emissions reductions equivalent to or greater than those achieved by the applicable emissions limits in paragraph (c), and identifies satisfactory means for determining initial and continuous compliance, including appropriate testing, monitoring, recordkeeping, and

reporting requirements. You may only include affected units (*i.e.*, engines meeting the applicability criteria in paragraph (b) of this section) in a Facility-Wide Averaging Plan. Upon EPA approval of a proposed Facility-Wide Averaging Plan, you cannot withdraw any affected unit listed in such plan, and the terms of the plan may not be changed unless approved in writing by the Administrator.

(1) Each request for approval of a proposed Facility-Wide Averaging Plan shall include, but not be limited to:

- (i) The address of the facility;
- (ii) A list of all affected units at the facility that will be covered by the plan, identified by unit identification number, the engine manufacturer's name, and model;
- (iii) For each affected unit, a description of any existing NO_x emissions control technology and the date of installation, and a description of any NO_x emissions control technology to be installed and the projected date of installation;
- (iv) Identification of the emissions cap, calculated in accordance with paragraph (d)(3) of this section, that all affected units covered by the proposed

Facility-Wide Averaging Plan will be subject to during the ozone season, together with all assumptions included in such calculation; and

(iv) Adequate provisions for testing, monitoring, recordkeeping, and reporting for each affected unit.

(2) Upon the Administrator's approval of a proposed Facility-Wide Averaging Plan, the owner or operator of the affected units covered by the Facility-Wide Averaging Plan shall comply with the cap identified in the plan in lieu of the emissions limits in paragraph (c) of this section. You will be in compliance with the cap if the sum of NO_x emissions from all units covered by the Facility-Wide Averaging Plan, in tons per day on a 30-day rolling average basis, is less than or equal to the cap.

(3) The owner or operator will calculate the cap according to equation 1 to this paragraph (d)(3). You will monitor and record daily hours of engine operation for use in calculating the cap on a 30-day rolling average basis. You will base the hours of operation on hour readings from a non-resettable hour meter or an equivalent monitoring device.

Equation 1 to Paragraph (d)(3)

$$\text{Cap (tons per day)} = 907,184.74 \times \sum_{i=1}^N (R_{li} \times DC \times H_i)$$

Where:

H_i = the average daily operating hours based on the highest consecutive 30-day period during the ozone season of the two most recent years preceding the emissions averaging year (hours).

i = each affected unit included in the Cap.

N = number of affected units.

DC = the engine manufacturer's design maximum capacity in horsepower (hp) at the installation site conditions.

R_{li} = the emissions limit for each affected unit from paragraph (c) of this section (grams/hp-hr).

(i) Any affected unit for which less than two years of operating data are available shall not be included in the Facility-Wide Averaging Plan unless the owner or operator extrapolates the available operating data for the affected unit to two years of operating data, for use in calculating the emissions cap in accordance with paragraph (d)(3) of this section.

(ii) [Reserved]

(4) The owner or operator of an affected units covered by an EPA-approved Facility-Wide Averaging Plan will be in violation of the cap if the sum of NO_x emissions from all such units, in

tons per day on a 30-day rolling average basis, exceeds the cap. Each day of noncompliance by each affected unit covered by the Facility-Wide Averaging Plan shall be a violation of the cap until corrective action is taken to achieve compliance.

(e) *Testing and monitoring requirements.* (1) If you are the owner or operator of an affected unit subject to a NO_x emissions limit under paragraph (c) of this section, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions.

(2) If you are the owner or operator of an affected unit and are operating a NO_x continuous emissions monitoring system (CEMS) that monitors NO_x emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the

following requirements for using CEMS to monitor NO_x emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_x emissions rates measured by the CEMS shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_x emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data will be obtained by using standby

monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3)(i) If you are the owner or operator of a new affected unit, you must conduct an initial performance test within six months of engine startup and conduct subsequent performance tests every twelve months thereafter to demonstrate compliance. If pollution control equipment is installed to comply with a NO_x emissions limit in paragraph (c) of this section, however, the initial performance test shall be conducted within 90 days of such installation.

(ii) If you are the owner or operator of an existing affected unit, you must conduct an initial performance test within six months of becoming subject to an emissions limit under paragraph (c) of this section and conduct subsequent performance tests every twelve months thereafter to demonstrate compliance. If pollution control equipment is installed to comply with a NO_x emissions limit in paragraph (c) of this section, however, the initial performance test shall be conducted within 90 days of such installation.

(iii) If you are the owner or operator of a new or existing affected unit that is only operated during peak demand periods outside of the ozone season and the engine's hours of operation during the ozone season are 50 hours or less, the affected unit is not subject to the testing and monitoring requirements of this paragraph (e)(3)(iii) as long as you record and report your hours of operation during the ozone season in accordance with paragraphs (f) and (g) of this section.

(iv) If you are the owner or operator of an affected unit, you must conduct all performance tests consistent with the requirements of 40 CFR 60.4244 in accordance with the applicable reference test methods identified in table 2 to subpart JJJJ of 40 CFR part 60, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. To determine compliance with the NO_x emissions limit in paragraph (c) of this section, the emissions rate shall be calculated in

accordance with the requirements of 40 CFR 60.4244(d).

(4) If you are the owner or operator of an affected unit that has a non-selective catalytic reduction (NSCR) control device to reduce emissions, you must:

(i) Monitor the inlet temperature to the catalyst daily and conduct maintenance if the temperature is not within the observed inlet temperature range from the most recent performance test or the temperatures specified by the manufacturer if no performance test was required by this section; and

(ii) Measure the pressure drop across the catalyst monthly and conduct maintenance if the pressure drop across the catalyst changes by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the most recent performance test.

(5) If you are the owner or operator of an affected unit not using an NSCR control device to reduce emissions, you are required to conduct continuous parametric monitoring to assure compliance with the applicable emissions limits according to the requirements in paragraphs (e)(5)(i) through (vi) of this section.

(i) You must prepare a site-specific monitoring plan that includes all of the following monitoring system design, data collection, and quality assurance and quality control elements:

(A) The performance criteria and design specifications for the monitoring system equipment, including the sample interface, detector signal analyzer, and data acquisition and calculations.

(B) Sampling interface (*e.g.*, thermocouple) location such that the monitoring system will provide representative measurements.

(C) Equipment performance evaluations, system accuracy audits, or other audit procedures.

(D) Ongoing operation and maintenance procedures in accordance with the requirements of paragraph (e)(1) of this section.

(E) Ongoing recordkeeping and reporting procedures in accordance with the requirements of paragraphs (f) and (g) of this section.

(ii) You must continuously monitor the selected operating parameters according to the procedures in your site-specific monitoring plan.

(iii) You must collect parametric monitoring data at least once every 15 minutes.

(iv) When measuring temperature range, the temperature sensor must have a minimum tolerance of 2.8 degrees Celsius (5 degrees Fahrenheit) or 1 percent of the measurement range, whichever is larger.

(v) You must conduct performance evaluations, system accuracy audits, or other audit procedures specified in your site-specific monitoring plan at least annually.

(vi) You must conduct a performance evaluation of each parametric monitoring device in accordance with your site-specific monitoring plan.

(6) If you are the owner or operator of an affected unit that is only operated during peak periods outside of the ozone season and your hours of operation during the ozone season are 0, you are not subject to the testing and monitoring requirements of this paragraph (e)(6) so long as you record and report your hours of operation during the ozone season in accordance with paragraphs (f) and (g) of this section.

(f) *Recordkeeping requirements.* If you are the owner or operator of an affected unit, you must keep records of:

(1) Performance tests conducted pursuant to paragraph (e)(2) of this section, including the date, engine settings on the date of the test, and documentation of the methods and results of the testing.

(2) Catalyst monitoring required by paragraph (e)(3) of this section, if applicable, and any actions taken to address monitored values outside the temperature or pressure drop parameters, including the date and a description of actions taken.

(3) Parameters monitored pursuant to the facility's site-specific parametric monitoring plan.

(4) Hours of operation on a daily basis.

(5) Tuning, adjustments, or other combustion process adjustments and the date of the adjustment(s).

(6) For any Facility-Wide Averaging Plan approved by the Administrator under paragraph (d) of this section, daily calculations of total NO_x emissions to demonstrate compliance with the cap during the ozone season. You must use the equation in this paragraph (f)(6) to calculate total NO_x emissions from all affected units covered by the Facility-Wide Averaging Plan, in tons per day on a 30-day rolling average basis, for purposes of determining compliance with the cap during the ozone season. A new 30-day rolling average emissions rate in tpd is calculated for each operating day during the ozone season, using the 30-day rolling average daily operating hours for the preceding 30 operating days.

Equation 2 to Paragraph (f)(6)

$$\sum_{i=1}^N (R_{ai} \times DC \times H_{ai}) \leq Cap \text{ (tons per day)}$$

Where:

H_{ai} = the consecutive 30-day rolling average daily operating hours for the preceding 30 operating days during ozone season (hours).

i = each affected unit.

N = number of affected units.

DC = the engine manufacturer's maximum design capacity in horsepower (hp) at the installation site conditions.

R_{ai} = the actual emissions rate for each affected unit based on the most recent performance test results, (grams/hp-hr).

(g) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emissions rate that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator of an affected unit, you must submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in paragraph (g) of this section. The report shall contain the following information:

- (i) The name and address of the owner and operator;
- (ii) The address of the subject engine;
- (iii) Longitude and latitude coordinates of the subject engine;
- (iv) Identification of the subject engine;
- (v) Statement of compliance with the applicable emissions limit under paragraph (c) of this section or a Facility-Wide Averaging Plan under paragraph (d) of this section;
- (vi) Statement of compliance regarding the conduct of maintenance and operations in a manner consistent

with good air pollution control practices for minimizing emissions;

(vii) The date and results of the performance test conducted pursuant to paragraph (e) of this section;

(viii) Any records required by paragraph (f) of this section, including records of parametric monitoring data, to demonstrate compliance with the applicable emissions limit under paragraph (c) of this section or a Facility-Wide Averaging Plan under paragraph (d) of this section, if applicable;

(ix) If applicable, a statement documenting any change in the operating characteristics of the subject engine; and

(x) A statement certifying that the information included in the annual report is complete and accurate.

§ 52.42 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Cement and Concrete Product Manufacturing Industry?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means a cement kiln meeting the applicability criteria of this section.

Cement kiln means an installation, including any associated pre-heater or pre-calciner devices, that produces clinker by heating limestone and other materials to produce Portland cement.

Cement plant means any facility manufacturing cement by either the wet or dry process.

Clinker means the product of a cement kiln from which finished cement is manufactured by milling and grinding.

Operating day means a 24-hour period beginning at 12:00 midnight during which the kiln produces clinker at any time.

(b) *Applicability.* You are subject to the requirements of this section if you own or operate a new or existing cement kiln that emits or has the potential to emit 100 tons per year or more of NO_x on or after August 4, 2023, and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). Any existing cement kiln with a potential to emit of 100 tons per year or more of NO_x on August 4, 2023, will continue to be subject to the

requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_x .

(c) *Emissions limitations.* If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

- (1) Long wet kilns: 4.0 lb/ton of clinker;
- (2) Long dry kilns: 3.0 lb/ton of clinker;
- (3) Preheater kilns: 3.8 lb/ton of clinker;
- (4) Precalciner kilns: 2.3 lb/ton of clinker; and
- (5) Preheater/Precalciner kilns: 2.8 lb/ton of clinker.

(d) *Testing and monitoring requirements.* (1) If you are the owner or operator of an affected unit you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season. You must calculate and record the 30-operating day rolling average emissions rate of NO_x as the total of all hourly emissions data for a cement kiln in the preceding 30 days, divided by the total tons of clinker produced in that kiln during the same 30-operating day period, using equation 1 to this paragraph (d)(1):

Equation 1 to Paragraph (d)(1)

$$E_{30D} = k \left(\frac{\sum_{i=1}^N C_i Q_i}{P} \right)$$

Where:

E_{30D} = 30 kiln operating day average emissions rate of NO_x , in lbs/ton of clinker.

C_i = Concentration of NO_x for hour i , in ppm.
 Q_i = Volumetric flow rate of effluent gas for hour i , where C_i and Q_i are on the same basis (either wet or dry), in scf/hr.

P = 30 days of clinker production during the same Time period as the NO_x emissions measured, in tons.

k = Conversion factor, 1.194×10^{-7} for NO_x, in lb/scf/ppm.

n = Number of kiln operating hours over 30 kiln operating days.

(2) If you are the owner or operator of an affected unit and are operating a NO_x continuous emissions monitoring system (CEMS) that monitors NO_x emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_x emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_x emissions rates measured by the CEMS shall be expressed in terms of lbs/ton of clinker and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_x emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_x CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (d)(3)(i) through (v) of this section.

(i) You must monitor and record kiln stack exhaust gas flow rate, hourly clinker production rate or kiln feed rate,

and kiln stack exhaust temperature during the initial performance test and subsequent annual performance tests to demonstrate continuous compliance with your NO_x emissions limits.

(ii) You must determine hourly clinker production by one of two methods:

(A) Install, calibrate, maintain, and operate a permanent weigh scale system to record weight rates of the amount of clinker produced in tons of mass per hour. The system of measuring hourly clinker production must be maintained within ± 5 percent accuracy; or

(B) Install, calibrate, maintain, and operate a permanent weigh scale system to measure and record weight rates of the amount of feed to the kiln in tons of mass per hour. The system of measuring feed must be maintained within ± 5 percent accuracy. Calculate your hourly clinker production rate using a kiln specific feed-to-clinker ratio based on reconciled clinker production rates determined for accounting purposes and recorded feed rates. This ratio should be updated monthly. Note that if this ratio changes at clinker reconciliation, you must use the new ratio going forward, but you do not have to retroactively change clinker production rates previously estimated.

(C) For each kiln operating hour for which you do not have data on clinker production or the amount of feed to the kiln, use the value from the most recent previous hour for which valid data are available.

(D) If you measure clinker production directly, record the daily clinker production rates; if you measure the kiln feed rates and calculate clinker production, record the daily kiln feed and clinker production rates.

(iii) You must use the kiln stack exhaust gas flow rate, hourly kiln production rate or kiln feed rate, and kiln stack exhaust temperature during the initial performance test and subsequent annual performance tests as indicators of NO_x operating parameters to demonstrate continuous compliance and establish site-specific indicator ranges for these operating parameters.

(iv) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(v) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (e) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(e) *Recordkeeping requirements.* If you are the owner or operator of an

affected unit, you shall maintain records of the following information for each day the affected unit operates:

(1) Calendar date;

(2) The average hourly NO_x emissions rates measured or predicted;

(3) The 30-day average NO_x emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_x emissions rates for the preceding 30 operating days;

(4) Identification of the affected unit operating days when the calculated 30-day average NO_x emissions rates are in excess of the applicable site-specific NO_x emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(7) If a CEMS is used to verify compliance:

(i) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ii) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(iii) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(8) Operating parameters required under paragraph (d) of this section to demonstrate compliance during the ozone season;

(9) Each fuel type, usage, and heat content; and

(10) Clinker production rates.

(f) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you shall submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emissions rate that exceeds the applicable emissions limit established under paragraph (c) of this section. Excess emissions reports must

be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by paragraph (d) of this section, including record of CEMS data or operating parameters required by paragraph (d) to demonstrate continuous compliance the applicable emissions limits under paragraph (c) of this section.

(g) *Initial notification requirements for existing affected units.* (1) The requirements of this paragraph (g) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit 100 tons per year or greater as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than December 4, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.*, physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

§ 52.43 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Iron and Steel Mills and Ferroalloy Manufacturing Industry?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means any reheat furnace meeting the applicability criteria of this section.

Day means a calendar day unless expressly stated to be a business day. In computing any period of time for recordkeeping and reporting purposes where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next business day.

Low NO_x burner means a burner designed to reduce flame turbulence by the mixing of fuel and air and by establishing fuel-rich zones for initial combustion, thereby reducing the formation of NO_x.

Low-NO_x technology means any post-combustion NO_x control technology capable of reducing NO_x emissions by 40% from baseline emission levels as measured during pre-installation testing.

Operating day means a 24-hour period beginning at 12:00 midnight during which any fuel is combusted at any time in the reheat furnace.

Reheat furnace means a furnace used to heat steel product—including metal ingots, billets, slabs, beams, blooms and other similar products—for the purpose of deformation and rolling.

(b) *Applicability.* The requirements of this section apply to each new or existing reheat furnace at an iron and steel mill or ferroalloy manufacturing facility that directly emits or has the potential to emit 100 tons per year or more of NO_x on or after August 4, 2023, does not have low-NO_x burners installed, and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). Any existing reheat furnace with a potential to emit of 100 tons per year or more of NO_x on August 4, 2023, will continue to be subject to the requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_x.

(c) *Emissions control requirements.* If you are the owner or operator of an affected unit without low-NO_x burners already installed, you must install and operate low-NO_x burners or equivalent alternative low-NO_x technology designed to achieve at least a 40% reduction from baseline NO_x emissions in accordance with the work plan established pursuant to paragraph (d) of this section. You must meet the emissions limit established under paragraph (d) on a 30-day rolling average basis.

(d) *Work plan requirements.* (1) The owner or operator of each affected unit must submit a work plan for each

affected unit by August 5, 2024. The work plan must be submitted via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g). Each work plan must include a description of the affected unit and rated production and energy capacities, identification of the low-NO_x burner or alternative low NO_x technology selected, and the phased construction timeframe by which you will design, install, and consistently operate the device. Each work plan shall also include, where applicable, performance test results obtained no more than five years before August 4, 2023, to be used as baseline emissions testing data providing the basis for required emissions reductions. If no such data exist, then the owner or operator must perform pre-installation testing as described in paragraph (e)(3) of this section.

(2) The owner or operator of an affected unit shall design each low-NO_x burner or alternative low-NO_x technology identified in the work plan to achieve NO_x emission reductions by a minimum of 40% from baseline emission levels measured during performance testing that meets the criteria set forth in paragraph (e)(1) of this section, or during pre-installation testing as described in paragraph (e)(3) of this section. Each low-NO_x burner or alternative low-NO_x technology shall be continuously operated during all production periods according to paragraph (c) of this section.

(3) The owner or operator of an affected unit shall establish an emissions limit in the work plan that the affected unit must comply with in accordance with paragraph (c) of this section.

(4) The EPA's action on work plans:

(i) The Administrator will provide via the CEDRI or analogous electronic submission system provided by the EPA notification to the owner or operator of an affected unit if the submitted work plan is complete, that is, whether the request contains sufficient information to make a determination, within 60 calendar days after receipt of the original work plan and within 60 calendar days after receipt of any supplementary information.

(ii) The Administrator will provide notification via the CEDRI or analogous electronic submission system provided by the EPA, which shall be publicly available, to the owner or operator of a decision to approve or intention to disapprove the work plan within 60 calendar days after providing written notification pursuant to paragraph

(d)(4)(i) of this section that the submitted work plan is complete.

(iii) Before disapproving a work plan, the Administrator will notify the owner or operator via the CEDRI or analogous electronic submission system provided by the EPA of the Administrator's intention to issue the disapproval, together with:

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended disapproval, additional information or arguments to the Administrator before further action on the work plan.

(iv) The Administrator's final decision to disapprove a work plan will be via the CEDRI or analogous electronic submission system provided by the EPA and publicly available, and will set forth the specific grounds on which the disapproval is based. The final decision will be made within 60 calendar days after presentation of additional information or argument (if the submitted work plan is complete), or within 60 calendar days after the deadline for the submission of additional information or argument under paragraph (d)(5)(iii)(B) of this section, if no such submission is made.

(v) If the Administrator disapproves the submitted work plan for failure to satisfy the requirements of paragraphs (c) and (d)(1) through (3) of this section, or if the owner or operator of an affected unit fails to submit a work plan by August 5, 2024, the owner or operator will be in violation of this section. Each day that the affected unit operates following such disapproval or failure to submit shall constitute a violation.

(e) *Testing and monitoring requirements.* (1) If you are the owner or operator of an affected unit you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season.

(2) If you are the owner or operator of an affected unit and are operating a NO_x continuous emissions monitoring system (CEMS) that monitors NO_x

emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_x emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_x emissions rates measured by the CEMS shall be expressed in form of the emissions limit established in the work plan and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits established in the work plan.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_x emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_x CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (e)(3)(i) through (iv) of this section.

(i) You must monitor and record stack exhaust gas flow rate and temperature during the initial performance test and subsequent annual performance tests to demonstrate continuous compliance with your NO_x emissions limits.

(ii) You must use the stack exhaust gas flow rate and temperature during the initial performance test and subsequent annual performance tests to establish a site-specific indicator for these operating parameters.

(iii) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(iv) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (f) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(f) *Recordkeeping requirements.* If you are the owner or operator of an affected unit, you shall maintain records of the following information for each day the affected unit operates:

(1) Calendar date;

(2) The average hourly NO_x emissions rates measured or predicted;

(3) The 30-day average NO_x emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_x emissions rates for the preceding 30 operating days;

(4) Identification of the affected unit operating days when the calculated 30-day average NO_x emissions rates are in excess of the applicable site-specific NO_x emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(5) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(6) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(7) If a CEMS is used to verify compliance:

(i) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ii) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(iii) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(8) Operating parameters required under paragraph (d) of this section to demonstrate compliance during the ozone season; and

(9) Each fuel type, usage, and heat content.

(g) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you shall submit a final report via the CEDRI or analogous electronic submission system provided by the EPA, by no later than March 30, 2026,

certifying that installation of each selected control device has been completed. You shall include in the report the dates of final construction and relevant performance testing, where applicable, demonstrating compliance with the selected emission limits pursuant to paragraphs (c) and (d) of this section.

(2) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(3) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emissions rate that exceeds the applicable emissions limit established under paragraphs (c) and (d) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(4) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by paragraphs (e) and (f) of this section, including record of CEMS data or operating parameters required by paragraph (e) to demonstrate compliance the applicable emissions limits established under paragraphs (c) and (d) of this section.

(h) *Initial notification requirements for existing affected units.* (1) The requirements of this paragraph (h) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit 100 tons per year or more of NO_x as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than December 4, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://>

cdx.epa.gov/). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.*, physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

§ 52.44 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Glass and Glass Product Manufacturing Industry?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected units means a glass manufacturing furnace meeting the applicability criteria of this section.

Borosilicate recipe means glass product composition of the following approximate ranges of weight proportions: 60 to 80 percent silicon dioxide, 4 to 10 percent total R₂O (*e.g.*, Na₂O and K₂O), 5 to 35 percent boric oxides, and 0 to 13 percent other oxides.

Container glass means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in Standard Industrial Classification (SIC) 3221 (SIC 3221).

Flat glass means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in SIC 3211.

Glass melting furnace means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass.

The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

Glass produced means the weight of the glass pulled from the glass melting furnace.

Idling means the operation of a glass melting furnace at less than 25% of the permitted production capacity or fuel use capacity as stated in the operating permit.

Lead recipe means glass product composition of the following ranges of weight proportions: 50 to 60 percent silicon dioxide, 18 to 35 percent lead oxides, 5 to 20 percent total R₂O (*e.g.*, Na₂O and K₂O), 0 to 8 percent total R₂O₃ (*e.g.*, Al₂O₃), 0 to 15 percent total RO (*e.g.*, CaO, MgO), other than lead oxide, and 5 to 10 percent other oxides.

Operating day means a 24-hr period beginning at 12:00 midnight during which the furnace combusts fuel at any time but excludes any period of startup, shutdown, or idling during which the affected unit complies with the requirements in paragraphs (d) through (f) of this section, as applicable.

Pressed and blown glass means glass which is pressed, blown, or both, including textile fiberglass, noncontinuous flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into: Glass of borosilicate recipe, Glass of soda-lime and lead recipes, and Glass of opal, fluoride, and other recipes.

Raw material means minerals, such as silica sand, limestone, and dolomite; inorganic chemical compounds, such as soda ash (sodium carbonate), salt cake (sodium sulfate), and potash (potassium carbonate); metal oxides and other metal-based compounds, such as lead oxide, chromium oxide, and sodium antimonate; metal ores, such as chromite and pyrolusite; and other substances that are intentionally added to a glass manufacturing batch and melted in a glass melting furnace to produce glass. Metals that are naturally-occurring trace constituents or contaminants of other substances are not considered to be raw materials.

Shutdown means the period of time during which a glass melting furnace is taken from an operational to a non-operational status by allowing it to cool down from its operating temperature to a cold or ambient temperature as the fuel supply is turned off.

Soda-lime recipe means glass product composition of the following ranges of weight proportions: 60 to 75 percent silicon dioxide, 10 to 17 percent total R₂O (*e.g.*, Na₂O and K₂O), 8 to 20 percent total RO but not to include any PbO (*e.g.*, CaO, and MgO), 0 to 8 percent total R₂O₃ (*e.g.*, Al₂O₃), and 1 to 5 percent other oxides.

Startup means the period of time, after initial construction or a furnace rebuild, during which a glass melting furnace is heated to operating temperatures by the primary furnace

combustion system, and systems and instrumentation are brought to stabilization.

Textile fiberglass means fibrous glass in the form of continuous strands having uniform thickness.

Wool fiberglass means fibrous glass of random texture, including acoustical board and tile (mineral wool), fiberglass insulation, glass wool, insulation (rock wool, fiberglass, slag, and silica minerals), and mineral wool roofing mats.

(b) *Applicability.* You are subject to the requirements under this section if you own or operate a new or existing glass manufacturing furnace that directly emits or has the potential to emit 100 tons per year or more of NO_x on or after August 4, 2023, and is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). Any existing glass manufacturing furnace with a potential to emit 100 tons per year or more of NO_x on August 4, 2023, will continue to be subject to the requirements of this section even if that unit later becomes subject to a physical or operational limitation that lowers its potential to emit below 100 tons per year of NO_x.

(c) *Emissions limitations.* If you are the owner or operator of an affected unit, you must meet the emissions limitations in paragraphs (c)(1) and (2) of this section on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter. For the 2026 ozone season, the emissions limitations in paragraphs (c)(1) and (2) do not apply during shutdown and idling if the affected unit complies with the requirements in paragraphs (e) and (f) of this section, as applicable. For the 2027 and subsequent ozone seasons, the emissions limitations in paragraphs (c)(1) and (2) do not apply during startup, shutdown, and idling, if the affected unit complies with the requirements in paragraphs (d) through (f) of this section, as applicable.

(1) Container glass, pressed/blown glass, or fiberglass manufacturing furnace: 4.0 lb/ton of glass; and

(2) Flat glass manufacturing furnace: 7.0 lb/ton of glass.

(d) *Startup requirements.* (1) If you are the owner or operator of an affected unit, you shall submit via the CEDRI or analogous electronic submission system provided by the EPA, no later than 30 days prior to the anticipated date of startup, the following information to assure proper operation of the furnace:

(i) A detailed list of activities to be performed during startup and explanations to support the length of time needed to complete each activity.

(ii) A description of the material process flow rates, system operating parameters, and other information that the owner or operator shall monitor and record during the startup period.

(iii) Identification of the control technologies or strategies to be utilized.

(iv) A description of the physical conditions present during startup periods that prevent the controls from being effective.

(v) A reasonably precise estimate as to when physical conditions will have reached a state that allows for the effective control of emissions.

(2) The length of startup following activation of the primary furnace combustion system may not exceed:

(i) Seventy days for a container, pressed or blown glass furnace;

(ii) Forty days for a fiberglass furnace; and

(iii) One hundred and four days for a flat glass furnace and for all other glass melting furnaces not covered under paragraphs (d)(2)(i) and (ii) of this section.

(3) During the startup period, the owner or operator of an affected unit shall maintain the stoichiometric ratio of the primary furnace combustion system so as not to exceed 5 percent excess oxygen, as calculated from the actual fuel and oxidant flow measurements for combustion in the affected unit.

(4) The owner or operator of an affected unit shall place the emissions control system in operation as soon as technologically feasible during startup to minimize emissions.

(e) *Shutdown requirements.* (1) If you are the owner or operator of an affected unit, you shall submit via the CEDRI or analogous electronic submission system provided by the EPA to the Administrator, no later than 30 days prior to the anticipated date of shutdown, the following information to assure proper operation of the furnace:

(i) A detailed list of activities to be performed during shutdown and explanations to support the length of time needed to complete each activity.

(ii) A description of the material process flow rates, system operating parameters, and other information that the owner or operator shall monitor and record during the shutdown period.

(iii) Identification of the control technologies or strategies to be utilized.

(iv) A description of the physical conditions present during shutdown periods that prevent the controls from being effective.

(v) A reasonably precise estimate as to when physical conditions will have reached a state that allows for the effective control of emissions.

(2) The duration of a shutdown, as measured from the time the furnace operations drop below 25% of the permitted production capacity or fuel use capacity to when all emissions from the furnace cease, may not exceed 20 days.

(3) If you are the owner or operator of an affected unit, you shall operate the emissions control system whenever technologically feasible during shutdown to minimize emissions.

(f) *Idling requirements.* (1) If you are the owner or operator of an affected unit, you shall operate the emissions control system whenever technologically feasible during idling to minimize emissions.

(2) If you are the owner or operator of an affected unit, your NO_x emissions during idling may not exceed the amount calculated using the following equation: Pounds per day emissions limit of NO_x = (Applicable NO_x emissions limit specified in paragraph (c) of this section expressed in pounds per ton of glass produced) × (Furnace permitted production capacity in tons of glass produced per day).

(3) To demonstrate compliance with the alternative daily NO_x emissions limit identified in paragraph (f)(2) of this section during periods of idling, the owners or operators of an affected unit shall maintain records consistent with paragraph (h)(3) of this section.

(g) *Testing and monitoring requirements.* (1) If you own or operate an affected unit subject to the NO_x emissions limits under paragraph (c) of this section you must conduct performance tests, on an annual basis, in accordance with the applicable reference test methods of 40 CFR part 60, appendix A-4, any alternative test method approved by the EPA as of June 5, 2023, under 40 CFR 59.104(f), 60.8(b)(3), 61.13(h)(1)(ii), 63.7(e)(2)(ii), or 65.158(a)(2) and available at the EPA's website (<https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods>), or other methods and procedures approved by the EPA through notice-and-comment rulemaking. The annual performance test does not have to be performed during the ozone season. Owners or operators of affected units must calculate and record the 30-day rolling average emissions rate of NO_x as the total of all hourly emissions data for an affected unit in the preceding 30 days, divided by the total tons of glass produced in that affected unit during the same 30-day period. Direct measurement or material balance using good engineering practice shall be used to determine the amount of glass produced during the performance test.

The rate of glass produced is defined as the weight of glass pulled from the affected unit during the performance test divided by the number of hours taken to perform the performance test.

(2) If you are the owner or operator of an affected unit subject to the NO_x emissions limits under paragraph (c)(1) of this section and are operating a NO_x CEMS that monitors NO_x emissions from the affected unit, you may use the CEMS data in lieu of the annual performance tests and parametric monitoring required under this section. You must meet the following requirements for using CEMS to monitor NO_x emissions:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂).

(ii) The CEMS shall be operated and data recorded during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. Data shall be recorded during calibration checks and zero and span adjustments.

(iii) The 1-hour average NO_x emissions rates measured by the CEMS shall be expressed in terms of lbs/ton of glass and shall be used to calculate the average emissions rates to demonstrate compliance with the applicable emissions limits in this section.

(iv) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the continuous monitoring systems.

(v) When NO_x emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emissions data will be obtained by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(3) If you are the owner or operator of an affected unit not operating NO_x CEMS, you must conduct an initial performance test before the 2026 ozone season to establish appropriate indicator ranges for operating parameters and continuously monitor those operator parameters consistent with the requirements of paragraphs (g)(3)(i) through (iv) of this section.

(i) You must monitor and record stack exhaust gas flow rate, hourly glass production, and stack exhaust gas temperature during the initial performance test and subsequent annual

performance tests to demonstrate continuous compliance with your NO_x emissions limits.

(ii) You must use the stack exhaust gas flow rate, hourly glass production, and stack exhaust gas temperature during the initial performance test and subsequent annual performance tests as NO_x CEMS indicators to demonstrate continuous compliance and establish a site-specific indicator ranges for these operating parameters.

(iii) You must repeat the performance test annually to reassess and adjust the site-specific operating parameter indicator ranges in accordance with the results of the performance test.

(iv) You must report and include your ongoing site-specific operating parameter data in the annual reports required under paragraph (h) of this section and semi-annual title V monitoring reports to the relevant permitting authority.

(4) If you are the owner or operator of an affected unit seeking to comply with the requirements for startup under paragraph (d) of this section or shutdown under paragraph (e) of this section in lieu of the applicable emissions limit under paragraph (c) of this section, you must monitor material process flow rates, fuel throughput, oxidant flow rate, and the selected system operating parameters in accordance with paragraphs (d)(1)(ii) and (e)(1)(ii) of this section.

(h) *Recordkeeping requirements.* (1) If you are the owner or operator of an affected unit, you shall maintain records of the following information for each day the affected unit operates:

(i) Calendar date;

(ii) The average hourly NO_x emissions rates measured or predicted;

(iii) The 30-day average NO_x emissions rates calculated at the end of each affected unit operating day from the measured or predicted hourly NO_x emissions rates for the preceding 30 operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day average NO_x emissions rates are in excess of the applicable site-specific NO_x emissions limit with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(vii) If a CEMS is used to verify compliance:

(A) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(B) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60; and

(C) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F;

(D) Operating parameters required under paragraph (g) to demonstrate compliance during the ozone season;

(viii) Each fuel type, usage, and heat content; and

(ix) Glass production rate.

(2) If you are the owner or operator of an affected unit, you shall maintain all records necessary to demonstrate compliance with the startup and shutdown requirements in paragraphs (d) and (e) of this section, including but not limited to records of material process flow rates, system operating parameters, the duration of each startup and shutdown period, fuel throughput, oxidant flow rate, and any additional records necessary to determine whether the stoichiometric ratio of the primary furnace combustion system exceeded 5 percent excess oxygen during startup.

(3) If you are the owner or operator of an affected unit, you shall maintain records of daily NO_x emissions in pounds per day for purposes of determining compliance with the applicable emissions limit for idling periods under paragraph (f)(2) of this section. Each owner or operator shall also record the duration of each idling period.

(i) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emissions rate that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you own or operate an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include records all records required by paragraph (g) of this section, including record of CEMS data or operating parameters to demonstrate continuous compliance the applicable emissions limits under paragraphs (c) of this section.

(j) *Initial notification requirements for existing affected units.* (1) The requirements of this paragraph (j) apply to the owner or operator of an existing affected unit.

(2) The owner or operator of an existing affected unit that emits or has a potential to emit greater than 100 tons per year or greater as of August 4, 2023, shall notify the Administrator via the CEDRI or analogous electronic submission system provided by the EPA that the unit is subject to this section. The notification, which shall be submitted not later than June 23, 2023, shall be submitted in PDF format to the EPA via CEDRI, which can be accessed through the EPA's CDX (<https://cdx.epa.gov/>). The notification shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (*i.e.*, physical location) of the affected unit;

(iii) An identification of the relevant standard, or other requirement, that is the basis for the notification and the unit's compliance date; and

(iv) A brief description of the nature, size, design, and method of operation of the facility and an identification of the types of emissions points (units) within the facility subject to the relevant standard.

§ 52.45 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from the Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, the Pulp, Paper, and Paperboard Mills Industries, Metal Ore Mining, and the Iron and Steel and Ferroalloy Manufacturing Industries?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given to them in the Act and in subpart A of 40 CFR part 60.

Affected unit means an industrial boiler meeting the applicability criteria of this section.

Boiler means an enclosed device using controlled flame combustion and having the primary purpose of

recovering thermal energy in the form of steam or hot water. Controlled flame combustion refers to a steady-state, or near steady-state, process wherein fuel and/or oxidizer feed rates are controlled.

Coal means "coal" as defined in 40 CFR 60.41b.

Distillate oil means "distillate oil" as defined in 40 CFR 60.41b.

Maximum heat input capacity means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis, as determined by the physical design and characteristics of the steam generating unit.

Natural gas means "natural gas" as defined in 40 CFR 60.41.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

Residual oil means "residual oil" as defined in 40 CFR 60.41c.

(b) *Applicability.* (1) The requirements of this section apply to each new or existing boiler with a design capacity of 100 mmBtu/hr or greater that receives 90% or more of its heat input from coal, residual oil, distillate oil, natural gas, or combinations of these fuels in the previous ozone season, is located at sources that are within the Basic Chemical Manufacturing industry, the Petroleum and Coal Products Manufacturing industry, the Pulp, Paper, and Paperboard industry, the Metal Ore Mining industry, and the Iron and Steel and Ferroalloys Manufacturing industry and which is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s). The requirements of this section do not apply to an emissions unit that meets the requirements for a low-use exemption as provided in paragraph (b)(2) of this section.

(2) If you are the owner or operator of a boiler meeting the applicability criteria of paragraph (b)(1) of this section that operates less than 10% per year on an hourly basis, based on the three most recent years of use and no more than 20% in any one of the three years, you are exempt from meeting the emissions limits of this section and are only subject to the recordkeeping and reporting requirements of paragraph (f)(2) of this section.

(i) If you are the owner or operator of an affected unit that exceeds the 10% per year hour of operation over three years or the 20% hours of operation per year criteria, you can no longer comply

via the low-use exemption provisions and must meet the applicable emissions limits and other applicable provisions as soon as possible but not later than one year from the date eligibility as a low-use boiler was negated by exceedance of the low-use boiler criteria.

(ii) [Reserved]

(c) *Emissions limitations.* If you are the owner or operator of an affected unit, you must meet the following emissions limitations on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) Coal-fired industrial boilers: 0.20 lbs NO_x/mmBtu;

(2) Residual oil-fired industrial boilers: 0.20 lbs NO_x/mmBtu;

(3) Distillate oil-fired industrial boilers: 0.12 lbs NO_x/mmBtu;

(4) Natural gas-fired industrial boilers: 0.08 lbs NO_x/mmBtu; and

(5) Boilers using combinations of fuels listed in paragraphs (c)(1) through (4) of this section: such units shall comply with a NO_x emissions limit derived by summing the products of each fuel's heat input and respective emissions limit and dividing by the sum of the heat input contributed by each fuel.

(d) *Testing and monitoring requirements.* (1) If you are the owner or operator of an affected unit, you shall conduct an initial compliance test as described in 40 CFR 60.8 using the continuous system for monitoring NO_x specified by EPA Test Method 7E of 40 CFR part 60, appendix A-4, to determine compliance with the emissions limits for NO_x identified in paragraph (c) of this section. In lieu of the timing of the compliance test described in 40 CFR 60.8(a), you shall conduct the test within 90 days from the installation of the pollution control equipment used to comply with the NO_x emissions limits in paragraph (c) of this section and no later than May 1, 2026.

(i) For the initial compliance test, you shall monitor NO_x emissions from the affected unit for 30 successive operating days and the 30-day average emissions rate will be used to determine compliance with the NO_x emissions limits in paragraph (c) of this section. You shall calculate the 30-day average emission rate as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(ii) You are not required to conduct an initial compliance test if the affected unit is subject to a pre-existing, federally enforceable requirement to monitor its NO_x emissions using a

CEMS in accordance with 40 CFR 60.13 or 40 CFR part 75.

(2) If you are the owner or operator of an affected unit with a heat input capacity of 250 mmBTU/hr or greater, you are subject to the following monitoring requirements:

(i) You shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring NO_x emissions and either oxygen (O₂) or carbon dioxide (CO₂), unless the Administrator has approved a request from you to use an alternative monitoring technique under paragraph (d)(2)(vii) of this section. If you have previously installed a NO_x emissions rate CEMS to meet the requirements of 40 CFR 60.13 or 40 CFR part 75 and continue to meet the ongoing requirements of 40 CFR 60.13 or 40 CFR part 75, that CEMS may be used to meet the monitoring requirements of this section.

(ii) You shall operate the CEMS and record data during all periods of operation during the ozone season of the affected unit except for CEMS breakdowns and repairs. You shall record data during calibration checks and zero and span adjustments.

(iii) You shall express the 1-hour average NO_x emissions rates measured by the CEMS in terms of lbs/mmBtu heat input and shall be used to calculate the average emissions rates under paragraph (c) of this section.

(iv) Following the date on which the initial compliance test is completed, you shall determine compliance with the applicable NO_x emissions limit in paragraph (c) of this section during the ozone season on a continuous basis using a 30-day rolling average emissions rate unless you monitor emissions by means of an alternative monitoring procedure approved pursuant to paragraph (d)(2)(vii) of this section. You shall calculate a new 30-day rolling average emissions rate for each operating day as the average of all the hourly NO_x emissions data for the preceding 30 operating days.

(v) You shall follow the procedures under 40 CFR 60.13 for installation, evaluation, and operation of the continuous monitoring systems. Additionally, you shall use a span value of 1000 ppm NO_x for affected units combusting coal and span value of 500 ppm NO_x for units combusting oil or gas. As an alternative to meeting these span values, you may elect to use the NO_x span values determined according to section 2.1.2 in appendix A to 40 CFR part 75.

(vi) When you are unable to obtain NO_x emissions data because of CEMS breakdowns, repairs, calibration checks

and zero and span adjustments, you will obtain emissions data by using standby monitoring systems, Method 7 of 40 CFR part 60, appendix A-4, Method 7A of 40 CFR part 60, appendix A-4, or other approved reference methods to provide emissions data for a minimum of 75 percent of the operating hours in each affected unit operating day, in at least 22 out of 30 successive operating days.

(vii) You may delay installing a CEMS for NO_x until after the initial performance test has been conducted. If you demonstrate during the performance test that emissions of NO_x are less than 70 percent of the applicable emissions limit in paragraph (c) of this section, you are not required to install a CEMS for measuring NO_x. If you demonstrate your affected unit emits less than 70 percent of the applicable emissions limit chooses to not install a CEMS, you must submit a written request to the Administrator that documents the results of the initial performance test and includes an alternative monitoring procedure that will be used to track compliance with the applicable NO_x emissions limit(s) in paragraph (c) of this section. The Administrator may consider the request and, following public notice and comment, may approve the alternative monitoring procedure with or without revision, or disapprove the request. Upon receipt of a disapproved request, you will have one year to install a CEMS.

(3) If you are the owner or operator of an affected unit with a heat input capacity less than 250 mmBTU/hr, you must monitor NO_x emission via the requirements of paragraph (e)(1) of this section or you must monitor NO_x emissions by conducting an annual test in conjunction with the implementation of a monitoring plan meeting the following requirements:

(i) You must conduct an initial performance test over a minimum of 24 consecutive steam generating unit operating hours at maximum heat input capacity to demonstrate compliance with the NO_x emission standards under paragraph (c) of this section using Method 7, 7A, or 7E of appendix A-4 to 40 CFR part 60, Method 320 of appendix A to 40 CFR part 63, or other approved reference methods.

(ii) You must conduct annual performance tests once per calendar year to demonstrate compliance with the NO_x emission standards under paragraph (c) of this section over a minimum of 3 consecutive steam generating unit operating hours at maximum heat input capacity using Method 7, 7A, or 7E of appendix A-4

to 40 CFR part 60, Method 320 of appendix A to 40 CFR part 63, or other approved reference methods. The annual performance test must be conducted before the affected units operates more than 400 hours in a given year.

(iii) You must develop and comply with a monitoring plan that relates the operational parameters to emissions of the affected unit. The owner or operator of each affected unit shall develop a monitoring plan that identifies the operating conditions of the affected unit to be monitored and the records to be maintained in order to reliably predict NO_x emissions and determine compliance with the applicable emissions limits of this section on a continuous basis. You shall include the following information in the plan:

(A) You shall identify the specific operating parameters to be monitored and the relationship between these operating parameters and the applicable NO_x emission rates. Operating parameters of the affected unit include, but are not limited to, the degree of staged combustion (*i.e.*, the ratio of primary air to secondary and/or tertiary air) and the level of excess air (*i.e.*, flue gas O₂ level).

(B) You shall include the data and information used to identify the relationship between NO_x emission rates and these operating conditions.

(C) *You shall identify:* how these operating parameters, including steam generating unit load, will be monitored on an hourly basis during periods of operation of the affected unit; the quality assurance procedures or practices that will be employed to ensure that the data generated by monitoring these operating parameters will be representative and accurate; and the type and format of the records of these operating parameters, including steam generating unit load, that you will maintain.

(4) You shall submit the monitoring plan to the EPA via the CEDRI reporting system, and request that the relevant permitting agency incorporate the monitoring plan into the facility's title V permit.

(e) *Recordkeeping requirements.* (1) If you are the owner or operator of an affected unit, which is not a low-use boiler, you shall maintain records of the following information for each day the affected unit operates during the ozone season:

(i) Calendar date;

(ii) The average hourly NO_x emissions rates (expressed as lbs NO₂/mmBtu heat input) measured or predicted;

(iii) The 30-day average NO_x emissions rates calculated at the end of

each affected unit operating day from the measured or predicted hourly NO_x emissions rates for the preceding 30 steam generating unit operating days;

(iv) Identification of the affected unit operating days when the calculated 30-day rolling average NO_x emissions rates are in excess of the applicable NO_x emissions limit in paragraph (c) of this section with the reasons for such excess emissions as well as a description of corrective actions taken;

(v) Identification of the affected unit operating days for which pollutant data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken;

(vi) Identification of the times when emissions data have been excluded from the calculation of average emissions rates and the reasons for excluding data;

(vii) Identification of "F" factor used for calculations, method of determination, and type of fuel combusted;

(viii) Identification of the times when the pollutant concentration exceeded full span of the CEMS;

(ix) Description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3 in appendix B to 40 CFR part 60;

(x) Results of daily CEMS drift tests and quarterly accuracy assessments as required under Procedure 1 of 40 CFR part 60, appendix F; and

(xi) The type and amounts of each fuel combusted.

(2) If you are the owner or operator of an affected unit complying as a low-use boiler, you must maintain the following records consistent with the requirements of § 52.40(g):

(i) Identification and location of the boiler;

(ii) Nameplate capacity;

(iii) The fuel or fuels used by the boiler;

(iv) For each operating day, the type and amount of fuel combusted, and the date and total number of hours of operation; and

(v) the annual hours of operation for each of the prior 3 years, and the 3-year average hours of operation.

(f) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g) within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you are required to submit excess emissions reports for any

excess emissions that occurred during the reporting period. Excess emissions are defined as any calculated 30-day rolling average NO_x emissions rate, as determined under paragraph (e)(1)(iii) of this section, that exceeds the applicable emissions limit in paragraph (c) of this section. Excess emissions reports must be submitted in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(3) If you are the owner or operator of an affected unit subject to the continuous monitoring requirements for NO_x under paragraph (d) of this section, you shall submit reports containing the information recorded under paragraph (d) of this section as described in paragraph (e)(1) of this section. You shall submit compliance reports for continuous monitoring in PDF format to the EPA via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section following the procedures specified in § 52.40(g).

(4) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g).

§ 52.46 What are the requirements of the Federal Implementation Plans (FIPs) relating to ozone season emissions of nitrogen oxides from Municipal Waste Combustors?

(a) *Definitions.* All terms not defined in this paragraph (a) shall have the meaning given them in the Act and in subpart A of 40 CFR part 60.

Affected unit means a municipal waste combustor meeting the applicability criteria of this section.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustor and who is responsible for daily onsite supervision, technical direction, management, and overall performance of the facility.

Mass burn refractory municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes combustors with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a cylindrical rotary

waterwall furnace or on a tumbling-tile grate.

Mass burn waterwall municipal waste combustor means a field-erected combustor that combusts municipal solid waste in a waterwall furnace.

Municipal waste combustor, MWC, or municipal waste combustor unit means:

(i) Means any setting or equipment that combusts solid, liquid, or gasified MSW including, but not limited to, field-erected incinerators (with or without heat recovery), modular incinerators (starved-air or excess-air), boilers (*i.e.*, steam-generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Municipal waste combustors do not include pyrolysis/combustion units located at plastics/rubber recycling units. Municipal waste combustors do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a MWC are defined as follows. The MWC unit includes, but is not limited to, the MSW fuel feed system, grate system, flue gas system, bottom ash system, and the combustor water system. The MWC boundary starts at the MSW pit or hopper and extends through:

(A) The combustor flue gas system, which ends immediately following the heat recovery equipment or, if there is no heat recovery equipment, immediately following the combustion chamber;

(B) The combustor bottom ash system, which ends at the truck loading station or similar ash handling equipment that transfer the ash to final disposal, including all ash handling systems that are connected to the bottom ash handling system; and

(C) The combustor water system, which starts at the feed water pump and ends at the piping exiting the steam drum or superheater.

(iii) The MWC unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine generator set.

Municipal waste combustor unit capacity means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under paragraph (e)(4) of this section.

Shift supervisor means the person who is in direct charge and control of the operation of a municipal waste combustor and who is responsible for onsite supervision, technical direction,

management, and overall performance of the facility during an assigned shift.

(b) *Applicability.* The requirements of this section apply to each new or existing municipal waste combustor unit with a combustion capacity greater than 250 tons per day (225 megagrams per day) of municipal solid waste and which is located within any of the States listed in § 52.40(c)(2), including Indian country located within the borders of any such State(s).

(c) *Emissions limitations.* If you are the owner or operator of an affected unit, you must meet the following emissions limitations at all times, except during startup and shutdown, on a 30-day rolling average basis during the 2026 ozone season and in each ozone season thereafter:

(1) 110 ppmvd at 7 percent oxygen on a 24-hour block averaging period; and

(2) 105 ppmvd at 7 percent oxygen on a 30-day rolling averaging period.

(d) *Startup and shutdown requirements.* If you are the owner or operator of an affected unit, you must comply with the following requirements during startup and shutdown:

(1) During periods of startup and shutdown, you shall meet the following emissions limits at stack oxygen content:

(i) 110 ppmvd at stack oxygen content on a 24-hour block averaging period; and

(ii) 105 ppmvd at stack oxygen content on a 30-day rolling averaging period.

(2) Duration of startup and shutdown, periods are limited to 3 hours per occurrence.

(3) The startup period commences when the affected unit begins the continuous burning of municipal solid waste and does not include any warmup period when the affected unit is combusting fossil fuel or other nonmunicipal solid waste fuel, and no municipal solid waste is being fed to the combustor.

(4) Continuous burning is the continuous, semicontinuous, or batch feeding of municipal solid waste for purposes of waste disposal, energy production, or providing heat to the combustion system in preparation for waste disposal or energy production. The use of municipal solid waste solely to provide thermal protection of the grate or hearth during the startup period when municipal solid waste is not being fed to the grate is not considered to be continuous burning.

(5) The owner and operator of an affected unit shall minimize NO_x emissions by operating and optimizing the use of all installed pollution control technology and combustion controls

consistent with the technological limitations, manufacturers' specifications, good engineering and maintenance practices, and good air pollution control practices for minimizing emissions (as defined in 40 CFR 60.11(d)) for such equipment and the unit at all times the unit is in operation.

(e) *Testing and monitoring requirements.* (1) If you are the owner or operator of an affected unit, you shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring the oxygen or carbon dioxide content of the flue gas at each location where NO_x are monitored and record the output of the system. You shall comply with the following test procedures and test methods:

(i) You shall use a span value of 25 percent oxygen for the oxygen monitor or 20 percent carbon dioxide for the carbon dioxide monitor;

(ii) You shall install, evaluate, and operate the CEMS in accordance with 40 CFR 60.13;

(iii) You shall complete the initial performance evaluation no later than 180 days after the date of initial startup of the affected unit, as specified under 40 CFR 60.8;

(iv) You shall operate the monitor in conformance with Performance Specification 3 in 40 CFR part 60, appendix B, except for section 2.3 (relative accuracy requirement);

(v) You shall operate the monitor in accordance with the quality assurance procedures of 40 CFR part 60, appendix F, except for section 5.1.1 (relative accuracy test audit); and

(vi) If you select carbon dioxide for use in diluent corrections, you shall establish the relationship between oxygen and carbon dioxide levels during the initial performance test according to the following procedures and methods:

(A) This relationship may be reestablished during performance compliance tests; and

(B) You shall submit the relationship between carbon dioxide and oxygen concentrations to the EPA as part of the initial performance test report and as part of the annual test report if the relationship is reestablished during the annual performance test.

(2) If you are the owner or operator of an affected unit, you shall use the following procedures and test methods to determine compliance with the NO_x emission limits in paragraph (c) of this section:

(i) If you are not already operating a CEMS in accordance with 40 CFR 60.13, you shall conduct an initial

performance test for nitrogen oxides consistent with 40 CFR 60.8.

(ii) You shall install and operate the NO_x CEMS according to Performance Specification 2 in 40 CFR part 60, appendix B, and shall follow the requirements of 40 CFR 60.58b(h)(10).

(iii) Quarterly accuracy determinations and daily calibration drift tests for the CEMS shall be performed in accordance with Procedure 1 in 40 CFR part 60, appendix F.

(iv) When NO_x continuous emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained using other monitoring systems as approved by the EPA or EPA Reference Method 19 in 40 CFR part 60, appendix A-7, to provide, as necessary, valid emissions data for a minimum of 90 percent of the hours per calendar quarter and 95 percent of the hours per calendar year the unit is operated and combusting municipal solid waste.

(v) You shall use EPA Reference Method 19, section 4.1, in 40 CFR part 60, appendix A-7, for determining the daily arithmetic average NO_x emissions concentration.

(A) You may request that compliance with the NO_x emissions limit be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. The relationship between oxygen and carbon dioxide levels for the affected unit shall be established as specified in paragraph (e)(1)(vi) of this section.

(B) [Reserved]

(vi) At a minimum, you shall obtain valid CEMS hourly averages for 90 percent of the operating hours per calendar quarter and for 95 percent of the operating hours per calendar year that the affected unit is combusting municipal solid waste:

(A) At least 2 data points per hour shall be used to calculate each 1-hour arithmetic average.

(B) Each NO_x 1-hour arithmetic average shall be corrected to 7 percent oxygen on an hourly basis using the 1-hour arithmetic average of the oxygen (or carbon dioxide) continuous emissions monitoring system data.

(vii) The 1-hour arithmetic averages section shall be expressed in parts per million by volume (dry basis) and used to calculate the 24-hour daily arithmetic average concentrations. The 1-hour arithmetic averages shall be calculated using the data points required under 40 CFR 60.13(e)(2).

(viii) All valid CEMS data must be used in calculating emissions averages even if the minimum CEMS data

requirements of paragraph (e)(2)(iv) of this section are not met.

(ix) The procedures under 40 CFR 60.13 shall be followed for installation, evaluation, and operation of the CEMS. The initial performance evaluation shall be completed no later than 180 days after the date of initial startup of the municipal waste combustor unit.

(3) If you are the owner or operator of an affected unit, you must determine compliance with the startup and shutdown requirements of paragraph (d) of this section by following the requirements in paragraphs (e)(3)(i) and (ii) of this section:

(i) You can measure CEMS data at stack oxygen content. You can dismiss or exclude CEMS data from compliance calculations, but you shall record and report CEMS data in accordance with the provisions of 40 CFR 60.59b(d)(7).

(ii) You shall determine compliance with the NO_x mass loading emissions limitation for periods of startup and shutdown by calculating the 24-hour average of all hourly average NO_x emissions concentrations from continuous emissions monitoring systems.

(A) You shall perform this calculations using stack flow rates derived from flow monitors, for all the hours during the 3-hour startup or shutdown period and the remaining 21 hours of the 24-hour period.

(B) [Reserved]

(4) If you are the owner or operator of an affected unit, you shall calculate municipal waste combustor unit capacity using the following procedures:

(i) For municipal waste combustor units capable of combusting municipal solid waste continuously for a 24-hour period, municipal waste combustor unit capacity shall be calculated based on 24 hours of operation at the maximum charging rate. The maximum charging rate shall be determined as specified in paragraphs (e)(4)(i)(A) and (B) of this section as applicable.

(A) For combustors that are designed based on heat capacity, the maximum charging rate shall be calculated based on the maximum design heat input capacity of the unit and a heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel.

(B) For combustors that are not designed based on heat capacity, the maximum charging rate shall be the maximum design charging rate.

(ii) For batch feed municipal waste combustor units, municipal waste combustor unit capacity shall be

calculated as the maximum design amount of municipal solid waste that can be charged per batch multiplied by the maximum number of batches that could be processed in a 24-hour period. The maximum number of batches that could be processed in a 24-hour period is calculated as 24 hours divided by the design number of hours required to process one batch of municipal solid waste, and may include fractional batches (e.g., if one batch requires 16 hours, then 24/16, or 1.5 batches, could be combusted in a 24-hour period). For batch combustors that are designed based on heat capacity, the design heating value of 12,800 kilojoules per kilogram for combustors firing refuse-derived fuel and a heating value of 10,500 kilojoules per kilogram for combustors firing municipal solid waste that is not refuse-derived fuel shall be used in calculating the municipal waste combustor unit capacity in megagrams per day of municipal solid waste.

(f) *Recordkeeping requirements.* If you are the owner or operator of an affected unit, you shall maintain records of the following information, as applicable, for each affected unit consistent with the requirements of § 52.40(g).

(1) The calendar date of each record.

(2) The emissions concentrations and parameters measured using continuous monitoring systems.

(i) All 1-hour average NO_x emissions concentrations.

(ii) The average concentrations and percent reductions, as applicable, including all 24-hour daily arithmetic average NO_x emissions concentrations.

(3) Identification of the calendar dates and times (hours) for which valid hourly NO_x emissions, including reasons for not obtaining the data and a description of corrective actions taken.

(4) Identification of each occurrence that NO_x emissions data, or operational data (i.e., unit load) have been excluded from the calculation of average emissions concentrations or parameters, and the reasons for excluding the data.

(5) The results of daily drift tests and quarterly accuracy determinations for CEMS, as required under 40 CFR part 60, appendix F, Procedure 1.

(6) The following records:

(i) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by 40 CFR 60.54b(a) including the dates of initial and renewal certifications and documentation of current certification;

(ii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have been fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program as required by 40 CFR 60.54b(b) including the dates of initial and renewal certifications and documentation of current certification;

(iii) Records showing the names of the municipal waste combustor chief facility operator, shift supervisors, and control room operators who have completed the EPA municipal waste combustor operator training course or a State-approved equivalent course as required by 40 CFR 60.54b(d) including documentation of training completion; and

(iv) Records of when a certified operator is temporarily off site. Include two main items:

(A) If the certified chief facility operator and certified shift supervisor are off site for more than 12 hours, but for 2 weeks or less, and no other certified operator is on site, record the dates that the certified chief facility operator and certified shift supervisor were off site.

(B) When all certified chief facility operators and certified shift supervisors are off site for more than 2 weeks and no other certified operator is on site, keep records of four items:

(1) Time of day that all certified persons are off site.

(2) The conditions that cause those people to be off site.

(3) The corrective actions taken by the owner or operator of the affected unit to ensure a certified chief facility operator or certified shift supervisor is on site as soon as practicable.

(4) Copies of the reports submitted every 4 weeks that summarize the actions taken by the owner or operator of the affected unit to ensure that a certified chief facility operator or certified shift supervisor will be on site as soon as practicable.

(7) Records showing the names of persons who have completed a review of the operating manual as required by 40 CFR 60.54b(f) including the date of the initial review and subsequent annual reviews.

(8) Records of steps taken to minimize emissions during startup and shutdown as required by paragraph (d)(5) of this section.

(g) *Reporting requirements.* (1) If you are the owner or operator of an affected unit, you must submit the results of the performance test or performance evaluation of the CEMS following the procedures specified in § 52.40(g)

within 60 days after the date of completing each performance test required by this section.

(2) If you are the owner or operator of an affected unit, you shall submit an annual report in PDF format to the EPA by January 30th of each year via CEDRI or analogous electronic reporting approach provided by the EPA to report data required by this section. Annual reports shall be submitted following the procedures in § 52.40(g). The report shall include all information required by paragraph (e) of this section, including CEMS data to demonstrate compliance with the applicable emissions limits under paragraph (c) of this section.

Subpart B—Alabama

■ 5. Amend § 52.54 by revising paragraphs (b)(2) and (3) and adding paragraphs (b)(4) and (5) to read as follows:

§ 52.54 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 through 2022. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(ii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

(3) The owner and operator of each source and each unit located in the State of Alabama and Indian country within the borders of the State and for which

requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Alabama's SIP.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, if, at the time of the approval of Alabama's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 2 allowances or CSAPR NO_x Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season

Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

Subpart E—Arkansas

■ 6. Amend § 52.184 by:

- a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);
- b. In newly redesignated paragraph (a)(2):
- i. Removing “2017 and each subsequent year” and adding in its place “2017 through 2022”; and
- ii. Removing the second sentence;
- c. Revising newly redesignated paragraph (a)(3); and
- d. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.184 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Arkansas and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Arkansas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Arkansas' SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Arkansas and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart F—California

■ 7. Add § 52.284 to read as follows:

§ 52.284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

The owner and operator of each source located in the State of California and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart O—Illinois

■ 8. Amend § 52.731 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Illinois and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart P—Indiana

■ 9. Amend § 52.789 by:

- a. In paragraph (b)(2), removing “(b)(2)(iv), except” and adding in its place “(b)(2)(ii), except”;
- b. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- c. Adding paragraph (c).

The addition reads as follows:

§ 52.789 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Indiana and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart S—Kentucky

■ 10. Amend § 52.940 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.940 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Kentucky and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart T—Louisiana

■ 11. Amend § 52.984 by:

- a. In paragraph (d)(3), revising the second and third sentences;
- b. Revising paragraph (d)(4);
- c. In paragraph (d)(5), adding “and Indian country within the borders of the State” after “in the State”; and
- d. Adding paragraph (e).

The revision and addition read as follows:

§ 52.984 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *
(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas

of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Louisiana’s SIP.

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, if, at the time of the approval of Louisiana’s SIP revision described in paragraph (d)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

* * * * *

(e) The owner and operator of each source located in the State of Louisiana and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart V—Maryland

■ 12. Amend § 52.1084 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.1084 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Maryland

and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart X—Michigan

- 13. Amend § 52.1186 by:
 - a. In paragraph (e)(3), revising the second and third sentences;
 - b. Revising paragraph (e)(4);
 - c. In paragraph (e)(5), adding “and Indian country within the borders of the State” after “in the State”; and
 - d. Adding paragraph (f).

The revision and addition read as follows:

§ 52.1186 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Michigan’s SIP.

(4) Notwithstanding the provisions of paragraph (e)(3) of this section, if, at the time of the approval of Michigan’s SIP revision described in paragraph (e)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply,

unless provided otherwise by such approval of the State’s SIP revision.

* * * * *

(f) The owner and operator of each source located in the State of Michigan and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart Y—Minnesota

- 14. Amend § 52.1240 by adding paragraph (d) to read as follows:

§ 52.1240 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d)(1) The owner and operator of each source and each unit located in the State of Minnesota and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Minnesota’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Minnesota’s SIP.

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, if, at the time of the approval of Minnesota’s SIP revision described in paragraph (d)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the

State’s SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State’s SIP revision.

Subpart Z—Mississippi

- 15. Amend § 52.1284 by:
 - a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);
 - b. In newly redesignated paragraph (a)(2):
 - i. Removing “2017 and each subsequent year” and adding in its place “2017 through 2022”; and
 - ii. Removing the second and third sentences;
 - c. Revising newly redesignated paragraph (a)(3); and
 - d. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.1284 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State’s SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi’s State Implementation Plan (SIP) as correcting the SIP’s deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator’s approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State’s SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Mississippi’s SIP.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Mississippi's SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Mississippi and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart AA—Missouri

■ 16. Amend § 52.1326 by revising paragraph (b)(2) and (3) and adding paragraphs (b)(4) and (5) and (c) to read as follows:

§ 52.1326 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(2) The owner and operator of each source and each unit located in the State of Missouri and for which requirements

are set forth under the CSAPR NO_x Ozone Season Group 2 Trading Program in subpart EEEEE of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2017 through 2022. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(ii), except to the extent the Administrator's approval is partial or conditional.

(3) The owner and operator of each source and each unit located in the State of Missouri and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Missouri's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii), except to the extent the Administrator's approval is partial or conditional.

(4) Notwithstanding the provisions of paragraphs (b)(2) and (3) of this section, if, at the time of the approval of Missouri's SIP revision described in paragraph (b)(2) or (3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 2 allowances or CSAPR NO_x Ozone Season Group 3 allowances under subpart EEEEE or GGGGG, respectively, of part 97 of this chapter to units in the State for a control period in any year, the provisions of such subpart authorizing the Administrator to complete the allocation and recordation of such allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (b)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts

of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State for control periods after 2022) shall continue to apply.

(c) The owner and operator of each source located in the State of Missouri and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart DD—Nevada

■ 17. Add § 52.1492 to read as follows:

§ 52.1492 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Nevada and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Nevada's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Nevada's SIP.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if, at the time of the approval of Nevada's SIP revision described in paragraph (a)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within

the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) The owner and operator of each source located in the State of Nevada and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart FF—New Jersey

- 18. Amend § 52.1584 by:
 - a. In paragraph (e)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (f).

The addition reads as follows:

§ 52.1584 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(f) The owner and operator of each source located in the State of New Jersey and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart HH—New York

- 19. Amend § 52.1684 by:
 - a. In paragraph (b)(3), revising the second and third sentences;
 - b. Revising paragraph (b)(4);
 - c. In paragraph (b)(5), adding “and Indian country within the borders of the State” after “in the State”; and
 - d. Adding paragraph (c).

The revision and addition read as follows:

§ 52.1684 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(b) * * *

(3) * * * The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the

promulgation of an approval by the Administrator of a revision to New York's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to New York's SIP.

(4) Notwithstanding the provisions of paragraph (b)(3) of this section, if, at the time of the approval of New York's SIP revision described in paragraph (b)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(c) The owner and operator of each source located in the State of New York and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart KK—Ohio

- 20. Amend § 52.1882 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).

The addition reads as follows:

§ 52.1882 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Ohio and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43,

§ 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart LL—Oklahoma

- 21. Amend § 52.1930 by:
 - a. Redesignating paragraphs (a) through (c) as paragraphs (a)(1) through (3);
 - b. In newly redesignated paragraph (a)(2):
 - i. Removing “2017 and each subsequent year” and adding in its place “2017 through 2022”; and
 - ii. Removing the second and third sentences;
 - c. Revising newly redesignated paragraph (a)(3); and
 - d. Adding paragraphs (a)(4) and (5) and (b).

The revision and additions read as follows:

§ 52.1930 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) * * *

(3) The owner and operator of each source and each unit located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Oklahoma's SIP.

(4) Notwithstanding the provisions of paragraph (a)(3) of this section, if, at the time of the approval of Oklahoma's SIP revision described in paragraph (a)(3) of this section, the Administrator has already started recording any allocations

of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (a)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(b) The owner and operator of each source located in the State of Oklahoma and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart NN—Pennsylvania

- 22. Amend § 52.2040 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).
- The addition reads as follows:

§ 52.2040 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Pennsylvania and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions

occurring in 2026 and each subsequent year.

Subpart SS—Texas

- 23. Amend § 52.2283 by:
 - a. In paragraph (d)(2):
 - i. Removing “2017 and each subsequent year” and adding in its place “2017 through 2022”; and
 - ii. Removing the second and third sentences;
 - b. Revising paragraph (d)(3); and
 - c. Adding paragraphs (d)(4) and (5) and (e).

The revision and additions read as follows:

§ 52.2283 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(d) * * *
(3) The owner and operator of each source and each unit located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Texas' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Texas' SIP.

(4) Notwithstanding the provisions of paragraph (d)(3) of this section, if, at the time of the approval of Texas' SIP revision described in paragraph (d)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period

in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (d)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

(e) The owner and operator of each source located in the State of Texas and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart TT—Utah

- 24. Add § 52.2356 to read as follows:

§ 52.2356 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a)(1) The owner and operator of each source and each unit located in the State of Utah and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Utah's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal

Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Utah's SIP.

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, if, at the time of the approval of Utah's SIP revision described in paragraph (a)(1) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) The owner and operator of each source located in the State of Utah and Indian country within the borders of the State and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart VV—Virginia

- 25. Amend § 52.2440 by:
 - a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
 - b. Adding paragraph (c).

The addition reads as follows:

§ 52.2440 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of Virginia and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart XX—West Virginia

- 26. Amend § 52.2540 by:

- a. In paragraph (b)(3), removing “(b)(2)(v), except” and adding in its place “(b)(2)(iii), except”; and
- b. Adding paragraph (c).

The addition reads as follows:

§ 52.2540 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(c) The owner and operator of each source located in the State of West Virginia and for which requirements are set forth in § 52.40 and § 52.41, § 52.42, § 52.43, § 52.44, § 52.45, or § 52.46 must comply with such requirements with regard to emissions occurring in 2026 and each subsequent year.

Subpart YY—Wisconsin

- 27. Amend § 52.2587 by:
 - a. In paragraph (e)(2):
 - i. Removing “2017 and each subsequent year” and adding in its place “2017 through 2022”; and
 - ii. Removing the second and third sentences;
 - b. Revising paragraph (e)(3); and
 - c. Adding paragraphs (e)(4) and (5).

The revision and additions read as follows:

§ 52.2587 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

* * * * *

(e) * * *

(3) The owner and operator of each source and each unit located in the State of Wisconsin and Indian country within the borders of the State and for which requirements are set forth under the CSAPR NO_x Ozone Season Group 3 Trading Program in subpart GGGGG of part 97 of this chapter must comply with such requirements with regard to emissions occurring in 2023 and each subsequent year. The obligation to comply with such requirements with regard to sources and units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority will be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan (FIP) under § 52.38(b)(1) and (b)(2)(iii) for those sources and units, except to the extent the Administrator's approval is partial or conditional. The obligation to comply with such requirements with regard to sources and units located in areas of Indian country within the borders of the State not subject to the State's SIP

authority will not be eliminated by the promulgation of an approval by the Administrator of a revision to Wisconsin's SIP.

(4) Notwithstanding the provisions of paragraph (e)(3) of this section, if, at the time of the approval of Wisconsin's SIP revision described in paragraph (e)(3) of this section, the Administrator has already started recording any allocations of CSAPR NO_x Ozone Season Group 3 allowances under subpart GGGGG of part 97 of this chapter to units in the State and areas of Indian country within the borders of the State subject to the State's SIP authority for a control period in any year, the provisions of subpart GGGGG of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of CSAPR NO_x Ozone Season Group 3 allowances to such units for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(5) Notwithstanding the provisions of paragraph (e)(2) of this section, after 2022 the provisions of § 97.826(c) of this chapter (concerning the transfer of CSAPR NO_x Ozone Season Group 2 allowances between certain accounts under common control), the provisions of § 97.826(e) of this chapter (concerning the conversion of amounts of unused CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods before 2023 to different amounts of CSAPR NO_x Ozone Season Group 3 allowances), and the provisions of § 97.811(e) of this chapter (concerning the recall of CSAPR NO_x Ozone Season Group 2 allowances equivalent in quantity and usability to all such allowances allocated to units in the State and Indian country within the borders of the State for control periods after 2022) shall continue to apply.

PART 75—CONTINUOUS EMISSION MONITORING

- 28. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q and 7651k note.

Subpart H—NO_x Mass Emissions Provisions

- 29. Amend § 75.72 by:
 - a. In paragraph (c)(3), removing “appendix B of this part” and adding in its place “appendix B to this part”;
 - b. In paragraph (e)(1)(ii), removing “heat input from” and adding in its place “heat input rate to”;
 - c. In paragraph (e)(2), removing “appendix D of this part” and adding in its place “appendix D to this part”; and

- d. Adding paragraph (f).
The addition reads as follows:

§ 75.72 Determination of NO_x mass emissions for common stack and multiple stack configurations.

* * * * *

(f) *Procedures for apportioning hourly NO_x mass emission rate to the unit level.* If the owner or operator of a unit determining hourly NO_x mass emission rate at a common stack under this section is subject to a State or Federal NO_x mass emissions reduction program under subpart GGGGG of part 97 of this chapter or under a state implementation plan approved pursuant to § 52.38(b)(12) of this chapter, then on and after January 1, 2024, the owner or operator shall apportion the hourly NO_x mass emissions rate at the common stack to each unit using the common stack based on the ratio of the hourly heat input rate for each such unit to the total hourly heat input rate for all such units, in conjunction with the appropriate unit and stack operating times, according to the procedures in section 8.5.3 of appendix F to this part.

* * * * *

- 30. Amend § 75.73 by:
 - a. Revising paragraph (a)(3);
 - b. In paragraph (c)(1), removing “NO_x emissions” and adding in its place “NO_x emissions”;
 - c. Adding a heading to paragraph (c)(2);
 - d. Revising paragraphs (c)(3) and (f)(1) introductory text;
 - e. Removing and reserving paragraph (f)(1)(i)(B);
 - f. In paragraph (f)(1)(ii)(G), removing “appendix D;” and adding in its place “appendix D to this part;”;
 - g. Adding paragraphs (f)(1)(ix) and (x);
 - h. Adding a heading to paragraph (f)(2); and
 - i. Revising paragraph (f)(4).

The revisions and additions read as follows:

§ 75.73 Recordkeeping and reporting.

(a) * * *

(3) For each hour when the unit is operating, NO_x mass emission rate, calculated in accordance with section 8 of appendix F to this part.

* * * * *

(c) * * *

(2) *Monitoring plan updates.* * * *

(3) *Contents of the monitoring plan.*

Each monitoring plan shall contain the information in § 75.53(g)(1) in electronic format and the information in § 75.53(g)(2) in hardcopy format. In addition, to the extent applicable, each monitoring plan shall contain the information in § 75.53(h)(1)(i) and (h)(2)(i) in electronic format and the

information in § 75.53(h)(1)(ii) and (h)(2)(ii) in hardcopy format. For units using the low mass emissions excepted methodology under § 75.19, the monitoring plan shall include the additional information in § 75.53(h)(4)(i) and (ii). The monitoring plan also shall include a seasonal controls indicator and an ozone season fuel-switching flag.

* * * * *

(f) * * *

(1) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in this paragraph (f)(1) and in paragraphs (f)(2) and (3) of this section to the Administrator quarterly, unless the unit has been placed in long-term cold storage (as defined in § 72.2 of this chapter). Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the information provided in paragraphs (f)(1)(i) through (x) of this section and shall also include the date of report generation. A unit placed into long-term cold storage is exempted from submitting quarterly reports beginning with the calendar quarter following the quarter in which the unit is placed into long-term cold storage, provided that the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced operation of the unit).

* * * * *

(ix) On and after on January 1, 2024, for a unit subject to subpart GGGGG of part 97 of this chapter or a state implementation plan approved under § 52.38(b)(12) of this chapter and determining NO_x mass emission rate at a common stack, apportioned hourly NO_x mass emission rate for the unit, lb/hr.

(x) On and after January 1, 2024, for a unit that is subject to subpart GGGGG of part 97 of this chapter or a state implementation plan approved under § 52.38(b)(12) of this chapter, that lists coal or a solid coal-derived fuel as a fuel in the unit’s monitoring plan under § 75.53 for any portion of the ozone season in the year for which data are being reported, that serves a generator of 100 MW or larger nameplate capacity, and that is not a circulating fluidized bed boiler, provided that through December 31, 2029, the requirements under this paragraph (f)(1)(x) shall apply to a unit in a given calendar year only if the unit also was equipped with selective catalytic reduction controls on

or before September 30 of the previous year:

(A) Daily NO_x emissions (lbs) for each day of the reporting period;

(B) Daily heat input (mmBtu) for each day of the reporting period;

(C) Daily average NO_x emission rate (lb/mmBtu, rounded to the nearest thousandth) for each day of the reporting period;

(D) Daily NO_x emissions (lbs) exceeding the applicable backstop daily NO_x emission rate for each day of the reporting period;

(E) Cumulative NO_x emissions (tons, rounded to the nearest tenth) exceeding the applicable backstop daily NO_x emission rate during the ozone season; and

(F) Cumulative NO_x emissions (tons, rounded to the nearest tenth) exceeding the applicable backstop daily NO_x emission rate during the ozone season by more than 50 tons, calculated as the remainder of the amount calculated under paragraph (f)(1)(x)(E) of this section minus 50, but not less than zero.

(2) *Verification of identification codes and formulas.* * * *

(4) *Electronic format, method of submission, and explanatory information.* The designated representative shall comply with all of the quarterly reporting requirements in § 75.64(d), (f), and (g).

- 31. Revise § 75.75 to read as follows:

§ 75.75 Additional ozone season calculation procedures.

(a) The owner or operator of a unit that is required to calculate daily or ozone season heat input shall do so by summing the unit’s hourly heat input determined according to the procedures in this part for all hours in which the unit operated during the day or ozone season.

(b) The owner or operator of a unit that is required to determine daily or ozone season NO_x emission rate (in lbs/mmBtu) shall do so by dividing daily or ozone season NO_x mass emissions (in lbs) determined in accordance with this subpart, by daily or ozone season heat input determined in accordance with paragraph (a) of this section.

- 32. Amend appendix F to part 75 by:

- a. Adding section 5.3.3;

- b. In section 8.1.2, revising the introductory text preceding Equation F–25;

- c. In section 8.4, revising the introductory text, paragraph (a) introductory text (preceding Equation F–27), and paragraph (b) introductory text (preceding Equation F–27a) and adding paragraph (c);

- d. In section 8.5.2, removing “the hourly NO_x mass emissions at each

unit” and adding in its place “hourly NO_x mass emissions at the common stack”; and

■ e. Adding section 8.5.3.

The additions and revisions read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

5. Procedures for Heat Input

* * * * *

5.3 Heat Input Summation (for Heat Input Determined Using a Flow Monitor and Diluent Monitor)

* * * * *

5.3.3 Calculate total daily heat input for a unit using a flow monitor and diluent monitor to calculate heat input, using the following equation:

$$HI_d = \sum_{h=1}^{24} HI_h t_h$$

(Eq. F-18c)

Where:

HI_d = Total heat input for a unit for the day, mmBtu.

HI_h = Heat input rate for the unit for hour “h” from Equation F-15, F-16, F-17, F-18, F-21a, or F-21b to this appendix, mmBtu/hr.

t_h = Unit operating time, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).

h = Designation of a particular hour.

* * * * *

8. Procedures for NO_x Mass Emissions

* * * * *

8.1.2 If NO_x emission rate is measured at a common stack and heat input rate is measured at the unit level, calculate the hourly heat input rate at the common stack according to the following formula:

* * * * *

8.4 Use the following equations to calculate daily, quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions:

(a) When hourly NO_x mass emissions are reported in lb., use Eq. F-27 to this appendix

to calculate quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions in tons.

* * * * *

(b) When hourly NO_x mass emission rate is reported in lb/hr, use Eq. F-27a to this appendix to calculate quarterly, cumulative ozone season, and cumulative year-to-date NO_x mass emissions in tons.

* * * * *

(c) To calculate daily NO_x mass emissions for a unit in pounds, use Eq. F-27b to this appendix.

$$M_{(NOX)_d} = \sum_{h=1}^{24} E_{(NOX)_h} t_h$$

(Eq. F-27b)

Where:

M_{(NOX)_d} = NO_x mass emissions for a unit for the day, pounds.

E_{(NOX)_h} = NO_x mass emission rate for the unit for hour “h” from Equation F-24a, F-26a, F-26b, or F-28, lb/hr.

t_h = Unit operating time, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).

h = Designation of a particular hour.

* * * * *

8.5.3 Where applicable, the owner or operator of a unit that determines hourly NO_x mass emission rate at a common stack shall apportion hourly NO_x mass emissions rate to the units using the common stack based on the hourly heat input rate, using Equation F-28 to this appendix:

$$E_{(NOX)_i} = E_{(NOX)CS} \left(\frac{t_{CS}}{t_i} \right) \left[\frac{HI_i t_i}{\sum_{i=1}^n HI_i t_i} \right]$$

(Eq. F-28)

Where:

E_{(NOX)_i} = Apportioned NO_x mass emission rate for the hour for unit “i”, lb/hr.

E_{(NOX)_{CS}} = NO_x mass emission rate for the hour at the common stack, lb/hr.

HI_i = Heat input rate for the hour for unit “i”, from Equation F-15, F-16, F-17, F-18, F-21a, or F-21b to this appendix, mmBtu/hr.

t_i = Operating time for unit “i”, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one

quarter of an hour, at the option of the owner or operator).

t_{CS} = Common stack operating time, fraction of the hour (0.00 to 1.00, in equal increments from one hundredth to one quarter of an hour, at the option of the owner or operator).

n = Number of units using the common stack.

i = Designation of a particular unit.

* * * * *

PART 78—APPEAL PROCEDURES

■ 33. The authority citation for part 78 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 34. Amend § 78.1 by:

■ a. In paragraphs (b)(13)(i), (b)(14)(i), (b)(15)(i), (b)(16)(i), and (b)(17)(i), removing “decision on the” and adding in its place “calculation of an”;

- b. In paragraph (b)(17)(viii), adding “or (e)” after “§ 97.826(d)”;
- c. In paragraph (b)(17)(ix), adding “or (e)” after “§ 97.811(d)”;
- d. In paragraph (b)(18)(i), removing “decision on the” and adding in its place “calculation of an”; and
- e. Revising paragraph (b)(19).
The revision reads as follows:

§ 78.1 Purpose and scope.

* * * * *

(b) * * *

(19) Under subpart GGGGG of part 97 of this chapter:

(i) The calculation of a dynamic trading budget under § 97.1010(a)(4) of this chapter.

(ii) The calculation of an allocation of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1011 or § 97.1012 of this chapter.

(iii) The decision on the transfer of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1023 of this chapter.

(iv) The decision on the deduction of CSAPR NO_x Ozone Season Group 3 allowances under § 97.1024, § 97.1025, or § 97.1026(d) of this chapter.

(v) The correction of an error in an Allowance Management System account under § 97.1027 of this chapter.

(vi) The adjustment of information in a submission and the decision on the deduction and transfer of CSAPR NO_x Ozone Season Group 3 allowances based on the information as adjusted under § 97.1028 of this chapter.

(vii) The finalization of control period emissions data, including retroactive adjustment based on audit.

(viii) The approval or disapproval of a petition under § 97.1035 of this chapter.

* * * * *

PART 97—FEDERAL NO_x BUDGET TRADING PROGRAM, CAIR NO_x AND SO₂ TRADING PROGRAMS, CSAPR NO_x AND SO₂ TRADING PROGRAMS, AND TEXAS SO₂ TRADING PROGRAM

- 35. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7491, 7601, and 7651, *et seq.*

Subpart AAAAA—CSAPR NO_x Annual Trading Program

§ 97.402 [Amended]

- 36. Amend § 97.402 by:
 - a. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”;
 - b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading

Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;

- c. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”.

§ 97.411 [Amended]

- 37. Amend § 97.411 by:

- a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”;

- b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.412 [Amended]

- 38. Amend § 97.412 by:

- a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;

- b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;

- c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;

- d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the State’s SIP authority, the Administrator”;

- e. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”.

§ 97.426 [Amended]

- 39. In § 97.426, amend paragraph (c) by:

- a. Removing “set forth in” and adding in its place “established under”;

- b. Removing “State (or Indian)” and adding in its place “State (and Indian)”.

Subpart BBBBB—CSAPR NO_x Ozone Season Group 1 Trading Program

§ 97.502 [Amended]

- 40. Amend § 97.502 by:

- a. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”;

- b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;

- c. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance”:

- i. Adding “or (e)” after “§ 97.826(d)”;

- ii. Adding “or less” after “one ton”;

- d. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;

- e. In the definition of “State”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”.

§ 97.511 [Amended]

- 41. Amend § 97.511 by:

- a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”;

- b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.512 [Amended]

- 42. Amend § 97.512 by:

- a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;

- b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;

- c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;

- d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the

State's SIP authority, the Administrator"; and

■ e. In paragraph (b)(5), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority".

■ 43. Amend § 97.526 by:

■ a. In paragraph (c):

■ i. Removing "set forth in" and adding in its place "established under"; and

■ ii. Removing "State (or Indian" and adding in its place "State (and Indian";

■ b. In paragraph (d)(1) introductory text, removing "§ 52.38(b)(2)(i) of this chapter (or" and adding in its place "§ 52.38(b)(2)(i)(A) of this chapter (and";

■ c. In paragraph (d)(1)(ii), removing "except a State listed in § 52.38(b)(2)(i)" and adding in its place "listed in § 52.38(b)(2)(ii)";

■ d. In paragraph (d)(1)(iv), removing "§ 52.38(b)(2)(iii) or (iv) of this chapter (or" and adding in its place "§ 52.38(b)(2)(ii) of this chapter (and";

■ e. Revising paragraph (d)(2)(i);

■ f. In paragraph (d)(2)(ii), removing "§ 52.38(b)(2)(v) of this chapter (or" and adding in its place "§ 52.38(b)(2)(iii)(A) of this chapter (and";

■ g. Adding paragraph (d)(2)(iii);

■ h. In paragraph (e)(1), removing "§ 52.38(b)(2)(ii) of this chapter (or Indian" and adding in its place "§ 52.38(b)(2)(i)(B) of this chapter (and Indian";

■ i. In paragraph (e)(2), removing "§ 52.38(b)(2)(iv) of this chapter (or" and adding in its place "§ 52.38(b)(2)(ii)(B) of this chapter (and"; and

■ j. Adding paragraph (e)(3).

The revisions and additions read as follows:

§ 97.526 Banking and conversion.

* * * * *

(d) * * *

(2)(i) Except as provided in paragraphs (d)(2)(ii) and (iii) of this section, after the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(ii) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 2 allowances for the control period in

2017 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section.

* * * * *

(iii) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(e)(1), upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 1 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 1 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(e)(1)(ii).

(e) * * *

(3) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section and § 97.826(e)(1), the owner or operator of a CSAPR NO_x Ozone Season Group 1 source in a State listed in § 52.38(b)(2)(ii)(C) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 1 allowances for the control period in 2015 or 2016 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 1 allowances divided by the conversion factor determined under paragraph (d)(1)(ii) of this section and further divided by the conversion factor determined under § 97.826(e)(1)(ii).

Subpart CCCCC—CSAPR SO₂ Group 1 Trading Program

§ 97.602 [Amended]

■ 44. Amend § 97.602 by:

■ a. In the definition of "CSAPR NO_x Ozone Season Group 1 Trading

Program", removing "(b)(2)(i) and (ii), and" and adding in its place "(b)(2)(i), and";

■ b. In the definition of "CSAPR NO_x Ozone Season Group 2 Trading Program", removing "(b)(2)(iii) and (iv), and" and adding in its place "(b)(2)(ii), and"; and

■ c. In the definition of "CSAPR NO_x Ozone Season Group 3 Trading Program", removing "(b)(2)(v), and" and adding in its place "(b)(2)(iii), and".

§ 97.611 [Amended]

■ 45. Amend § 97.611 by:

■ a. In paragraphs (b)(1)(i)(A) and (B), removing "State, in accordance" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, in accordance"; and

■ b. In paragraphs (b)(2)(i)(A) and (B), removing "Indian country within the borders of a State, in accordance" and adding in its place "areas of Indian country within the borders of a State not subject to the State's SIP authority, in accordance".

§ 97.612 [Amended]

■ 46. Amend § 97.612 by:

■ a. In paragraph (a) introductory text, removing "State, the Administrator" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, the Administrator";

■ b. In paragraphs (a)(3)(iii) and (a)(5), adding "and areas of Indian country within the borders of the State subject to the State's SIP authority" after "in the State";

■ c. In paragraph (a)(10), removing "State, is allocated" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, is allocated";

■ d. In paragraph (b) introductory text, removing "Indian country within the borders of each State, the Administrator" and adding in its place "areas of Indian country within the borders of each State not subject to the State's SIP authority, the Administrator"; and

■ e. In paragraph (b)(5), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority".

§ 97.626 [Amended]

■ 47. In § 97.626, amend paragraph (c) by:

■ a. Removing "set forth in" and adding in its place "established under"; and

■ b. Removing “State (or Indian” and adding in its place “State (and Indian”.

Subpart DDDDD—CSAPR SO₂ Group 2 Trading Program

■ 48. Amend § 97.702 by:

- a. In the definition of “Alternate designated representative”, removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”;
- b. In the definition of “CSAPR NO_x Ozone Season Group 1 Trading Program”, removing “(b)(2)(i) and (ii), and” and adding in its place “(b)(2)(i), and”;
- c. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
- d. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 Trading Program”; and
- e. In the definition of “Designated representative”, removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”.

The addition reads as follows:

§ 97.702 Definitions.

* * * * *

CSAPR NO_x Ozone Season Group 3 Trading Program means a multi-state NO_x air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

§ 97.711 [Amended]

- 49. Amend § 97.711 by:
 - a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”; and
 - b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian

country within the borders of a State not subject to the State’s SIP authority, in accordance”.

§ 97.712 [Amended]

- 50. Amend § 97.712 by:
 - a. In paragraph (a) introductory text, removing “State, the Administrator” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, the Administrator”;
 - b. In paragraphs (a)(3)(iii) and (a)(5), adding “and areas of Indian country within the borders of the State subject to the State’s SIP authority” after “in the State”;
 - c. In paragraph (a)(10), removing “State, is allocated” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, is allocated”;
 - d. In paragraph (b) introductory text, removing “Indian country within the borders of each State, the Administrator” and adding in its place “areas of Indian country within the borders of each State not subject to the State’s SIP authority, the Administrator”; and
 - e. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”.

§ 97.726 [Amended]

- 51. In § 97.726, amend paragraph (c) by:
 - a. Removing “set forth in” and adding in its place “established under”; and
 - b. Removing “State (or Indian” and adding in its place “State (and Indian”.

§ 97.734 [Amended]

- 52. In § 97.734, amend paragraph (d)(3) by removing “or CSAPR NO_x Ozone Season Group 2 Trading Program, quarterly” and adding in its place “CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, quarterly”.

Subpart EEEEE—CSAPR NO_x Ozone Season Group 2 Trading Program

- 53. Amend § 97.802 by:
 - a. In the definition of “Assurance account”, removing “base CSAPR” and adding in its place “CSAPR”;
 - b. Removing the definitions for “Base CSAPR NO_x Ozone Season Group 2 source” and “Base CSAPR NO_x Ozone Season Group 2 unit”;
 - c. In the definition of “Common designated representative”, removing

“base CSAPR” and adding in its place “CSAPR”;

- d. In the definition of “Common designated representative’s assurance level”, revising paragraph (1);
- e. In the definition of “Common designated representative’s share”, removing “base CSAPR” and adding in its place “CSAPR” each time it appears;
- f. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;
- g. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance”;
- i. Adding “or (e)” after “§ 97.826(d)”;
- and
- ii. Adding “or less” after “one ton”;
- h. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;
- i. In the definition of “State”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”.

The revision reads as follows:

§ 97.802 Definitions.

* * * * *

Common designated representative’s assurance level * * *

(1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_x Ozone Season Group 2 allowances allocated for such control period to the group of one or more CSAPR NO_x Ozone Season Group 2 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of CSAPR NO_x Ozone Season Group 2 allowances purchased by an owner or operator of such CSAPR NO_x Ozone Season Group 2 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_x Ozone Season Group 2 units in accordance with the CSAPR NO_x Ozone Season Group 2 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(8) or (9) of this chapter, multiplied by the sum of the State NO_x Ozone Season Group 2 trading budget under § 97.810(a) and the State’s variability limit under § 97.810(b) for such control period, and divided by such State NO_x Ozone Season Group 2 trading budget;

* * * * *

§ 97.806 [Amended]

- 54. Amend § 97.806 by:
 - a. In paragraphs (c)(2)(i) introductory text, (c)(2)(i)(B), and (c)(2)(iii) and (iv),

removing “base CSAPR” and adding in its place “CSAPR” each time it appears;

- b. In paragraph (c)(3)(i), removing “paragraph (c)(1)” and adding in its place “paragraphs (c)(1) and (2)”; and
- c. Removing and reserving paragraph (c)(3)(ii).

§ 97.810 [Amended]

- 55. In § 97.810, amend paragraphs (a)(1)(i) through (iii), (a)(2)(i) and (ii), (a)(12)(i) through (iii), (a)(13)(i) and (ii), (a)(17)(i) through (iii), (a)(20)(i) through (iii), (a)(23)(i) through (iii), and (b)(1), (2), (12), (13), (17), (20), and (23) by removing “and thereafter” and adding in its place “through 2022”.

- 56. Amend § 97.811 by:

- a. In paragraphs (b)(1)(i)(A) and (B), removing “State, in accordance” and adding in its place “State and areas of Indian country within the borders of the State subject to the State’s SIP authority, in accordance”;

- b. In paragraphs (b)(2)(i)(A) and (B), removing “Indian country within the borders of a State, in accordance” and adding in its place “areas of Indian country within the borders of a State not subject to the State’s SIP authority, in accordance”;

- c. In paragraph (d)(1), removing “§ 52.38(b)(2)(iv) of this chapter (or)” and adding in its place “§ 52.38(b)(2)(ii)(B) of this chapter (and)”;

- d. Adding paragraph (e).

The addition reads as follows:

§ 97.811 Timing requirements for CSAPR NO_x Ozone Season Group 2 allowance allocations.

* * * * *

(e) *Recall of CSAPR NO_x Ozone Season Group 2 allowances allocated for control periods after 2022.* (1) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b) of this chapter, the provisions of this paragraph (e)(1) and paragraphs (e)(2) through (7) of this section shall apply with regard to each CSAPR NO_x Ozone Season Group 2 allowance that was allocated for a control period after 2022 to any unit (including a permanently retired unit qualifying for an exemption under § 97.805) in a State listed in § 52.38(b)(2)(ii)(C) of this chapter (and Indian country within the borders of such a State) and that was initially recorded in the compliance account for the source that includes the unit, whether such CSAPR NO_x Ozone Season Group 2 allowance was allocated pursuant to this subpart or pursuant to a SIP revision approved under § 52.38(b) of this chapter and whether such CSAPR NO_x Ozone Season Group 2

allowance remains in such compliance account or has been transferred to another Allowance Management System account.

(2)(i) For each CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section that was allocated for a given control period and initially recorded in a given source’s compliance account, one CSAPR NO_x Ozone Season Group 2 allowance that was allocated for the same or an earlier control period and initially recorded in the same or any other Allowance Management System account must be surrendered in accordance with the procedures in paragraphs (e)(3) and (4) of this section.

(ii)(A) The surrender requirement under paragraph (e)(2)(i) of this section corresponding to each CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section initially recorded in a given source’s compliance account shall apply to such source’s current owners and operators, except as provided in paragraph (e)(2)(ii)(B) of this section.

(B) If the owners and operators of a given source as of a given date assumed ownership and operational control of the source through a transaction that did not also provide rights to direct the use or transfer of a given CSAPR NO_x Ozone Season Group 2 allowance described in paragraph (e)(1) of this section with regard to such source (whether recordation of such CSAPR NO_x Ozone Season Group 2 allowance in the source’s compliance account occurred before such transaction or was anticipated to occur after such transaction), then the surrender requirement under paragraph (e)(2)(i) of this section corresponding to such CSAPR NO_x Ozone Season Group 2 allowance shall apply to the most recent former owners and operators of the source before the occurrence of such a transaction.

(C) The Administrator will not adjudicate any private legal dispute among the owners and operators of a source or among the former owners and operators of a source, including any disputes relating to the requirements to surrender CSAPR NO_x Ozone Season Group 2 allowances for the source under paragraph (e)(2)(i) of this section.

(3)(i) As soon as practicable on or after August 4, 2023, the Administrator will send a notification to the designated representative for each source described in paragraph (e)(1) of this section identifying the amounts of CSAPR NO_x Ozone Season Group 2 allowances allocated for each control period after 2022 and recorded in the source’s compliance account and the

corresponding surrender requirements for the source under paragraph (e)(2)(i) of this section.

(ii) As soon as practicable on or after August 21, 2023, the Administrator will deduct from the compliance account for each source described in paragraph (e)(1) of this section CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (e)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such compliance account.

(iii) As soon as practicable after completion of the deductions under paragraph (e)(3)(ii) of this section, the Administrator will identify for each source described in paragraph (e)(1) of this section the amounts, if any, of CSAPR NO_x Ozone Season Group 2 allowances allocated for each control period after 2022 and recorded in the source’s compliance account for which the corresponding surrender requirements under paragraph (e)(2)(i) of this section have not been satisfied and will send a notification concerning such identified amounts to the designated representative for the source.

(iv) With regard to each source for which unsatisfied surrender requirements under paragraph (e)(2)(i) of this section remain after the deductions under paragraph (e)(3)(ii) of this section:

(A) Except as provided in paragraph (e)(3)(iv)(B) of this section, not later than September 15, 2023, the owners and operators of the source shall hold sufficient CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such unsatisfied surrender requirements under paragraph (e)(2)(i) of this section in the source’s compliance account.

(B) With regard to any portion of such unsatisfied surrender requirements that apply to former owners and operators of the source pursuant to paragraph (e)(2)(ii)(B) of this section, not later than September 15, 2023, such former owners and operators shall hold sufficient CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such portion of the unsatisfied surrender requirements under paragraph (e)(2)(i) of this section either in the source’s compliance account or in another Allowance Management System account identified to the Administrator on or before such date in a submission by the authorized account representative for such account.

(C) As soon as practicable on or after September 15, 2023, the Administrator will deduct from the Allowance

Management System account identified in accordance with paragraph (e)(3)(iv)(A) or (B) of this section CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy the surrender requirements for the source under paragraph (e)(2)(i) of this section until all such surrender requirements for the source are satisfied or until no more CSAPR NO_x Ozone Season Group 2 allowances eligible to satisfy such surrender requirements remain in such account.

(v) When making deductions under paragraph (e)(3)(ii) or (iv) of this section to address the surrender requirements under paragraph (e)(2)(i) of this section for a given source:

(A) The Administrator will make deductions to address any surrender requirements with regard to first the 2023 control period and then the 2024 control period.

(B) When making deductions to address the surrender requirements with regard to a given control period, the Administrator will first deduct CSAPR NO_x Ozone Season Group 2 allowances allocated for such given control period and will then deduct CSAPR NO_x Ozone Season Group 2 allowances allocated for each successively earlier control period in sequence.

(C) When deducting CSAPR NO_x Ozone Season Group 2 allowances allocated for a given control period from a given Allowance Management System account, the Administrator will first deduct CSAPR NO_x Ozone Season Group 2 allowances initially recorded in the account under § 97.821 (if the account is a compliance account) in the order of recordation and will then deduct CSAPR NO_x Ozone Season Group 2 allowances recorded in the account under § 97.526(d) or § 97.823 in the order of recordation.

(4)(i) To the extent the surrender requirements under paragraph (e)(2)(i) of this section corresponding to any CSAPR NO_x Ozone Season Group 2 allowances allocated for a control period after 2022 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraph (e)(3) of this section, as soon as practicable on or after November 15, 2023, the Administrator will deduct such initially recorded CSAPR NO_x Ozone Season Group 2 allowances from any Allowance Management System accounts in which such CSAPR NO_x Ozone Season Group 2 allowances are held, making such deductions in any order determined by the Administrator, until all such surrender requirements for such source have been satisfied or until all such CSAPR NO_x Ozone

Season Group 2 allowances have been deducted, except as provided in paragraph (e)(4)(ii) of this section.

(ii) If no person with an ownership interest in a given CSAPR NO_x Ozone Season Group 2 allowance as of April 30, 2022, was an owner or operator of the source in whose compliance account such CSAPR NO_x Ozone Season Group 2 allowance was initially recorded, was a direct or indirect parent or subsidiary of an owner or operator of such source, or was directly or indirectly under common ownership with an owner or operator of such source, the Administrator will not deduct such CSAPR NO_x Ozone Season Group 2 allowance under paragraph (e)(4)(i) of this section. For purposes of this paragraph (e)(4)(ii), each owner or operator of a source shall be deemed to be a person with an ownership interest in any CSAPR NO_x Ozone Season Group 2 allowance held in that source's compliance account. The limitation established by this paragraph (e)(4)(ii) on the deductibility of certain CSAPR NO_x Ozone Season Group 2 allowances under paragraph (e)(4)(i) of this section shall not be construed as a waiver of the surrender requirements under paragraph (e)(2)(i) of this section corresponding to such CSAPR NO_x Ozone Season Group 2 allowances.

(iii) Not less than 45 days before the planned date for any deductions under paragraph (e)(4)(i) of this section, the Administrator will send a notification to the authorized account representative for the Allowance Management System account from which such deductions will be made identifying the CSAPR NO_x Ozone Season Group 2 allowances to be deducted and the data upon which the Administrator has relied and specifying a process for submission of any objections to such data. Any objections must be submitted to the Administrator not later than 15 days before the planned date for such deductions as indicated in such notification.

(5) To the extent the surrender requirements under paragraph (e)(2)(i) of this section corresponding to any CSAPR NO_x Ozone Season Group 2 allowances allocated for a control period after 2022 and initially recorded in a given source's compliance account have not been fully satisfied through the deductions under paragraphs (e)(3) and (4) of this section:

(i) The persons identified in accordance with paragraph (e)(2)(ii) of this section with regard to such source and each such CSAPR NO_x Ozone Season Group 2 allowance shall pay any fine, penalty, or assessment or comply

with any other remedy imposed under the Clean Air Act; and

(ii) Each such CSAPR NO_x Ozone Season Group 2 allowance, and each day in such control period, shall constitute a separate violation of this subpart and the Clean Air Act.

(6) The Administrator will record in the appropriate Allowance Management System accounts all deductions of CSAPR NO_x Ozone Season Group 2 allowances under paragraphs (e)(3) and (4) of this section.

(7)(i) Each submission, objection, or other written communication from a designated representative, authorized account representative, or other person to the Administrator under paragraph (e)(2), (3), or (4) of this section shall be sent electronically to the email address *CSAPR@epa.gov*. Each such communication from a designated representative must contain the certification statement set forth in § 97.814(a), and each such communication from the authorized account representative for a general account must contain the certification statement set forth in § 97.820(c)(2)(ii).

(ii) Each notification from the Administrator to a designated representative or authorized account representative under paragraph (e)(3) or (4) of this section will be sent electronically to the email address most recently received by the Administrator for such representative. In any such notification, the Administrator may provide information by means of a reference to a publicly accessible website where the information is available.

§ 97.812 [Amended]

■ 57. Amend § 97.812 by:

- a. In paragraph (a) introductory text, removing "State, the Administrator" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, the Administrator";
- b. In paragraphs (a)(3)(iii) and (a)(5), adding "and areas of Indian country within the borders of the State subject to the State's SIP authority" after "in the State";
- c. In paragraph (a)(10), removing "State, is allocated" and adding in its place "State and areas of Indian country within the borders of the State subject to the State's SIP authority, is allocated";
- d. In paragraph (b) introductory text, removing "Indian country within the borders of each State, the Administrator" and adding in its place "areas of Indian country within the borders of each State not subject to the

State's SIP authority, the Administrator"; and

■ e. In paragraph (b)(5), removing "Indian country within the borders of the State" and adding in its place "areas of Indian country within the borders of the State not subject to the State's SIP authority".

§ 97.825 [Amended]

■ 58. In § 97.825, amend paragraphs (a) introductory text, (a)(2), (b)(1)(i), (b)(1)(ii)(A) and (B), (b)(3), (b)(4)(i), (b)(5), (b)(6)(i), (b)(6)(ii) introductory text, and (b)(6)(iii)(A) and (B) by removing "base CSAPR" and adding in its place "CSAPR" each time it appears.

■ 59. Amend § 97.826 by:

■ a. In paragraph (b), removing "(c) or (d)" and adding in its place "(c), (d), or (e)";

■ b. In paragraph (c):

■ i. Removing "set forth in" and adding in its place "established under"; and

■ ii. Removing "State (or Indian" and adding in its place "State (and Indian";

■ c. In paragraphs (d)(1)(i)(A) and (B), removing "§ 52.38(b)(2)(iv)" and adding in its place "§ 52.38(b)(2)(ii)(B)";

■ d. Revising paragraph (d)(1)(i)(C);

■ e. In paragraph (d)(1)(ii) introductory text, removing "§ 52.38(b)(2)(v)" and adding in its place "§ 52.38(b)(2)(iii)(A)";

■ f. In paragraphs (d)(2)(i) and (d)(3), removing "§ 52.38(b)(2)(v) of this chapter (or" and adding in its place "§ 52.38(b)(2)(iii)(A) of this chapter (and";

■ g. Redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e); and

■ h. Revising newly redesignated paragraphs (f)(1) and (2).

The revisions and additions read as follows:

§ 97.826 Banking and conversion.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) The full-season CSAPR NO_x Ozone Season Group 3 allowance bank target, computed as the sum for all States listed in § 52.38(b)(2)(iii)(A) of this chapter of the variability limits under § 97.1010(e) for such States for the control period in 2022.

* * * * *

(e) Notwithstanding any other provision of this subpart, part 52 of this chapter, or any SIP revision approved under § 52.38(b)(8) or (9) of this chapter:

(1) By September 18, 2023, the Administrator will temporarily suspend acceptance of CSAPR NO_x Ozone Season Group 2 allowance transfers

submitted under § 97.822 and, before resuming acceptance of such transfers, will take the following actions with regard to every general account and every compliance account except a compliance account for a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(A) of this chapter (and Indian country within the borders of such a State):

(i) The Administrator will deduct all CSAPR NO_x Ozone Season Group 2 allowances allocated for the control periods in 2017 through 2022 from each such account.

(ii) The Administrator will determine a conversion factor equal to the greater of 1.0000 or the quotient, expressed to four decimal places, of—

(A) The sum of all CSAPR NO_x Ozone Season Group 2 allowances deducted from all such accounts under paragraph (e)(1)(i) of this section; divided by

(B) The product of the sum of the variability limits for the control period in 2024 under § 97.1010(e) for all States listed in § 52.38(b)(2)(iii)(B) and (C) of this chapter multiplied by a fraction whose numerator is the number of days from August 4, 2023 through September 30, 2023, inclusive, and whose denominator is 153.

(iii) The Administrator will allocate and record in each such account an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed as the quotient, rounded up to the nearest allowance, of the number of CSAPR NO_x Ozone Season Group 2 allowances deducted from such account under paragraph (e)(1)(i) of this section divided by the conversion factor determined under paragraph (e)(1)(ii) of this section, except as provided in paragraph (e)(1)(iv) or (v) of this section.

(iv) Where, pursuant to paragraph (e)(1)(i) of this section, the Administrator deducts CSAPR NO_x Ozone Season Group 2 allowances from the compliance account for a source in a State not listed in § 52.38(b)(2)(iii) of this chapter (and Indian country within the borders of such a State), the Administrator will not record CSAPR NO_x Ozone Season Group 3 allowances in that compliance account but instead will allocate and record the amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 computed for such source in accordance with paragraph (e)(1)(iii) of this section in a general account identified by the designated representative for such source, provided that if the designated representative fails to identify such a general account in a submission to the Administrator by September 18, 2023, the Administrator

may record such CSAPR NO_x Ozone Season Group 3 allowances in a general account identified or established by the Administrator with the designated representative as the authorized account representative and with the owners and operators of such source (as indicated on the certificate of representation for the source) as the persons represented by the authorized account representative.

(v)(A) In computing any amounts of CSAPR NO_x Ozone Season Group 3 allowances to be allocated to and recorded in general accounts under paragraph (e)(1)(iii) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single account for purposes of such computation.

(B) Following a computation for a group of general accounts in accordance with paragraph (e)(1)(v)(A) of this section, the Administrator will allocate to and record in each individual account in such group a proportional share of the quantity of CSAPR NO_x Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_x Ozone Season Group 2 allowances removed from such individual accounts under paragraph (e)(1)(i) of this section.

(C) In determining the proportional shares under paragraph (e)(1)(v)(B) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_x Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (e)(1)(v)(A) of this section, even where such adjustments cause the numbers of CSAPR NO_x Ozone Season Group 3 allowances allocated to some individual accounts to equal zero.

(2) After the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section, upon any determination that would otherwise result in the initial recordation of a given number of CSAPR NO_x Ozone Season Group 2 allowances in the compliance account for a source in a State listed in § 52.38(b)(2)(iii)(B) of this chapter (and Indian country within the borders of such a State), the Administrator will not record such CSAPR NO_x Ozone Season Group 2 allowances but instead will allocate and record in such account an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in

2023 computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (e)(1)(ii) of this section.

(f) * * *

(1) After the Administrator has carried out the procedures set forth in paragraph (d)(1) of this section, the owner or operator of a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(B) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 2 allowances for a control period in 2017 through 2020 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2021 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (d)(1)(i)(D) of this section.

(2) After the Administrator has carried out the procedures set forth in paragraph (e)(1) of this section, the owner or operator of a CSAPR NO_x Ozone Season Group 2 source in a State listed in § 52.38(b)(2)(ii)(C) of this chapter (and Indian country within the borders of such a State) may satisfy a requirement to hold a given number of CSAPR NO_x Ozone Season Group 2 allowances for a control period in 2017 through 2022 by holding instead, in a general account established for this sole purpose, an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in 2023 (or any later control period for which the allowance transfer deadline defined in § 97.1002 has passed) computed as the quotient, rounded up to the nearest allowance, of such given number of CSAPR NO_x Ozone Season Group 2 allowances divided by the conversion factor determined under paragraph (e)(1)(ii) of this section.

Subpart FFFFF—Texas SO₂ Trading Program

■ 60. Amend § 97.902 by:

■ a. In the definition of “Alternate designated representative”, removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading

Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”;

■ b. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;

■ c. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 Trading Program”; and

■ d. In the definition of “Designated representative”, removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, then” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, then”.

The addition reads as follows:

§ 97.902 Definitions.

* * * * *

CSAPR NO_x Ozone Season Group 3 Trading Program means a multi-state NO_x air pollution control and emission reduction program established in accordance with subpart GGGGG of this part and § 52.38(b)(1), (b)(2)(iii), and (b)(10) through (14) and (17) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(10) or (11) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(12) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

§ 97.934 [Amended]

■ 61. In § 97.934, amend paragraph (d)(3) by removing “Program or CSAPR NO_x Ozone Season Group 2 Trading Program, quarterly” and adding in its place “Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, quarterly”.

Subpart GGGGG—CSAPR NO_x Ozone Season Group 3 Trading Program

■ 62. Amend § 97.1002 by:

■ a. Revising the definition of “Allocate or allocation”;

■ b. In the definition of “Allowance transfer deadline”, adding “primary” before “emissions limitation”;

■ c. In the definition of “Alternate designated representative”, removing “or CSAPR SO₂ Group 1 Trading Program, then” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, then”;

■ d. In the definition of “Assurance account”, removing “base CSAPR” and adding in its place “CSAPR”;

■ e. Adding in alphabetical order a definition for “Backstop daily NO_x emissions rate”;

■ f. Removing the definitions for “Base CSAPR NO_x Ozone Season Group 3 source” and “Base CSAPR NO_x Ozone Season Group 3 unit”;

■ g. Adding in alphabetical order a definition for “Coal-derived fuel”;

■ h. In the definition of “Common designated representative”, removing “base CSAPR” and adding in its place “CSAPR”;

■ i. Revising the definition of “Common designated representative’s assurance level”;

■ j. In the definition of “Common designated representative’s share”, removing “base CSAPR” and adding in its place “CSAPR” each time it appears;

■ k. In the definition of “Compliance account”, adding “primary” before “emissions limitation”;

■ l. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 1 Trading Program”;

■ m. In the definition of “CSAPR NO_x Ozone Season Group 2 Trading Program”, removing “(b)(2)(iii) and (iv), and” and adding in its place “(b)(2)(ii), and”;

■ n. In the definition of “CSAPR NO_x Ozone Season Group 3 allowance”:

■ i. Adding “or (e)” after “§ 97.826(d)”;

and

■ ii. Adding “or less” after “one ton”;

■ o. In the definitions of “CSAPR NO_x Ozone Season Group 3 allowance deduction” and “CSAPR NO_x Ozone Season Group 3 emissions limitation”, adding “primary” before “emissions limitation”;

■ p. Adding in alphabetical order a definition for “CSAPR NO_x Ozone Season Group 3 secondary emissions limitation”;

■ q. In the definition of “CSAPR NO_x Ozone Season Group 3 Trading Program”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”;

■ r. Adding in alphabetical order a definition for “CSAPR SO₂ Group 2 Trading Program”;

■ s. In the definition of “Designated representative”, removing “or CSAPR SO₂ Group 1 Trading Program, then” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, then”.

■ t. In the definition of “Excess emissions”, adding “primary” before “emissions limitation”;

■ u. Adding in alphabetical order a definition for “Historical control period”;

and

■ v. In the definition of “State”, removing “(b)(2)(v), and” and adding in its place “(b)(2)(iii), and”.

The revisions and additions read as follows:

§ 97.1002 Definitions.

* * * * *

Allocate or *allocation* means, with regard to CSAPR NO_x Ozone Season Group 3 allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart, §§ 97.526(d) and 97.826(d) and (e), and any SIP revision submitted by the State and approved by the Administrator under § 52.38(b)(10), (11), or (12) of this chapter, of the amount of such CSAPR NO_x Ozone Season Group 3 allowances to be initially credited, at no cost to the recipient, to:

- (1) A CSAPR NO_x Ozone Season Group 3 unit;
- (2) A new unit set-aside;
- (3) An Indian country new unit set-aside;
- (4) An Indian country existing unit set-aside; or
- (5) An entity not listed in paragraphs (1) through (4) of this definition;
- (6) Provided that, if the

Administrator, State, or permitting authority initially credits, to a CSAPR NO_x Ozone Season Group 3 unit qualifying for an initial credit, a credit in the amount of zero CSAPR NO_x Ozone Season Group 3 allowances, the CSAPR NO_x Ozone Season Group 3 unit will be treated as being allocated an amount (*i.e.*, zero) of CSAPR NO_x Ozone Season Group 3 allowances.

* * * * *

Backstop daily NO_x emissions rate means a NO_x emissions rate used in the determination of the CSAPR NO_x Ozone Season Group 3 primary emissions limitation for a CSAPR NO_x Ozone Season Group 3 source in accordance with § 97.1024(b).

* * * * *

Coal-derived fuel means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal.

* * * * *

Common designated representative's assurance level means, with regard to a specific common designated representative and a State (and Indian country within the borders of such State) and control period in a given year for which the State assurance level is exceeded as described in § 97.1006(c)(2)(iii):

- (1) The amount (rounded to the nearest allowance) equal to the sum of the total amount of CSAPR NO_x Ozone Season Group 3 allowances allocated for such control period to the group of one or more CSAPR NO_x Ozone Season Group 3 units in such State (and such Indian country) having the common designated representative for such control period and the total amount of

CSAPR NO_x Ozone Season Group 3 allowances purchased by an owner or operator of such CSAPR NO_x Ozone Season Group 3 units in an auction for such control period and submitted by the State or the permitting authority to the Administrator for recordation in the compliance accounts for such CSAPR NO_x Ozone Season Group 3 units in accordance with the CSAPR NO_x Ozone Season Group 3 allowance auction provisions in a SIP revision approved by the Administrator under § 52.38(b)(11) or (12) of this chapter, multiplied by the sum of the State NO_x Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(e) for such control period, and divided by such State NO_x Ozone Season Group 3 trading budget;

(2) Provided that the allocations of CSAPR NO_x Ozone Season Group 3 allowances for any control period taken into account for purposes of this definition shall exclude any CSAPR NO_x Ozone Season Group 3 allowances allocated for such control period under § 97.526(d) or § 97.826(d) or (e).

* * * * *

CSAPR NO_x Ozone Season Group 1 Trading Program means a multi-state NO_x air pollution control and emission reduction program established in accordance with subpart BBBBB of this part and § 52.38(b)(1), (b)(2)(i), and (b)(3) through (5) and (13) through (15) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(3) or (4) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(5) of this chapter), as a means of mitigating interstate transport of ozone and NO_x.

* * * * *

CSAPR NO_x Ozone Season Group 3 secondary emissions limitation means, for a CSAPR NO_x Ozone Season Group 3 unit to which such a limitation applies under § 97.1025(c)(1) for a control period in a given year, the tonnage of NO_x emissions calculated for the unit in accordance with § 97.1025(c)(2) for such control period.

* * * * *

CSAPR SO₂ Group 2 Trading Program means a multi-state SO₂ air pollution control and emission reduction program established in accordance with subpart DDDDD of this part and § 52.39(a), (c), (g) through (k), and (m) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.39(g) or (h) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.39(i) of this chapter), as a means of mitigating

interstate transport of fine particulates and SO₂.

* * * * *

Historical control period means, for a unit as of a given calendar year, the period starting May 1 of a previous calendar year and ending September 30 of that previous calendar year, inclusive, without regard to whether the unit was subject to requirements under the CSAPR NO_x Ozone Season Group 3 Trading Program during such period.

* * * * *

- 63. Amend § 97.1006 by:
 - a. Revising paragraph (b)(2), paragraph (c)(1) heading, paragraph (c)(1)(i), and paragraph (c)(1)(ii) introductory text;
 - b. Adding paragraphs (c)(1)(iii) and (iv);
 - c. In paragraphs (c)(2)(i) introductory text and (c)(2)(i)(B), removing “base CSAPR” and adding in its place “CSAPR” each time it appears;
 - d. Revising paragraph (c)(2)(iii);
 - e. In paragraph (c)(2)(iv), removing “base CSAPR” and adding in its place “CSAPR” each time it appears;
 - f. Revising paragraph (c)(3); and
 - g. In paragraph (c)(6) introductory text, adding “or less” after “one ton”.

The revisions and additions read as follows:

§ 97.1006 Standard requirements.

* * * * *

(b) * * *

(2) The emissions and heat input data determined in accordance with §§ 97.1030 through 97.1035 shall be used to calculate allocations of CSAPR NO_x Ozone Season Group 3 allowances under §§ 97.1011 and 97.1012 and to determine compliance with the CSAPR NO_x Ozone Season Group 3 primary and secondary emissions limitations and assurance provisions under paragraph (c) of this section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.1030 through 97.1035 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero.

(c) * * *

(1) *CSAPR NO_x Ozone Season Group 3 primary and secondary emissions limitations*—(i) *Primary emissions limitation*. As of the allowance transfer deadline for a control period in a given year, the owners and operators of each CSAPR NO_x Ozone Season Group 3 source and each CSAPR NO_x Ozone

Season Group 3 unit at the source shall hold, in the source's compliance account, CSAPR NO_x Ozone Season Group 3 allowances available for deduction for such control period under § 97.1024(a) in an amount not less than the amount determined under § 97.1024(b), comprising the sum of—

(A) The tons of total NO_x emissions for such control period from all CSAPR NO_x Ozone Season Group 3 units at the source; plus

(B) Two times the excess, if any, over 50 tons of the sum, for all CSAPR NO_x Ozone Season Group 3 units at the source and all calendar days of the control period, of any NO_x emissions from such a unit on any calendar day of the control period exceeding the NO_x emissions that would have occurred on that calendar day if the unit had combusted the same daily heat input and emitted at any backstop daily NO_x emissions rate applicable to the unit for that control period.

(ii) *Exceedances of primary emissions limitation.* If total NO_x emissions during a control period in a given year from the CSAPR NO_x Ozone Season Group 3 units at a CSAPR NO_x Ozone Season Group 3 source are in excess of the CSAPR NO_x Ozone Season Group 3 primary emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

* * * * *

(iii) *Secondary emissions limitation.* The owner or operator of a CSAPR NO_x Ozone Season Group 3 unit subject to an emissions limitation under § 97.1025(c)(1) shall not discharge, or allow to be discharged, emissions of NO_x to the atmosphere during a control period in excess of the tonnage amount

calculated in accordance with § 97.1025(c)(2).

(iv) *Exceedances of secondary emissions limitation.* If total NO_x emissions during a control period in a given year from a CSAPR NO_x Ozone Season Group 3 unit are in excess of the amount of a CSAPR NO_x Ozone Season Group 3 secondary emissions limitation applicable to the unit for the control period under paragraph (c)(1)(iii) of this section, then the owners and operators of the unit and the source at which the unit is located shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) * * *

(iii) Total NO_x emissions from all CSAPR NO_x Ozone Season Group 3 units at CSAPR NO_x Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) during a control period in a given year exceed the State assurance level if such total NO_x emissions exceed the sum, for such control period, of the State NO_x Ozone Season Group 3 trading budget under § 97.1010(a) and the State's variability limit under § 97.1010(e).

* * * * *

(3) *Compliance periods.* (i) A CSAPR NO_x Ozone Season Group 3 unit shall be subject to the requirements under paragraphs (c)(1)(i) and (ii) and (c)(2) of this section for the control period starting on the later of the applicable date in paragraph (c)(3)(i)(A), (B), or (C)

of this section or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter:

(A) May 1, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(B) May 1, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter; or

(C) August 4, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter.

(ii) A CSAPR NO_x Ozone Season Group 3 unit shall be subject to the requirements under paragraphs (c)(1)(iii) and (iv) of this section for the control period starting on the later of May 1, 2024, or the deadline for meeting the unit's monitor certification requirements under § 97.1030(b) and for each control period thereafter.

* * * * *

■ 64. Revise § 97.1010 to read as follows:

§ 97.1010 State NO_x Ozone Season Group 3 trading budgets, set-asides, and variability limits.

(a) *State NO_x Ozone Season Group 3 trading budgets.* (1)(i) The State NO_x Ozone Season Group 3 trading budgets for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021 through 2025 shall be as indicated in table 1 to this paragraph (a)(1)(i), subject to prorating for the control period in 2023 as provided in paragraph (a)(1)(ii) of this section:

TABLE 1 TO PARAGRAPH (a)(1)(i)—STATE NO_x OZONE SEASON GROUP 3 TRADING BUDGETS BY CONTROL PERIOD, 2021–2025

[Tons]

State	2021	2022	Portion of 2023 control period before August 4, 2023, before prorating	Portion of 2023 control period on and after August 4, 2023, before prorating	2024	2025
Alabama			13,211	6,379	6,489	6,489
Arkansas			9,210	8,927	8,927	8,927
Illinois	11,223	9,102	8,179	7,474	7,325	7,325
Indiana	17,004	12,582	12,553	12,440	11,413	11,413
Kentucky	17,542	14,051	14,051	13,601	12,999	12,472
Louisiana	16,291	14,818	14,818	9,363	9,363	9,107
Maryland	2,397	1,266	1,266	1,206	1,206	1,206
Michigan	14,384	12,290	9,975	10,727	10,275	10,275
Minnesota				5,504	4,058	4,058
Mississippi			6,315	6,210	5,058	5,037
Missouri			15,780	12,598	11,116	11,116
Nevada				2,368	2,589	2,545
New Jersey	1,565	1,253	1,253	773	773	773
New York	4,079	3,416	3,421	3,912	3,912	3,912
Ohio	13,481	9,773	9,773	9,110	7,929	7,929
Oklahoma			11,641	10,271	9,384	9,376

TABLE 1 TO PARAGRAPH (a)(1)(i)—STATE NO_x OZONE SEASON GROUP 3 TRADING BUDGETS BY CONTROL PERIOD, 2021–2025—Continued

[Tons]

State	2021	2022	Portion of 2023 control period before August 4, 2023, before prorating	Portion of 2023 control period on and after August 4, 2023, before prorating	2024	2025
Pennsylvania	12,071	8,373	8,373	8,138	8,138	8,138
Texas			52,301	40,134	40,134	38,542
Utah				15,755	15,917	15,917
Virginia	6,331	3,897	3,980	3,143	2,756	2,756
West Virginia	15,062	12,884	12,884	13,791	11,958	11,958
Wisconsin			7,915	6,295	6,295	5,988

(ii) For the control period in 2023, the State NO_x Ozone Season Group 3 trading budget for each State shall be calculated as the sum, rounded to the nearest allowance, of the following prorated amounts:

(A) The product of the non-prorated trading budget for the portion of the 2023 control period before August 4, 2023, shown for the State in table 1 to paragraph (a)(1)(i) of this section (or zero if table 1 to paragraph (a)(1)(i) shows no amount for such portion of the

2023 control period for the State) multiplied by a fraction whose numerator is the number of days from May 1, 2023, through the day before August 4, 2023, inclusive, and whose denominator is 153; plus

(B) The product of the non-prorated trading budget for the portion of the 2023 control period on and after August 4, 2023, shown for the State in table 1 to paragraph (a)(1)(i) of this section multiplied by a fraction whose numerator is the number of days from

August 4, 2023, through September 30, 2023, inclusive, and whose denominator is 153.

(2)(i) The State NO_x Ozone Season Group 3 trading budget for each State and each control period in 2026 through 2029 shall be the preset trading budget indicated for the State and control period in table 2 to this paragraph (a)(2)(i), except as provided in paragraph (a)(2)(ii) of this section.

TABLE 2 TO PARAGRAPH (a)(2)(i)—PRESET TRADING BUDGETS BY CONTROL PERIOD, 2026–2029

[Tons]

State	2026	2027	2028	2029
Alabama	6,339	6,236	6,236	5,105
Arkansas	6,365	4,031	4,031	3,582
Illinois	5,889	5,363	4,555	4,050
Indiana	8,363	8,135	7,280	5,808
Kentucky	9,697	7,908	7,837	7,392
Louisiana	6,370	3,792	3,792	3,639
Maryland	842	842	842	842
Michigan	6,743	5,691	5,691	4,656
Minnesota	4,058	2,905	2,905	2,578
Mississippi	3,484	2,084	1,752	1,752
Missouri	9,248	7,329	7,329	7,329
Nevada	1,142	1,113	1,113	880
New Jersey	773	773	773	773
New York	3,650	3,388	3,388	3,388
Ohio	7,929	7,929	6,911	6,409
Oklahoma	6,631	3,917	3,917	3,917
Pennsylvania	7,512	7,158	7,158	4,828
Texas	31,123	23,009	21,623	20,635
Utah	6,258	2,593	2,593	2,593
Virginia	2,565	2,373	2,373	1,951
West Virginia	10,818	9,678	9,678	9,678
Wisconsin	4,990	3,416	3,416	3,416

(ii) If the preset trading budget indicated for a given State and control period in table 2 to paragraph (a)(2)(i) of this section is less than the dynamic trading budget for the State and control period referenced in the applicable notice promulgated under paragraph (a)(4)(v)(C) of this section, then the State NO_x Ozone Season Group 3 trading

budget for the State and control period shall be the dynamic trading budget for the State and control period referenced in the applicable notice promulgated under paragraph (a)(4)(v)(C) of this section.

(3) The State NO_x Ozone Season Group 3 trading budget for each State and each control period in 2030 and

thereafter shall be the dynamic trading budget for the State and control period referenced in the applicable notice promulgated under paragraph (a)(4)(v)(C) of this section.

(4) The Administrator will calculate the dynamic trading budget for each State and each control period in 2026

and thereafter in the year before the year of the control period as follows:

(i) The Administrator will include a unit in a State (and Indian country within the borders of the State) in the calculation of the State's dynamic trading budget for a control period if—

(A) To the best of the Administrator's knowledge, the unit qualifies as a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004, without regard to whether the unit has permanently retired, provided that including a unit in the calculation of a dynamic trading budget does not constitute a determination that the unit is a CSAPR NO_x Ozone Season Group 3 unit, and not including a unit in the calculation of a dynamic trading budget does not constitute a determination that the unit is not a CSAPR NO_x Ozone Season Group 3 unit;

(B) The unit's deadline for certification of monitoring systems under § 97.1030(b) is on or before May 1 of the year two years before the year of the control period for which the dynamic trading budget is being calculated; and

(C) The owner or operator reported heat input greater than zero for the unit in accordance with part 75 of this chapter for the historical control period in the year two years before the year of the control period for which the dynamic trading budget is being calculated.

(ii) For each unit identified for inclusion in the calculation of the State's dynamic trading budget for a control period under paragraph (a)(4)(i) of this section, the Administrator will calculate the heat input amount in mmBtu to be used in the budget calculation as follows:

(A) For each such unit, the Administrator will determine the following unit-level amounts:

(1) The total heat input amounts reported in accordance with part 75 of this chapter for the unit for the historical control periods in the years two, three, four, five, and six years before the year of the control period for which the dynamic trading budget is being calculated, except any historical control period that commenced before the unit's first deadline under any regulatory program to begin recording and reporting heat input in accordance with part 75 of this chapter; and

(2) The average of the three highest unit-level total heat input amounts identified for the unit under paragraph (a)(4)(iv)(A)(1) of this section or, if fewer than three non-zero amounts are identified for the unit, the average of all such non-zero total heat input amounts.

(B) For the State, the Administrator will determine the following state-level amounts:

(1) The sum for all units in the State meeting the criterion under paragraph (a)(4)(i)(A) of this section, without regard to whether such units also meet the criteria under paragraphs (a)(4)(i)(B) and (C) of this section, of the total heat input amounts reported in accordance with part 75 of this chapter for the historical control periods in the years two, three, and four years before the year of the control period for which the dynamic trading budget is being calculated, provided that for the historical control periods in 2022 and 2023, the total reported heat input amounts for Nevada and Utah as otherwise determined under this paragraph (a)(4)(ii)(B)(1) shall be increased by 13,489,332 mmBtu for Nevada and by 1,888,174 mmBtu for Utah;

(2) The average of the three state-level total heat input amounts calculated for the State under paragraph (a)(4)(ii)(B)(1) of this section; and

(3) The sum for all units identified for inclusion in the calculation of the State's dynamic trading budget for the control period under paragraph (a)(4)(i) of this section of the unit-level average heat input amounts calculated under paragraph (a)(4)(ii)(A)(2) of this section.

(C) The heat input amount for a unit used in the calculation of the State's dynamic trading budget shall be the product of the unit-level average total heat input amount calculated for the unit under paragraph (a)(4)(ii)(A)(2) of this section multiplied by a fraction whose numerator is the state-level average total heat input amount calculated under paragraph (a)(4)(ii)(B)(2) of this section and whose denominator is the state-level sum of the unit-level average heat input amounts calculated under paragraph (a)(4)(ii)(B)(3) of this section.

(iii) For each unit identified for inclusion in the calculation of the State's dynamic trading budget for a control period under paragraph (a)(4)(i) of this section, the Administrator will identify the NO_x emissions rate in lb/mmBtu to be used in the calculation as follows:

(A) For a unit listed in the document entitled "Unit-Specific Ozone Season NO_x Emissions Rates for Dynamic Budget Calculations" posted at www.regulations.gov in docket EPA-HQ-OAR-2021-0668, the NO_x emissions rate used in the calculation for the control period shall be the NO_x emissions rate shown for the unit and control period in that document.

(B) For a unit not listed in the document referenced in paragraph (a)(4)(iii)(A) of this section, the NO_x emissions rate used in the calculation for the control period shall be identified according to the type of unit and the type of fuel combusted by the unit during the control period beginning May 1 on or immediately after the unit's deadline for certification of monitoring systems under § 97.1030(b) as follows:

(1) 0.011 lb/mmBtu, for a simple cycle combustion turbine or a combined cycle combustion turbine other than an integrated coal gasification combined cycle unit;

(2) 0.030 lb/mmBtu, for a boiler combusting only fuel oil or gaseous fuel (other than coal-derived fuel) during such control period; or

(3) 0.050 lb/mmBtu, for a boiler combusting any amount of coal or coal-derived fuel during such control period or any other unit not covered by paragraph (a)(4)(iii)(B)(1) or (2) of this section.

(iv) The Administrator will calculate the State's dynamic trading budget for the control period as the sum (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton), for all units identified for inclusion in the calculation under paragraph (a)(4)(i) of this section, of the product for each such unit of the heat input amount in mmBtu calculated for the unit under paragraph (a)(4)(ii) of this section multiplied by the NO_x emissions rate in lb/mmBtu identified for the unit under paragraph (a)(4)(iii) of this section.

(v)(A) By March 1, 2025 and March 1 of each year thereafter, the Administrator will calculate the dynamic trading budget for each State, in accordance with paragraphs (a)(4)(i) through (iv) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year after the year of the applicable calculation deadline under this paragraph (a)(4)(v)(A) and will promulgate a notice of data availability of the results of the calculations.

(B) For each notice of data availability required in paragraph (a)(4)(v)(A) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the units included in the calculations) are in accordance with the provisions referenced in paragraph (a)(4)(v)(A) of this section.

(C) The Administrator will adjust the calculations to the extent necessary to

ensure that they are in accordance with the provisions referenced in paragraph (a)(4)(v)(A) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (a)(4)(v)(A) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (a)(4)(v)(B) of this section.

(b) *Indian country existing unit set-asides for the control periods in 2023 and thereafter.* The Indian country existing unit set-aside for allocations of CSAPR NO_x Ozone Season Group 3 allowances for each State for each control period in 2023 and thereafter shall be calculated as the sum of all allowance allocations to units in areas of Indian country within the borders of the State not subject to the State's SIP authority as provided in the applicable notice of data availability for the control period referenced in § 97.1011(a)(2).

(c) *New unit set-asides.* (1) The new unit set-asides for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021 and 2022 for each State with CSAPR NO_x Ozone Season Group 3 trading budgets for such control periods shall be as indicated in table 3 to this paragraph (c)(1):

TABLE 3 TO PARAGRAPH (c)(1)—NEW UNIT SET-ASIDES BY CONTROL PERIOD [2021–2022 (tons)]

State	2021	2022
Illinois	265	265
Indiana	262	254
Kentucky	309	283
Louisiana	430	430
Maryland	135	115
Michigan	500	482
New Jersey	27	27
New York	168	168
Ohio	291	290
Pennsylvania	335	339
Virginia	185	161
West Virginia	266	261

(2) The new unit set-aside for allocations of CSAPR NO_x Ozone Season Group 3 allowances for each State for each control period in 2023 and thereafter shall be calculated as the product (rounded to the nearest allowance) of the State NO_x Ozone Season Group 3 trading budget for the State and control period established in

accordance with paragraph (a) of this section multiplied by—

- (i) 0.09, for Nevada for the control periods in 2023 through 2025;
- (ii) 0.06, for Ohio for the control periods in 2023 through 2025;
- (iii) 0.05, for each State other than Nevada and Ohio for the control periods in 2023 through 2025; or
- (iv) 0.05, for each State for each control period in 2026 and thereafter.

(d) *Indian country new unit set-asides for the control periods in 2021 and 2022.* The Indian country new unit set-asides for allocations of CSAPR NO_x Ozone Season Group 3 allowances for the control periods in 2021 and 2022 for each State with CSAPR NO_x Ozone Season Group 3 trading budgets for such control periods shall be as indicated in table 4 to this paragraph (d):

TABLE 4 TO PARAGRAPH (d)—INDIAN COUNTRY NEW UNIT SET-ASIDES BY CONTROL PERIOD [2021–2022 (tons)]

State	2021	2022
Illinois	.....	.....
Indiana	.....	.....
Kentucky	.....	.....
Louisiana	15	15
Maryland	.....	.....
Michigan	13	12
New Jersey	.....	.....
New York	3	3
Ohio	.....	.....
Pennsylvania	.....	.....
Virginia	.....	.....
West Virginia	.....	.....

(e) *Variability limits.* (1) The variability limits for the State NO_x Ozone Season Group 3 trading budgets for the control periods in 2021 and 2022 for each State with such trading budgets for such control periods shall be as indicated in table 5 to this paragraph (e)(1).

TABLE 5 TO PARAGRAPH (e)(1)—VARIABILITY LIMITS BY CONTROL PERIOD [2021–2022 (tons)]

State	2021	2022
Illinois	2,356	1,911
Indiana	3,571	2,642
Kentucky	3,684	2,951
Louisiana	3,421	3,112
Maryland	504	266
Michigan	3,021	2,581
New Jersey	329	263
New York	856	717

TABLE 5 TO PARAGRAPH (e)(1)—VARIABILITY LIMITS BY CONTROL PERIOD—Continued

[2021–2022 (tons)]

State	2021	2022
Ohio	2,831	2,052
Pennsylvania	2,535	1,758
Virginia	1,329	818
West Virginia	3,163	2,706

(2) The variability limit for the State NO_x Ozone Season Group 3 trading budget for each State for each control period in 2023 and thereafter shall be calculated as the product (rounded to the nearest ton) of the State NO_x Ozone Season Group 3 trading budget for the State and control period established in accordance with paragraph (a) of this section multiplied by the greater of—

- (i) 0.21; or
- (ii) Any excess over 1.00 of the quotient (rounded to two decimal places) of—

(A) The sum for all CSAPR NO_x Ozone Season Group 3 units in the State and Indian country within the borders of the State of the total heat input reported for the control period in mmBtu, provided that, for purposes of this paragraph (e)(2)(ii)(A), the 2023 control period for all States shall be deemed to be the period from May 1, 2023 through September 30, 2023, inclusive; divided by

(B) The state-level total heat input amount used in the calculation of the State NO_x Ozone Season Group 3 trading budget for the State and control period in mmBtu, as identified in accordance with paragraph (e)(3) of this section.

(3) For purposes of paragraph (e)(2)(ii)(B) of this section, the state-level total heat input amount used in the calculation of a State NO_x Ozone Season Group 3 trading budget for a given control period shall be identified as follows:

- (i) For a control period in 2023 through 2025, and for a control period in 2026 through 2029 if the State NO_x Ozone Season Group 3 trading budget for the State and control period under paragraph (a)(2) of this section is the preset trading budget set forth for the State and control period in table 2 to paragraph (a)(2)(i) of this section, the state-level total heat input amounts shall be as indicated in table 6 to this paragraph (e)(3)(i).

TABLE 6 TO PARAGRAPH (e)(3)(i)—STATE-LEVEL TOTAL HEAT INPUT USED IN CALCULATIONS OF PRESET TRADING BUDGETS BY CONTROL PERIOD [2023–2029 (mmBtu)]

State	2023	2024	2025	2026	2027	2028	2029
Alabama	313,037,541	333,030,691	333,030,691	330,396,046	328,650,653	328,650,653	307,987,882
Arkansas	192,843,561	192,843,561	192,843,561	190,921,052	190,921,052	190,921,052	190,921,052
Illinois	274,005,935	286,568,112	286,568,112	253,219,463	253,219,463	214,086,655	193,900,867
Indiana	356,047,916	330,175,944	330,175,944	302,245,332	302,245,332	277,218,546	236,611,101
Kentucky	301,161,750	301,161,750	295,857,697	295,857,697	295,857,697	293,016,485	274,595,978
Louisiana	280,592,592	280,592,592	278,766,253	278,461,807	277,262,840	277,262,840	277,262,840
Maryland	70,725,007	70,725,007	70,725,007	70,725,007	70,725,007	70,725,007	70,725,007
Michigan	313,846,533	299,124,688	299,124,688	258,225,107	258,225,107	258,225,107	222,314,181
Minnesota	128,893,685	107,821,236	107,821,236	107,821,236	93,890,928	93,890,928	85,707,385
Mississippi	192,978,295	189,415,018	189,279,160	189,279,160	189,279,160	176,004,820	176,004,820
Missouri	284,308,851	249,153,661	249,153,661	249,153,661	248,413,545	248,413,545	248,413,545
Nevada	103,489,785	116,979,117	114,729,782	105,018,415	100,193,805	100,193,805	96,378,269
New Jersey	112,233,231	112,233,231	112,233,231	112,233,231	112,233,231	112,233,231	112,233,231
New York	242,853,661	242,853,661	242,853,661	242,853,661	242,853,661	242,853,661	242,853,661
Ohio	412,292,609	386,560,212	386,560,212	386,560,212	386,560,212	358,992,155	342,075,946
Oklahoma	212,903,386	211,187,283	211,165,691	211,145,820	196,160,642	196,160,642	196,160,642
Pennsylvania	550,993,363	550,993,363	550,993,363	550,993,363	550,993,363	550,993,363	487,590,728
Texas	1,395,116,925	1,395,116,925	1,389,251,813	1,389,251,813	1,356,192,532	1,320,040,162	1,280,014,875
Utah	164,519,648	166,407,822	166,407,822	127,217,396	127,217,396	127,217,396	127,217,396
Virginia	202,953,791	194,015,719	194,015,719	194,015,719	194,015,719	194,015,719	186,848,587
West Virginia	306,845,495	273,151,957	273,151,957	273,151,957	273,151,957	273,151,957	273,151,957
Wisconsin	220,794,282	220,792,155	213,038,308	185,469,476	151,343,287	151,343,287	151,343,287

(ii) For a control period in 2026 through 2029 if the State NO_x Ozone Season Group 3 trading budget for the State and control period under paragraph (a)(2) of this section is the dynamic trading budget for the State and control period referenced in the applicable notice promulgated under paragraph (a)(4)(v)(C) of this section, and for a control period in 2030 and thereafter, the state-level total heat input amount shall be the amount for the State and control period calculated under paragraph (a)(4)(ii)(B)(2) of this section.

(f) *Relationship of trading budgets, set-asides, and variability limits.* Each State NO_x Ozone Season Group 3 trading budget in this section includes any tons in an Indian country existing unit set-aside, a new unit set-aside, or an Indian country new unit set-aside but does not include any tons in a variability limit.

■ 65. Amend § 97.1011 by revising the section heading and paragraphs (a), (b), paragraph (c) heading, and paragraphs (c)(1) and (5) to read as follows:

§ 97.1011 CSAPR NO_x Ozone Season Group 3 allowance allocations to existing units.

(a) *Allocations to existing units in general.* (1) For the control periods in 2021 and each year thereafter, CSAPR NO_x Ozone Season Group 3 allowances will be allocated to units in each State and areas of Indian country within the borders of the State subject to the State’s SIP authority as provided in notices of data availability issued by the Administrator. Starting with the control period in 2026, the notices of data availability will be the notices issued

under paragraph (b)(11)(iii) of this section.

(2) For the control periods in 2023 and each year thereafter, CSAPR NO_x Ozone Season Group 3 allowances will be allocated to units in areas of Indian country within the borders of each State not subject to the State’s SIP authority as provided in notices of data availability issued by the Administrator. Starting with the control period in 2026, the notices of data availability will be the notices issued under paragraph (b)(11)(iii) of this section.

(3) Providing an allocation to a unit in a notice of data availability does not constitute a determination that the unit is a CSAPR NO_x Ozone Season Group 3 unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a CSAPR NO_x Ozone Season Group 3 unit.

(b) *Calculation of default allocations to existing units for control periods in 2026 and thereafter.* For each control period in 2026 and thereafter, and for the CSAPR NO_x Ozone Season Group 3 units in each State and areas of Indian country within the borders of the State, the Administrator will calculate default allocations of CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) For each State and control period, the total amount of CSAPR NO_x Ozone Season Group 3 allowances for which the Administrator will calculate default allocations shall be the remainder of the State NO_x Ozone Season Group 3 trading budget for the control period under § 97.1010(a) minus the new unit

set-aside for the control period under § 97.1010(c).

(2) The Administrator will calculate a default allocation of CSAPR NO_x Ozone Season Group 3 allowances for each CSAPR NO_x Ozone Season Group 3 unit in the State and Indian country within the borders of the State meeting the following criteria:

(i) To the best of the Administrator’s knowledge, the unit qualifies as a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004, without regard to whether the unit has permanently retired;

(ii) The unit’s deadline for certification of monitoring systems under § 97.1030(b) is on or before May 1 of the year two years before the year of the control period for which the allowances are being allocated; and

(iii) The owner or operator reported heat input greater than zero for the unit in accordance with part 75 of this chapter for the historical control period in the year two years before the year of the control period for which the allowances are being allocated.

(3) For each CSAPR NO_x Ozone Season Group 3 unit for which a default allocation is being calculated for a control period, the Administrator will calculate an average heat input amount to be used in the allocation calculations as follows:

(i) The Administrator will identify the total heat input amounts reported for the unit in accordance with part 75 of this chapter for the historical control periods in the years two, three, four, five, and six years before the year of the control period for which the allowances are being allocated, except any

historical control period that commenced before the unit's first deadline under any regulatory program to begin recording and reporting heat input in accordance with part 75 of this chapter.

(ii) The average heat input amount used in the allocation calculations shall be the average of the three highest total heat input amounts identified for the unit under paragraph (b)(3)(i) of this section or, if fewer than three non-zero amounts are identified for the unit, the average of all such non-zero total heat input amounts.

(4) For each CSAPR NO_x Ozone Season Group 3 unit for which a default allocation is being calculated for a control period, the Administrator will calculate a tentative maximum allocation amount to be used in the allocation calculations as follows:

(i) The Administrator will identify the total NO_x emissions amounts reported for the unit in accordance with part 75 of this chapter for the historical control periods in the years two, three, four, five, and six years before the year of the control period for which the allowances are being allocated.

(ii) The tentative maximum allocation amount used in the allocation calculations shall be the highest of the total NO_x emissions amounts identified for the unit under paragraph (b)(4)(i) of this section or, if less, any applicable amount calculated under paragraph (b)(4)(iii) of this section.

(iii)(A) The tentative maximum allocation amount under paragraph (b)(4)(ii) of this section for a unit described in paragraph (b)(4)(iii)(B) or (C) of this section may not exceed a maximum controlled baseline calculated as the product (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton) of the highest total heat input amount identified for the unit under paragraph (b)(3)(i) of this section in mmBtu multiplied by a NO_x emissions rate of 0.08 lb/mmBtu.

(B) For the control period in 2026, a maximum controlled baseline under paragraph (b)(4)(iii)(A) of this section shall apply to any unit that combusted any coal or solid coal-derived fuel during the historical control period for which the unit's heat input was most recently reported, that serves a generator with nameplate capacity of 100 MW or more, and that is equipped with selective catalytic reduction controls, except a circulating fluidized bed boiler.

(C) For each control period in 2027 and thereafter, a maximum controlled baseline under paragraph (b)(4)(iii)(A) of this section shall apply to any unit that combusted any coal or solid coal-

derived fuel during the historical control period for which the unit's heat input was most recently reported and that serves a generator with nameplate capacity of 100 MW or more, except a circulating fluidized bed boiler.

(5) The Administrator will calculate the initial unrounded default allocations for each CSAPR NO_x Ozone Season Group 3 unit according to the procedure in paragraph (b)(6) of this section and will recalculate the unrounded default allocations according to the procedures in paragraph (b)(7) or (8) of this section, as applicable, iterating the recalculations as necessary until the total of the unrounded default allocations to all eligible units equals the amount of allowances determined for the State under paragraph (b)(1) of this section.

(6) The Administrator will calculate the initial unrounded default allocations to CSAPR NO_x Ozone Season Group 3 units as follows:

(i) The Administrator will calculate the sum, for all units determined under paragraph (b)(2) of this section to be eligible to receive default allocations, of the units' average heat input amounts determined under paragraph (b)(3)(ii) of this section.

(ii) For each unit determined under paragraph (b)(2) of this section to be eligible to receive a default allocation, the Administrator will calculate the unit's unrounded default allocation as the lesser of—

(A) The product of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section multiplied by a fraction whose numerator is the unit's average heat input amount determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(6)(i) of this section; and

(B) The unit's tentative maximum allocation amount determined under paragraph (b)(4)(ii) of this section.

(iii) If the sum of the unrounded default allocations determined under paragraph (b)(6)(ii) of this section is less than the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will follow the procedures in paragraph (b)(7) or (8) of this section, as applicable.

(iv) If the sum of the unrounded default allocations determined under paragraph (b)(6)(ii) of this section equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will determine the rounded default allocations according to the procedures

in paragraphs (b)(9) and (10) of this section.

(7) If the unrounded default allocation determined in the previous round of the calculation procedure for at least one CSAPR NO_x Ozone Season Group 3 unit is less than the unit's tentative maximum allocation amount determined under paragraph (b)(4)(ii) of this section, the Administrator will recalculate the unrounded default allocations as follows:

(i) The Administrator will calculate the additional pool of allowances to be allocated as the remainder of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section minus the sum of the unrounded default allocations from the previous round of the calculation procedure for all units determined under paragraph (b)(2) of this section to be eligible to receive default allocations.

(ii) The Administrator will calculate the sum, for all units whose unrounded default allocations determined in the previous round of the calculation procedure were less than the respective units' tentative maximum allocation amounts determined under paragraph (b)(4)(ii) of this section, of the units' average heat input amounts determined under paragraph (b)(3)(ii) of this section.

(iii) For each unit whose unrounded default allocation determined in the previous round of the calculation procedure was less than the unit's tentative maximum allocation amount determined under paragraph (b)(4)(ii) of this section, the Administrator will recalculate the unit's unrounded default allocation as the lesser of—

(A) The sum of the unit's unrounded default allocation determined in the previous round of the calculation procedure plus the product of the additional pool of allowances determined under paragraph (b)(7)(i) of this section multiplied by a fraction whose numerator is the unit's average heat input amount determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(7)(ii) of this section; and

(B) The unit's tentative maximum allocation amount determined under paragraph (b)(4)(ii) of this section.

(iv) Except as provided in paragraph (b)(7)(iii) of this section, a unit's unrounded default allocation shall equal the amount determined in the previous round of the calculation procedure.

(v) If the sum of the unrounded default allocations determined under paragraphs (b)(7)(iii) and (iv) of this section is less than the total amount of

allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will iterate the procedures in paragraph (b)(7) of this section or follow the procedures in paragraph (b)(8) of this section, as applicable.

(vi) If the sum of the unrounded default allocations determined under paragraphs (b)(7)(iii) and (iv) of this section equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section, the Administrator will determine the rounded default allocations according to the procedures in paragraphs (b)(9) and (10) of this section.

(8) If the unrounded default allocation determined in the previous round of the calculation procedure for every CSAPR NO_x Ozone Season Group 3 unit equals the unit's tentative maximum allocation amount determined under paragraph (b)(4)(ii) of this section, the Administrator will recalculate the unrounded default allocations as follows:

(i) The Administrator will calculate the additional pool of allowances to be allocated as the remainder of the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section minus the sum of the unrounded default allocations from the previous round of the calculation procedure for all units determined under paragraph (b)(2) of this section to be eligible to receive default allocations.

(ii) The Administrator will recalculate the unrounded default allocation for each eligible unit as the sum of—

(A) The unit's unrounded default allocation as determined in the previous round of the calculation procedure; plus

(B) The product of the additional pool of allowances determined under paragraph (b)(8)(i) of this section multiplied by a fraction whose numerator is the unit's average heat input amount determined under paragraph (b)(3)(ii) of this section and whose denominator is the sum determined under paragraph (b)(6)(i) of this section.

(9) The Administrator will round the default allocation for each eligible unit determined under paragraph (b)(6), (7), or (8) of this section to the nearest allowance and make any adjustments required under paragraph (b)(10) of this section.

(10) If the sum of the default allocations after rounding under paragraph (b)(9) of this section does not equal the total amount of allowances determined for the State and control period under paragraph (b)(1) of this

section, the Administrator will adjust the default allocations as follows. The Administrator will list the CSAPR NO_x Ozone Season Group 3 units in descending order based on such units' allocation amounts under paragraph (b)(9) of this section and, in cases of equal allocation amounts, in alphabetical order of the relevant sources' names and numerical order of the relevant units' identification numbers, and will adjust each unit's allocation amount upward or downward by one CSAPR NO_x Ozone Season Group 3 allowance (but not below zero) in the order in which the units are listed, and will repeat this adjustment process as necessary, until the total of the adjusted default allocations equals the total amount of allowances determined for the State and control period under paragraph (b)(1) of this section.

(11)(i) By March 1, 2025 and March 1 of each year thereafter, the Administrator will calculate the default allocation of CSAPR NO_x Ozone Season Group 3 allowances to each CSAPR NO_x Ozone Season Group 3 unit in a State and Indian country within the borders of the State, in accordance with paragraphs (b)(1) through (10) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year after the year of the applicable calculation deadline under this paragraph (b)(11)(i) and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(11)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(11)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(11)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(11)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(11)(ii) of this section.

(c) *Incorrect allocations of CSAPR NO_x Ozone Season Group 3 allowances to existing units.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_x Ozone Season Group 3 allowances were allocated for the control period to a recipient covered by the provisions of paragraph (c)(1)(i), (ii), or (iii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i) The recipient is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of the control period and is allocated CSAPR NO_x Ozone Season Group 3 allowances for such control period under paragraph (a)(1) or (2) of this section;

(ii) The recipient is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of the control period and is allocated CSAPR NO_x Ozone Season Group 3 allowances for such control period under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter that the SIP revision provides should be allocated only to recipients that are CSAPR NO_x Ozone Season Group 3 units as of the first day of such control period; or

(iii) The recipient is not located as of the first day of the control period in the State (and Indian country within the borders of the State) from whose NO_x Ozone Season Group 3 trading budget CSAPR NO_x Ozone Season Group 3 allowances were allocated to the recipient for such control period under paragraph (a)(1) or (2) of this section or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter.

* * * * *

(5) With regard to any CSAPR NO_x Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section:

(i) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs on or before May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for 2021, 2022, or 2023 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(ii) If the non-recording decision under paragraph (c)(2) of this section or

the deduction under paragraph (c)(3) of this section occurs after May 1, 2024, and on or before May 1 of the year following the year of the control period for which the CSAPR NO_x Ozone Season Group 3 allowances were allocated, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for such control period for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(iii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2024, and after May 1 of the year following the year of the control period for which the CSAPR NO_x Ozone Season Group 3 allowances were allocated, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to a surrender account.

■ 66. Amend § 97.1012 by:

- a. Revising paragraphs (a) introductory text and (a)(1)(i) and (ii);
- b. Removing paragraphs (a)(1)(iii) and (iv);
- c. Revising paragraphs (a)(2) and (a)(3)(i);
- d. In paragraph (a)(3)(ii), adding “and” after the semicolon;
- e. Revising paragraph (a)(3)(iii);
- f. Removing paragraph (a)(3)(iv);
- g. Revising paragraph (a)(4)(i);
- h. Redesignating paragraph (a)(4)(ii) as paragraph (a)(4)(iii) and adding a new paragraph (a)(4)(ii);
- i. Revising paragraphs (a)(5) and (10);
- j. In paragraph (a)(11), removing “§ 97.1011(b)(1)(i), (ii), and (v), of” and adding in its place “paragraph (a)(13) of this section, of”;
- k. Adding paragraph (a)(13);
- l. Revising paragraphs (b) introductory text and (b)(1) and (2);
- m. In paragraph (b)(5), removing “Indian country within the borders of the State” and adding in its place “areas of Indian country within the borders of the State not subject to the State’s SIP authority”;
- n. Revising paragraph (b)(10);
- o. In paragraph (b)(11), removing “§ 97.1011(b)(2)(i), (ii), and (v), of” and adding in its place “paragraph (b)(13) of this section, of”;
- p. Adding paragraphs (b)(13) and (c).

The revisions and additions read as follows:

§ 97.1012 CSAPR NO_x Ozone Season Group 3 allowance allocations to new units.

(a) *Allocations from new unit set-asides.* For each control period in 2021 and thereafter for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, or

2023 and thereafter for a State listed in § 52.38(b)(2)(iii)(B) or (C) of this chapter, and for the CSAPR NO_x Ozone Season Group 3 units in each State and areas of Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State’s SIP authority), the Administrator will allocate CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) * * *

(i) CSAPR NO_x Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period; or

(ii) CSAPR NO_x Ozone Season Group 3 units whose allocation of an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2) is covered by § 97.1011(c)(2) or (3).

(2) The Administrator will establish a separate new unit set-aside for the State for each such control period. Each such new unit set-aside will be allocated CSAPR NO_x Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in § 97.1010(c) and will be allocated additional CSAPR NO_x Ozone Season Group 3 allowances (if any) in accordance with § 97.1011(c)(5) and paragraphs (b)(10) and (c)(5) of this section.

(3) * * *

(i) The control period in 2021, for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, or the control period in 2023, for a State listed in § 52.38(b)(2)(iii)(B) or (C) of this chapter;

* * * * *

(iii) For a unit described in paragraph (a)(1)(ii) of this section, the first control period in which the CSAPR NO_x Ozone Season Group 3 unit operates in the State and Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State’s SIP authority) after operating in another jurisdiction and for which the unit is not already allocated one or more CSAPR NO_x Ozone Season Group 3 allowances.

(4)(i) The allocation to each CSAPR NO_x Ozone Season Group 3 unit described in paragraphs (a)(1)(i) through

(iii) of this section and for each control period described in paragraph (a)(3) of this section will be an amount equal to the unit’s total tons of NO_x emissions during the control period or, if less, any applicable amount calculated under paragraph (a)(4)(ii) of this section.

(ii)(A) The allocation under paragraph (a)(4)(i) of this section to a unit described in paragraph (a)(4)(ii)(B) or (C) of this section may not exceed a maximum controlled baseline calculated as the product (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton) of the unit’s total heat input during the control period in mmBtu multiplied by a NO_x emissions rate of 0.08 lb/mmBtu.

(B) For a control period in 2024 through 2026, a maximum controlled baseline under paragraph (a)(4)(ii)(A) of this section shall apply to any unit combusting any coal or solid coal-derived fuel during the control period, serving a generator with nameplate capacity of 100 MW or more, and equipped with selective catalytic reduction controls on or before September 30 of the preceding control period, except a circulating fluidized bed boiler.

(C) For a control period in 2027 and thereafter, a maximum controlled baseline under paragraph (a)(4)(ii)(A) of this section shall apply to any unit combusting any coal or solid coal-derived fuel during the control period and serving a generator with nameplate capacity of 100 MW or more, except a circulating fluidized bed boiler.

* * * * *

(5) The Administrator will calculate the sum of the allocation amounts of CSAPR NO_x Ozone Season Group 3 allowances determined for all such CSAPR NO_x Ozone Season Group 3 units under paragraph (a)(4)(i) of this section in the State and Indian country within the borders of the State (except, for the control periods in 2021 and 2022, areas of Indian country within the borders of the State not subject to the State’s SIP authority) for such control period.

* * * * *

(10)(i) For a control period in 2021 or 2022, if, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_x Ozone Season Group 3 unit that is in the State and areas of Indian country within the borders of the State subject to the State’s

SIP authority and is allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period in the applicable notice of data availability referenced in § 97.1011(a)(1) an amount of CSAPR NO_x Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_x Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a)(1) for such control period, divided by the remainder of the amount of tons in the applicable State NO_x Ozone Season Group 3 trading budget minus the sum of the amounts of tons in such new unit set-aside and the Indian country new unit set-aside for the State for such control period, and rounded to the nearest allowance.

(ii) For a control period in 2023 or thereafter, if, after completion of the procedures under paragraphs (a)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the new unit set-aside for the State for such control period, the Administrator will allocate to each CSAPR NO_x Ozone Season Group 3 unit that is in the State and Indian country within the borders of the State and is allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for the control period by the Administrator in the applicable notice of data availability referenced in § 97.1011(a)(1) or (2), or under a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter, an amount of CSAPR NO_x Ozone Season Group 3 allowances equal to the following: The total amount of such remaining unallocated CSAPR NO_x Ozone Season Group 3 allowances in such new unit set-aside, multiplied by the unit's allocation under § 97.1011(a)(1) or (2) or a provision of a SIP revision approved under § 52.38(b)(10), (11), or (12) of this chapter for such control period, divided by the remainder of the amount of tons in the applicable State NO_x Ozone Season Group 3 trading budget minus the amount of tons in such new unit set-aside for the State for such control period, and rounded to the nearest allowance.

* * * * *

(13)(i) By March 1, 2022, and March 1 of each year thereafter, the Administrator will calculate the CSAPR NO_x Ozone Season Group 3 allowance allocation to each CSAPR NO_x Ozone Season Group 3 unit in a State and Indian country within the borders of the State (except, for the control periods in

2021 and 2022, areas of Indian country within the State not subject to the State's SIP authority), in accordance with paragraphs (a)(2) through (7), (10), and (12) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph (a)(13)(i) and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (a)(13)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (a)(13)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (a)(13)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (a)(13)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (a)(13)(ii) of this section.

(b) *Allocations from Indian country new unit set-asides.* For the control periods in 2021 and 2022, for a State listed in § 52.38(b)(2)(iii)(A) of this chapter, and for the CSAPR NO_x Ozone Season Group 3 units in areas of Indian country within the borders of each such State not subject to the State's SIP authority, the Administrator will allocate CSAPR NO_x Ozone Season Group 3 allowances to the CSAPR NO_x Ozone Season Group 3 units as follows:

(1) The CSAPR NO_x Ozone Season Group 3 allowances will be allocated to CSAPR NO_x Ozone Season Group 3 units that are not allocated an amount of CSAPR NO_x Ozone Season Group 3 allowances for such control period in the applicable notice of data availability referenced in § 97.1011(a)(1) and that have deadlines for certification of monitoring systems under § 97.1030(b) not later than September 30 of the year of the control period, except as provided in paragraph (b)(10) of this section.

(2) The Administrator will establish a separate Indian country new unit set-

aside for the State for each such control period. Each such Indian country new unit set-aside will be allocated CSAPR NO_x Ozone Season Group 3 allowances in an amount equal to the applicable amount of tons of NO_x emissions as set forth in § 97.1010(d) and will be allocated additional CSAPR NO_x Ozone Season Group 3 allowances (if any) in accordance with paragraph (c)(5) of this section.

* * * * *

(10) If, after completion of the procedures under paragraphs (b)(2) through (7) and (12) of this section for a control period, any unallocated CSAPR NO_x Ozone Season Group 3 allowances remain in the Indian country new unit set-aside for the State for such control period, the Administrator will transfer such unallocated CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for the State for such control period.

* * * * *

(13)(i) By March 1, 2022, and March 1, 2023, the Administrator will calculate the CSAPR NO_x Ozone Season Group 3 allowance allocation to each CSAPR NO_x Ozone Season Group 3 unit in areas of Indian country within the borders of a State not subject to the State's SIP authority, in accordance with paragraphs (b)(2) through (7), (10), and (12) of this section and §§ 97.1006(b)(2) and 97.1030 through 97.1035, for the control period in the year before the year of the applicable calculation deadline under this paragraph (b)(13)(i) and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(13)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice. Objections shall be submitted by the deadline specified in such notice and shall be limited to addressing whether the calculations (including the identification of the CSAPR NO_x Ozone Season Group 3 units) are in accordance with the provisions referenced in paragraph (b)(13)(i) of this section.

(iii) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(13)(i) of this section. By May 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(13)(i) of this section, the Administrator will promulgate a notice of data availability of the results of the calculations incorporating any adjustments that the Administrator

determines to be necessary and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(13)(ii) of this section.

(c) *Incorrect allocations of CSAPR NO_x Ozone Season Group 3 allowances to new units.* (1) For each control period in 2021 and thereafter, if the Administrator determines that CSAPR NO_x Ozone Season Group 3 allowances were allocated for the control period under paragraphs (a)(2) through (7) and (12) of this section or paragraphs (b)(2) through (7) and (12) of this section to a recipient that is not actually a CSAPR NO_x Ozone Season Group 3 unit under § 97.1004 as of the first day of such control period, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021.

(3) If the Administrator already recorded such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will deduct from the account in which such CSAPR NO_x Ozone Season Group 3 allowances were recorded an amount of CSAPR NO_x Ozone Season Group 3 allowances allocated for the same or a prior control period equal to the amount of such already recorded CSAPR NO_x Ozone Season Group 3 allowances. The authorized account representative shall ensure that there are sufficient CSAPR NO_x Ozone Season Group 3 allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such CSAPR NO_x Ozone Season Group 3 allowances under § 97.1021 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.1024(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded CSAPR NO_x Ozone Season Group 3 allowances.

(5) With regard to any CSAPR NO_x Ozone Season Group 3 allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance

with paragraphs (c)(2) and (3) of this section:

(i) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs on or before May 1, 2023, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside, in the case of allowances allocated under paragraph (a) of this section, or the Indian country new unit set-aside, in the case of allowances allocated under paragraph (b) of this section, for the control period in 2021 or 2022 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(ii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2023, and on or before May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to the new unit set-aside for the control period in 2023 for the State from whose NO_x Ozone Season Group 3 trading budget the CSAPR NO_x Ozone Season Group 3 allowances were allocated.

(iii) If the non-recording decision under paragraph (c)(2) of this section or the deduction under paragraph (c)(3) of this section occurs after May 1, 2024, the Administrator will transfer the CSAPR NO_x Ozone Season Group 3 allowances to a surrender account.

■ 67. Amend § 97.1021 by:

- a. In paragraph (a), removing “§ 97.1011(a)” and adding in its place “§ 97.1011(a)(1)”;
- b. Revising paragraph (b);
- c. Removing and reserving paragraph (c);
- d. Adding paragraphs (d) and (e);
- e. In paragraph (f), removing “§ 97.1011(a), or” and adding in its place “§ 97.1011(a)(1), or”;
- f. Redesignating paragraphs (g) and (h) as paragraphs (i) and (j), respectively, and adding new paragraphs (g) and (h);
- g. Revising newly redesignated paragraph (i);
- h. In newly redesignated paragraph (j), removing “and May 1 of each year thereafter, the” and adding in its place “, and May 1, 2023, the”; and
- i. In paragraph (m), adding “or (e)” after “§ 97.811(d)” each time it appears.

The revisions and addition read as follows:

§ 97.1021 Recordation of CSAPR NO_x Ozone Season Group 3 allowance allocations and auction results.

* * * * *

(b) By July 29, 2021, the Administrator will record in each

CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2022.

* * * * *

(d) By September 5, 2023, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2023.

(e) By September 5, 2023, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024, unless the State in which the source is located notifies the Administrator in writing by August 4, 2023, of the State's intent to submit to the Administrator a complete SIP revision by September 1, 2023, meeting the requirements of § 52.38(b)(10)(i) through (iv) of this chapter.

(1) If, by September 1, 2023, the State does not submit to the Administrator such complete SIP revision, the Administrator will record by September 15, 2023, in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024.

(2) If the State submits to the Administrator by September 1, 2023, and the Administrator approves by March 1, 2024, such complete SIP revision, the Administrator will record by March 1, 2024, in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source as provided in such approved, complete SIP revision for the control period in 2024.

(3) If the State submits to the Administrator by September 1, 2023, and the Administrator does not approve by March 1, 2024, such complete SIP revision, the Administrator will record by March 1, 2024, in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances

allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(1) for the control period in 2024.

* * * * *

(g) By September 5, 2023, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(2) for the control periods in 2023 and 2024.

(h) By July 1, 2024, and July 1 of each year thereafter, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1011(a)(2) for the control period in the year after the year of the applicable recordation deadline under this paragraph (h).

(i) By May 1, 2022, and May 1 of each year thereafter, the Administrator will record in each CSAPR NO_x Ozone Season Group 3 source's compliance account the CSAPR NO_x Ozone Season Group 3 allowances allocated to the CSAPR NO_x Ozone Season Group 3 units at the source in accordance with § 97.1012(a) for the control period in the year before the year of the applicable recordation deadline under this paragraph (i).

* * * * *

- 68. Amend § 97.1024 by:
 - a. Revising the section heading;
 - b. In paragraphs (a) introductory text and (b) introductory text, adding "primary" before "emissions limitation";
 - c. Revising paragraph (b)(1);
 - d. Adding paragraph (b)(3); and
 - e. In paragraph (c)(2)(ii), adding "or (e)" after "§ 97.826(d)".

The revisions and addition read as follows:

§ 97.1024 Compliance with CSAPR NO_x Ozone Season Group 3 primary emissions limitation; backstop daily NO_x emissions rate.

* * * * *

(b) * * *

(1) Until the amount of CSAPR NO_x Ozone Season Group 3 allowances deducted equals the sum of:

- (i) The number of tons of total NO_x emissions from all CSAPR NO_x Ozone Season Group 3 units at the source for such control period; plus
- (ii) Two times the excess, if any, over 50 tons of the sum (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton), for all

calendar days in the control period and all CSAPR NO_x Ozone Season Group 3 units at the source to which the backstop daily NO_x emissions rate applies for the control period under paragraph (b)(3) of this section, of any amount by which a unit's NO_x emissions for a given calendar day in pounds exceed the product in pounds of the unit's total heat input in mmBtu for that calendar day multiplied by 0.14 lb/mmBtu; or

* * * * *

(3) The backstop daily NO_x emissions rate of 0.14 lb/mmBtu applies as follows:

(i) For each control period in 2024 through 2029, the backstop daily NO_x emissions rate shall apply to each CSAPR NO_x Ozone Season Group 3 unit combusting any coal or solid coal-derived fuel during the control period, serving a generator with nameplate capacity of 100 MW or more, and equipped with selective catalytic reduction controls on or before September 30 of the preceding control period, except a circulating fluidized bed boiler.

(ii) For each control in 2030 and thereafter, the backstop daily NO_x emissions rate shall apply to each CSAPR NO_x Ozone Season Group 3 unit combusting any coal or solid coal-derived fuel during the control period and serving a generator with nameplate capacity of 100 MW or more, except a circulating fluidized bed boiler.

* * * * *

- 69. Amend § 97.1025 by:
 - a. Revising the section heading;
 - b. In paragraphs (a) introductory text, (a)(2), (b)(1)(i), (b)(1)(ii)(A) and (B), (b)(3), (b)(4)(i), (b)(5), (b)(6)(i), (b)(6)(iii) introductory text, and (b)(6)(iii)(A) and (B), removing "base CSAPR" and adding in its place "CSAPR" each time it appears; and
 - c. Adding paragraph (c).

The revision and addition read as follows:

§ 97.1025 Compliance with CSAPR NO_x Ozone Season Group 3 assurance provisions; CSAPR NO_x Ozone Season Group 3 secondary emissions limitation.

* * * * *

(c) CSAPR NO_x Ozone Season Group 3 secondary emissions limitation. (1) The owner or operator of a CSAPR NO_x Ozone Season Group 3 unit equipped with selective catalytic reduction controls or selective non-catalytic reduction controls shall not discharge, or allow to be discharged, emissions of NO_x to the atmosphere during a control period in excess of the tonnage amount calculated in accordance with paragraph (c)(2) of this section, provided that the

emissions limitation established under this paragraph (c)(1) shall apply to a unit for a control period only if:

(i) The unit is included for the control period in a group of CSAPR NO_x Ozone Season Group 3 units at CSAPR NO_x Ozone Season Group 3 sources in a State (and Indian country within the borders of such State) having a common designated representative and the owners and operators of such units and sources are subject to a requirement for such control period to hold one or more CSAPR NO_x Ozone Season Group 3 allowances under § 97.1006(c)(2)(i) and paragraph (b) of this section with respect to such group; and

(ii) The unit was required to report NO_x emissions and heat input data for all or portions of at least 367 operating hours during the control period and all or portions of at least 367 operating hours during at least one historical control period under the CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program.

(2) The amount of the emissions limitation applicable to a CSAPR NO_x Ozone Season Group 3 unit for a control period under paragraph (c)(1) of this section, in tons of NO_x, shall be calculated as the sum of 50 plus the product (converted to tons at a conversion factor of 2,000 lb/ton and rounded to the nearest ton) of multiplying—

(i) The total heat input in mmBtu reported for the unit for the control period in accordance with §§ 97.1030 through 97.1035; and

(ii) A NO_x emission rate of 0.10 lb/mmBtu or, if higher, the product of 1.25 times the lowest seasonal average NO_x emission rate in lb/mmBtu achieved by the unit in any historical control period for which the unit was required to report NO_x emissions and heat input data for all or portions of at least 367 operating hours under the CSAPR NO_x Ozone Season Group 1 Trading Program, CSAPR NO_x Ozone Season Group 2 Trading Program, or CSAPR NO_x Ozone Season Group 3 Trading Program, where the unit's seasonal average NO_x emission rate for each such historical control period shall be calculated from such reported data as the quotient (converted to lb/mmBtu at a conversion factor of 2,000 lb/ton, and rounded to the nearest 0.0001 lb/mmBtu) of the unit's total NO_x emissions in tons for the historical control period divided by the unit's total heat input in mmBtu for the historical control period.

- 70. Amend § 97.1026 by:

- a. Revising the section heading and paragraph (b);
- b. In paragraph (c):
- i. Removing “set forth in” and adding in its place “established under”; and
- ii. Removing “State (or Indian” and adding in its place “State (and Indian”;
- c. Adding paragraph (d).

The revision and addition read as follows:

§ 97.1026 Banking; bank recalibration.

* * * * *

(b) Any CSAPR NO_x Ozone Season Group 3 allowance that is held in a compliance account or a general account will remain in such account unless and until the CSAPR NO_x Ozone Season Group 3 allowance is deducted or transferred under § 97.1011(c), § 97.1012(c), § 97.1023, § 97.1024, § 97.1025, § 97.1027, or § 97.1028 or paragraph (c) or (d) of this section.

* * * * *

(d) Before the allowance transfer deadline for each control period in 2024 and thereafter, the Administrator will deduct amounts of CSAPR NO_x Ozone Season Group 3 allowances issued for the control periods in previous years exceeding the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period in accordance with paragraphs (d)(1) through (4) of this section.

(1) As soon as practicable on or after August 1, 2024, and August 1 of each year thereafter, the Administrator will temporarily suspend acceptance of CSAPR NO_x Ozone Season Group 3 allowance transfers submitted under § 97.1022 and, before resuming acceptance of such transfers, will take the actions in paragraphs (d)(2) through (4) of this section.

(2) The Administrator will determine each of the following values:

(i) The total amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section and held in all compliance and general accounts.

(ii) The CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period in the year of the deadline under paragraph (d)(1) of this section, calculated as the product, rounded to the nearest allowance, of the sum for all States listed in § 52.38(b)(2)(iii) of this chapter of the State NO_x Ozone Season Group 3 trading budgets under § 97.1010(a) for such States for such control period multiplied by—

(A) 0.210, for a control period in 2024 through 2029; or

(B) 0.105, for a control period in 2030 and thereafter.

(3) If the total amount of CSAPR NO_x Ozone Season Group 3 allowances determined under paragraph (d)(2)(i) of this section exceeds the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target determined under paragraph (d)(2)(ii) of this section, then for each compliance account or general account holding CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section, the Administrator will:

(i) Determine the total amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section and held in the account.

(ii) Determine the account's share of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period, calculated as the product, rounded up to the nearest allowance, of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target determined under paragraph (d)(2)(ii) of this section multiplied by a fraction whose numerator is the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in the account determined under paragraph (d)(3)(i) of this section and whose denominator is the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in all compliance and general accounts determined under paragraph (d)(2)(i) of this section.

(iii) Deduct an amount of CSAPR NO_x Ozone Season Group 3 allowances issued for control periods in years before the year of the deadline under paragraph (d)(1) of this section equal to any positive remainder of the total amount of CSAPR NO_x Ozone Season Group 3 allowances held in the account determined under paragraph (d)(3)(i) of this section minus the account's share of the CSAPR NO_x Ozone Season Group 3 allowance bank ceiling target for the control period determined under paragraph (d)(3)(ii) of this section. The allowances will be deducted on a first-in, first-out basis in the order set forth in § 97.1024(c)(2)(i) and (ii).

(iv) Record the deductions under paragraph (d)(3)(iii) of this section in the account.

(4)(i) In computing any amounts of CSAPR NO_x Ozone Season Group 3 allowances to be deducted from general accounts under paragraph (d)(3) of this section, the Administrator may group multiple general accounts whose ownership interests are held by the same or related persons or entities and treat the group of accounts as a single

account for purposes of such computation.

(ii) Following a computation for a group of general accounts in accordance with paragraph (d)(4)(i) of this section, the Administrator will deduct from and record in each individual account in such group a proportional share of the quantity of CSAPR NO_x Ozone Season Group 3 allowances computed for such group, basing such shares on the respective quantities of CSAPR NO_x Ozone Season Group 3 allowances determined for such individual accounts under paragraph (d)(3)(i) of this section.

(iii) In determining the proportional shares under paragraph (d)(4)(ii) of this section, the Administrator may employ any reasonable adjustment methodology to truncate or round each such share up or down to a whole number and to cause the total of such whole numbers to equal the amount of CSAPR NO_x Ozone Season Group 3 allowances computed for such group of accounts in accordance with paragraph (d)(4)(i) of this section, even where such adjustments cause the numbers of CSAPR NO_x Ozone Season Group 3 allowances remaining in some individual accounts following the deductions to equal zero.

■ 71. Amend § 97.1030 by:

■ a. Revising paragraph (b)(1); and

■ b. In paragraph (b)(3), removing “(b)(2)” and adding in its place “(b)(1) or (2)” each time it appears.

The revision reads as follows:

§ 97.1030 General monitoring, recordkeeping, and reporting requirements.

* * * * *

(b) * * *

(1)(i) May 1, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(ii) May 1, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter;

(iii) August 4, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter, where the unit is required to report NO_x mass emissions data or NO_x emissions rate data according to 40 CFR part 75 to address other regulatory requirements; or

(iv) January 31, 2024, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter, where the unit is not required to report NO_x mass emissions data or NO_x emissions rate data according to 40 CFR

part 75 to address other regulatory requirements.

* * * * *

■ 72. Amend § 97.1034 by:

- a. Revising paragraph (d)(2)(i); and
- b. In paragraph (d)(4), removing “or CSAPR SO₂ Group 1 Trading Program, quarterly” and adding in its place “CSAPR SO₂ Group 1 Trading Program, or CSAPR SO₂ Group 2 Trading Program, quarterly”.

The revision reads as follows:

§ 97.1034 Recordkeeping and reporting.

* * * * *

(d) * * *

(2) * * *

(i)(A) The calendar quarter covering May 1, 2021, through June 30, 2021, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(A) of this chapter;

(B) The calendar quarter covering May 1, 2023, through June 30, 2023, for a unit in a State (and Indian country

within the borders of such State) listed in § 52.38(b)(2)(iii)(B) of this chapter; or

(C) The calendar quarter covering August 4, 2023, through June 30, 2023, for a unit in a State (and Indian country within the borders of such State) listed in § 52.38(b)(2)(iii)(C) of this chapter;

* * * * *

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