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

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Presidential Documents

Title 3—

The President

Proclamation 10605 of August 4, 2023

National Health Center Week, 2023

By the President of the United States of America

A Proclamation

Every year, our Nation's nearly 1,400 federally funded community health centers provide critical, accessible, and affordable medical, dental, and behavioral health care to over 30 million Americans. Spread across every State and territory, these vital health care centers help make real the promise that health care in this country should be a right, not a privilege. During National Health Center Week, we celebrate their dedicated staff and recommit to providing the resources these vital centers need to continue protecting the well-being of the American people.

From the beginning of my Administration, we have made historic investments to strengthen our Nation's community health center network. Through the American Rescue Plan, we invested $7.6 billion to grow the health center workforce, update facilities, and provide them with the necessary resources to fight the COVID–19 pandemic. The Bipartisan Infrastructure Law is rebuilding our roads, highways, water systems, and high-speed internet to better connect people and places with the care they need. My latest Budget would renew critical support for the Health Center Program and put it on a path to double its size and expand its reach.

Community health centers are key to tackling health care disparities in underserved communities. By improving access to screenings, they bring us closer to ending cancer as we know it, which is the goal of my Cancer Moonshot Initiative. By connecting more Americans to behavioral health services, they build an infrastructure of service that addresses mental health needs—a key pillar of my Unity Agenda. By supporting the delivery of pregnancy-related care, they improve the lives of mothers and children across the country.

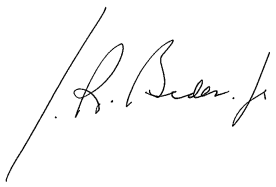
Time and again, evidence reveals that health centers make a powerful difference in the communities they serve. During the height of the COVID–19 pandemic, community health care centers distributed over 20 million vaccines—nearly 70 percent of which went to people of color and more than 20 percent to those who lived in rural areas. In these ways, they help bridge a critical gap in access to lifesaving prevention and treatment. And because of their patient-majority governing board structure, health centers ensure that their mission and decision-making are informed not only by medical experts but, principally, by the people they serve.

These investments are a matter of human dignity and fairness. When we fail to invest in the health outcomes of some communities, we all suffer. But when we take the necessary actions to improve care in every zip code, we are all better for it.

This week, we thank the heroic health center staff on the front lines of improving lives. We acknowledge your sacrifice and courage, especially at the height of the pandemic. We are grateful for your daily work that saves lives and protects the future of our country. You make the promise of America real—a promise to lift everyone up and leave no one behind. My Administration is committed to supporting you as you make our Nation healthier, more resilient, and more just.

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 the week of August 6 through August 12, 2023, as National Health Center Week.

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



[FR Doc. 2023–17179
Filed 8–8–23; 8:45 am]
Billing code 3395–F3–P

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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 HOMELAND SECURITY

8 CFR Part 214

[DHS Docket No. ICEB–2021–0016]

Removal of Obsolete Procedures and Requirements Related to F, J, and M Nonimmigrants; Corrections

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Correcting amendments.

SUMMARY: On December 12, 2022, the Department of Homeland Security (DHS) issued an interim final rule, Removal of Obsolete Procedures and Requirements Related to F, J, and M Nonimmigrants, that inadvertently contained inaccurate amendatory instructions so that the revisions in the 2022 rule could not be made to the Code of Federal Regulations (CFR). This document corrects the CFR.

DATES: Effective on August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Policy and Response Unit Chief, Student and Exchange Visitor Program; U.S. Immigration and Customs Enforcement; 500 12th Street SW, Stop 5600; Washington, DC 20536–5600; or by email at *sevp@ice.dhs.gov* or telephone at 703/603–3400.

SUPPLEMENTARY INFORMATION: On December 12, 2022, DHS issued an interim final rule, Removal of Obsolete Procedures and Requirements Related to F, J, and M Nonimmigrants (87 FR 75891), that inadvertently contained inaccurate amendatory instructions so that the revisions in the 2022 rule could not be made to the Code of Federal Regulations (CFR). This document corrects the CFR.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

Accordingly, DHS corrects 8 CFR part 214 by making the following correcting amendments:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

§ 214.1 [Amended]

■ 2. Amend § 214.1 in paragraph (b)(3)(iv) by removing the phrase ''the alien's Form I–20 ID copy, and a properly endorsed page 4 of Form I–20M–N'' and adding in its place ''and the alien's properly endorsed Form I–20 or successor form''.

§ 214.2 [Amended]

■ 3. Amend § 214.2 as follows:

■ a. In paragraph (f)(9)(i), remove ''* * *''.

■ b. In paragraph (f)(13)(i), remove ''his or her I–20 ID'' and add in its place ''their Form I–20 or successor form''.

■ c. In paragraph (m)(14)(vi), remove ''the Service'' wherever it appears and ''print'' and add in their place ''USCIS'' and ''generate a'', respectively.

§ 214.3 [Amended]

■ 4. Amend § 214.3 in paragraph (c)(1) as follows:

■ a. Add a comma after ''Secretary of of Homeland Security''.

■ b. Remove the phase ''vocational or recreational'' and add in its place ''avocational or recreational''.

§ 214.4 [Amended]

■ 5. Amend § 214.4 as follows:

■ a. In paragraphs (a)(2)(x), (xi), (xviii), and (xix) by removing ''Forms I–20'' and add in its place ''Form I–20 or successor form''.

■ b. In paragraph (i)(1) by removing ''Forms I–20'' and add in its place ''Form I–20''.

Alejandro N. Mayorkas,
Secretary, U.S. Department of Homeland Security.

[FR Doc. 2023–17043 Filed 8–8–23; 8:45 am]
BILLING CODE 9111–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1653; Project Identifier AD–2023–00899–A; Amendment 39–22519; AD 2023–15–07]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Air Tractor, Inc. (Air Tractor) Model AT–802 and AT–802A airplanes that have Wipaire Supplemental Type Certificate (STC) No. SA01795CH installed. This AD was prompted by reports of cracks found in the forward horizontal stabilizer spar where the vertical finlets tie to the horizontal tail forward spar. This AD requires repetitively inspecting both the left and right forward horizontal stabilizer spars for cracks and replacing any forward horizontal stabilizer spar found cracked. This AD also requires reporting inspection results to the FAA. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 9, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 9, 2023.

The FAA must receive comments on this AD by September 25, 2023.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1653; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Wipaire, Inc., 1700 Henry Ave., Fleming Field (KSGS), South St. Paul, MN 55075; phone: (651) 451–1205; email: *customerservice@wipaire.com;* website: *wipaire.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–1653.

FOR FURTHER INFORMATION CONTACT: Tim Eichor, Aviation Safety Engineer, Central Certification Branch, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (847) 294–7141; email: *tim.d.eichor@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–2023–1653, Project Identifier AD–2023–00899–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Tim Eichor, Aviation Safety Engineer, Central Certification Branch, FAA, 1801 South Airport Road, Wichita, KS 67209. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

During routine maintenance, an Air Tractor Model AT–802 airplane was found with a hairline crack in the flange of the right forward horizontal stabilizer spar. The airplane had STC No. SA01795CH installed and is used in fire-fighting missions, which can propagate crack growth more rapidly. Of the 144 Air Tractor Model AT–802 and AT–802A airplanes that have this STC, 45 have been inspected, and 24 of those inspected had cracks found in at least one forward horizontal stabilizer spar. The cracking is in the forward horizontal stabilizer spar bend radius located at the STC finlet mounting locations.

This condition, if not addressed, could result in structural failure of the horizontal tail with consequent loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Wipaire, Inc. Service Letter 253, Revision B, dated July 27, 2023, which specifies procedures for inspecting the left and right forward horizontal stabilizer spars for cracks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires repetitively inspecting both the left and right forward horizontal stabilizer spars for cracks and replacing any forward horizontal stabilizer spar found cracked. This AD also requires reporting inspection results to the FAA.

Interim Action

The FAA considers this AD to be an interim action. The STC design approval holder is working on a modification to the STC configurations to address this issue. The FAA may consider future rulemaking on this subject.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because cracks in the forward horizontal stabilizer spars could lead to structural failure of the horizontal tail with consequent loss of control of the airplane. Airplanes with the affected STC installed are used in fire-fighting missions and put frequent high repetitive fatigue loads in this area at a high utilization rate. Based on the number of cracks found to date, a significant number of airplanes need to be inspected within 3 to 15 days depending on the configuration. This compliance time is shorter than the time necessary for the public to comment and for publication of the final rule.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, 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, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect forward horizontal stabilizer spars	20 work-hours × $85 per hour = $1,700	$0	$1,700 per inspection cycle.	$51,000 per inspection cycle.
Report inspection results	1 work-hour × $85 per hour = $85	0	85 per inspection cycle.	2,550 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace a cracked forward horizontal stabilizer spar	40 work-hours × $85 per hour = $3,400	$1,325	$4,725

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 be 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, 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:

2023–15–07 Air Tractor, Inc.: Amendment 39–22519; Docket No. FAA–2023–1653; Project Identifier AD–2023–00899–A.

(a) Effective Date

This airworthiness directive (AD) is effective August 9, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Air Tractor, Inc. Model AT–802 and AT–802A airplanes, all serial numbers, certificated in any category, that

have Wipaire, Inc. Supplemental Type Certificate (STC) No. SA01795CH installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 5510, Horizontal Stabilizer Structure; 5511 Horizontal stabilizer, Spar/Rib; 5514, Horizontal Stabilizer Miscellaneous Structure; 5530, Vertical Stabilizer Structure.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in at least one forward horizontal stabilizer spar on 24 of the affected airplanes where the vertical finlets tie to the forward horizontal stabilizer spar. The FAA is issuing this AD to prevent structural failure of the forward horizontal stabilizer spars. The unsafe condition, if not addressed, could result in structural failure of the horizontal tail with consequent loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) At the compliance times in paragraphs (g)(1)(i) through (iii) of this AD, as applicable, and thereafter at intervals not to exceed 200 hours time-in-service (TIS), inspect the left and right forward horizontal stabilizer spars for cracks in accordance with Steps 1 through 9 of the Work Instructions of Wipaire, Inc. Service Letter 253, Revision B, dated July 27, 2023.

(i) *For STC configuration 7D1–4399–01:* Within 3 days or 24 hours TIS after the effective date of this AD or before the accumulation of 200 hours TIS since installation of STC No. SA01795CH, whichever occurs later.

(ii) *For STC configuration 7D1–4399–02:* Within 5 days or 24 hours TIS after the effective date of this AD or before the accumulation of 300 hours TIS since installation of STC No. SA01795CH, whichever occurs later.

(iii) *For STC configuration 7D1–4399–03:* Within 15 days or 24 hours TIS after the effective date of this AD or before the accumulation of 600 hours TIS since installation of STC No. SA01795CH, whichever occurs later.

(2) If any crack is found in a forward horizontal stabilizer spar during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the cracked forward horizontal stabilizer spar. Replacement of the cracked forward horizontal stabilizer spar starts the initial and repetitive inspections over.

(3) Within 10 days after each inspection required by paragraph (g)(1) of this AD or within 10 days after the effective date of this AD, whichever occur later, report the following to the FAA at the address in paragraph (j)(1) of this AD. Report this information regardless of whether cracks are found.

(i) Model, engine configuration (with horsepower limits), and propeller type;

(ii) Serial number and N number;

(iii) Total hours TIS on airframe;

(iv) Total hours TIS operated with floats, if known;

(v) STC configuration and total hours with STC installed;

(vi) Crack location (right or left, upper/lower caps inboard/outboard hole);

(vii) Crack size;

(viii) Photos of cracks found, if available; and

(ix) Any additional operator/mechanic comments

(h) Credit for Previous Actions

You may take credit for the initial inspection required by paragraph (g)(1) of this AD if, before the effective date of this AD, you complied with Wipaire, Inc. Service Letter 253, Revision A, dated April 5, 2023.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

(1) For more information about this AD, contact Tim Eichor, Aviation Safety Engineer, Central Certification Branch, FAA, 1801 S Airport Road, Wichita, KS 67209; phone: (847) 294–7141; email: *tim.d.eichor@faa.gov.*

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

(k) Material Incorporated by Reference

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

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

(i) Wipaire, Inc. Service Letter 253, Revision B, dated July 27, 2023.

(ii) [Reserved]

(3) For service information identified in this AD, contact Wipaire, Inc., 1700 Henry Ave, Fleming Field (KSGS), South St. Paul, MN 55075; phone: (651) 451–1205; email: *customerservice@wipaire.com;* website: *wipaire.com.*

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

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

Issued on July 28, 2023.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–16964 Filed 8–7–23; 11:15 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 161, 164, 184, and 186

[Docket No. FDA–2019–N–4750]

RIN 0910–AI15

Revocation of Uses of Partially Hydrogenated Oils in Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending our regulations that provide for the use of partially hydrogenated oils (PHOs) in food in light of our determination that PHOs are no longer generally recognized as safe (GRAS). The rule removes PHOs as an optional ingredient in the standards of identity for peanut butter and canned tuna. It revises FDA's regulations affirming food substances as GRAS pertaining to menhaden oil and rapeseed oil to no longer include partially hydrogenated forms of these oils, and deletes the regulation affirming hydrogenated fish oil as GRAS as an indirect food substance. We are also revoking prior sanctions (*i.e.,* pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns based on our conclusion that these uses of PHOs may be injurious to health. We are issuing these amendments directly as a final rule because they are noncontroversial given the public health risks associated with PHOs and the increasing use of PHO alternatives, and we anticipate no significant adverse comments because PHOs were declared no longer GRAS for any use in human food in 2015.

DATES: This rule is effective December 22, 2023. Either electronic or written comments on the direct final rule or its companion proposed rule must be submitted by October 23, 2023. If FDA receives no significant adverse

comments within the specified comment period, we intend to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, FDA will publish a document in the **Federal Register** withdrawing this direct final rule within 30 days after the comment period on this direct final rule ends.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 23, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–4750 for ''Revocation of Uses of Partially Hydrogenated Oils in Foods.'' Received comments, those filed in a timely manner (see **ADDRESSES**) will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition, Office of Food Additive Safety (HFS–255), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1309; or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Direct Final Rule

The purpose of this direct final rule is to amend our regulations and revoke prior-sanctioned uses of PHOs to conform with the current state of scientific knowledge regarding the public health risks of PHOs. In June 2015, FDA published a declaratory order (Order) setting forth our final determination, based on the available scientific evidence and the findings of expert scientific panels, that there is no longer a consensus among qualified experts that PHOs, which are the primary dietary source of industrially produced *trans* fatty acids, are GRAS for any use in human food. The Order stated that we determined that this body of evidence established the health risks associated with the consumption of *trans* fat. In the Order, we recognized that there were some uses of PHOs in foods that are expressly authorized by GRAS affirmation regulations, acknowledged that there could be some uses recognized by ''prior sanction'' (and thus could not be regulated as a

food additive), and stated that we would address such uses separate from the final determination. We also stated that we would consider taking further action, including revising certain standards of identity that list PHOs as optional ingredients.

As explained in the Order, there is a lack of convincing evidence that PHOs are GRAS. FDA has not approved a food additive petition for PHOs. Accordingly, we are removing PHOs from our food regulations in light of our determination that PHOs are no longer GRAS.

Furthermore, based on our current review of scientific data and information, as well as previous safety reviews performed to support various FDA actions regarding *trans* fat, we are prohibiting all prior-sanctioned uses of PHOs. A prior sanction exempts a specific use of a substance in food from the definition of food additive and from all related food additive provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) if the use was sanctioned or approved prior to September 6, 1958. In accordance with FDA's general regulations regarding prior sanctions, we may revoke a prior-sanctioned use of a food ingredient where scientific data or information demonstrate that prior-sanctioned use of the food ingredient may be injurious to health. We have determined that the prior-sanctioned uses of PHOs may render food injurious to health. Consequently, we are revoking the prior-sanctioned uses of PHOs.

B. Summary of the Major Provisions of the Direct Final Rule

The rule removes PHOs as an optional ingredient in the standards of identity for peanut butter and canned tuna, revises the regulations affirming the use of menhaden oil and rapeseed oil as GRAS to delete language regarding partially hydrogenated forms of these oils, and revokes the regulation affirming hydrogenated fish oil as GRAS as an indirect food substance. We are revoking prior sanctions (*i.e.,* pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns.

C. Legal Authority

This rule is consistent with our authority in sections 201, 401, 402, 409, and 701 of the FD&C Act (21 U.S.C. 321, 341, 342, 348, and 371). We discuss our legal authority in greater detail in section V of this document.

D. Costs and Benefits

We estimated the costs of removing PHO-containing foods from the market, which accrue from product reformulation, relabeling products, changing food recipes, finding substitute ingredients and changes in functional and sensory product properties, such as taste, texture, and shelf life. The benefits of the rule accrue from reduction of coronary heart diseases. Discounted at 7 percent over a 20-year period, the annualized primary cost estimate of the rule is $24.5 million with a lower bound estimate of $20.8 million and an upper bound estimate of $29.7 million. The annualized benefits of this rule discounted at 7 percent over a 20-year period is $61.5 million for the primary estimate with a lower bound of $20.1 million and an upper bound of $120.7 million.

II. Direct Final Rulemaking

In the document titled ''Guidance for FDA and Industry: Direct Final Rule Procedures,'' announced and provided in the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described its procedures on when and how we will employ direct final rulemaking. The guidance may be accessed at: *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.* We have determined that this rule is appropriate for direct final rulemaking because it includes only noncontroversial amendments, and we anticipate no significant adverse comments. Consistent with our procedures on direct final rulemaking, we are also publishing elsewhere in this issue of the **Federal Register** a companion proposed rule proposing to amend our regulations and revoke prior-sanctioned uses of PHOs to conform with the current state of scientific knowledge regarding the public health risks of PHOs. The companion proposed rule provides a procedural framework within which the rule may be finalized if the direct final rule is withdrawn because of any significant adverse comments. The comment period for the direct final rule runs concurrently with the companion proposed rule. Any comments received in response to the companion proposed rule will be considered as comments regarding the direct final rule.

We are providing a comment period on the direct final rule of 75 days after the date of publication in the **Federal Register**. If we receive any significant adverse comments, we intend to withdraw this direct final rule before its effective date by publication of a notice in the **Federal Register**. A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process.

Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to a part of this rule and that part can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of the significant adverse comment.

If any significant adverse comments are received during the comment period, FDA will publish, before the effective date of this direct final rule, a notice of significant adverse comment and withdraw the direct final rule. If we withdraw the direct final rule, any comments received will be applied to the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedure.

If FDA receives no significant adverse comments during the specified comment period, we intend to publish a document confirming the effective date within 30 days after the comment period ends.

III. Table of Abbreviations/Acronyms Used in This Document

Abbreviation/ acronym	What it means
CFR	Code of Federal Regulations.
CHD	Coronary heart disease.
CVD	Cardiovascular disease.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
FR	**Federal Register.**
GRAS	Generally Recognized as Safe.
IP–TFA	Industrially Produced *Trans* Fatty Acid.
LEAR oil	Low Erucic Acid Rapeseed Oil.
%en	Percentage of Total Energy Intake per Day.
PHOs	Partially Hydrogenated Oils.
U.S.C.	United States Code.
USDA	United States Department of Agriculture.

IV. Background

In the **Federal Register** of November 8, 2013 (78 FR 67169), we announced our tentative determination that, based on currently available scientific information, PHOs are no longer GRAS under any condition of use in human food and, therefore, are food additives. Section 201(s) of the FD&C Act (21 U.S.C. 321(s)) defines a food additive, in part, as a substance that is not GRAS, and section 402(a)(2)(C) of the FD&C Act (21 U.S.C. 342(a)(2)(C)) establishes that food bearing or containing a food additive that is unsafe within the meaning of section 409 of the FD&C Act (21 U.S.C. 348) is adulterated. Section 409 of the FD&C Act establishes that a food additive is unsafe for the purposes of section 402(a)(2)(C) of the FD&C Act unless certain criteria are met, such as conformance with a regulation prescribing the conditions under which the additive may be safely used. In the **Federal Register** of June 17, 2015 (80 FR 34650), we published a declaratory order (the Order) announcing our final determination that there is no longer a consensus among qualified experts that PHOs, the primary dietary source of industrially produced *trans* fatty acids (IP–TFA), are GRAS for any use in human food. For a discussion of the science regarding the harms associated with PHOs, we refer readers to the prior administrative proceeding (see 78 FR 67169 at 67171).

The Order acknowledged (see 80 FR 34650 at 34651) that the regulations at 21 CFR part 184, ''Direct Food Substances Affirmed as Generally Recognized as Safe,'' (GRAS affirmation regulations) include partially hydrogenated versions of two oils: (1) menhaden oil (§ 184.1472(b) (21 CFR 184.1472(b))) and (2) low erucic acid rapeseed (LEAR) oil (§ 184.1555(c)(2) (21 CFR 184.1555(c)(2))). Partially hydrogenated menhaden oil was affirmed as GRAS for use in food (54 FR 38219, September 15, 1989) on the basis that the oil is chemically and biologically comparable to commonly used partially hydrogenated vegetable oils such as corn and soybean oils. Partially hydrogenated LEAR oil was affirmed as GRAS for use in food (50 FR 3745, January 28, 1985) based on published safety studies (*i.e.,* scientific procedures) (21 CFR 170.30). In the Order, we stated that we would amend the GRAS affirmation regulations for menhaden oil and LEAR oil (§§ 184.1472 and 184.1555) in a future rulemaking (see 80 FR 34650 at 34651, 34655, and 34667).

In addition, our GRAS affirmation regulation for hydrogenated fish oil at § 186.1551 (21 CFR 186.1551) (44 FR 28323, May 15, 1979), provides for partial hydrogenation of oils expressed from fish, primarily menhaden, and secondarily herring or tuna, used as a constituent of cotton and cotton fabrics used for dry food packaging.

Certain standard of identity regulations include PHOs as an optional ingredient. Since 1990, the standard of identity for canned tuna at § 161.190 (21 CFR 161.190) has provided for the use of PHOs as an optional seasoning or flavoring ingredient in canned tuna in water (55 FR 45795, October 31, 1990). Since 1968, the standard of identity for peanut butter at § 164.150 (21 CFR 164.150) has provided for the use of PHOs as an optional stabilizing ingredient (33 FR 10506, July 24, 1968).

In addition, based on a review of our regulations and on comments submitted in response to our tentative determination, ''prior sanctions'' exist for the use of PHOs in margarine, shortening, and bread, rolls, and buns. As discussed in more detail in section VI of this document, a prior sanction exempts a specific use of a substance in food if the use was sanctioned or approved prior to September 6, 1958, from the definition of a food additive under section 201(s)(4) of the FD&C Act and from all related food additive provisions of the FD&C Act.

V. Legal Authority

We are issuing this rule under the legal authority of sections 201, 401, 402, 409, and 701 of the FD&C Act. The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food, if such substance is not generally recognized by experts as safe under the conditions of its intended use (section 201(s) of the FD&C Act). The definition of ''food additive'' exempts any uses that are the subject of a prior sanction (section 201(s)(4) of the FD&C Act). Food additives are deemed unsafe except to the extent that FDA approves their use (section 409(a) of the FD&C Act). Food is adulterated when it contains an unapproved food additive (section 402(a)(2)(C) of the FD&C Act). In addition, we may establish standards of identity for foods to promote honesty and fair dealing in the interest of consumers (section 401 of the FD&C Act). Section 701(a) of the FD&C Act provides the authority to issue regulations for the efficient enforcement of the FD&C Act.

With respect to prior sanctions, section 201(s)(4) of the FD&C Act exempts from the definition of a food additive any substance used in accordance with a sanction or approval granted under the FD&C Act, the Meat Inspection Act, or the Poultry Products Inspection Act before the enactment of the Food Additives Amendment of 1958 on September 6, 1958. This type of sanction or approval is referred to as a ''prior sanction.'' Our regulation, at 21 CFR 170.3(l), defines this term as an explicit approval granted with respect to use of a substance in food before September 6, 1958, under the FD&C Act, the Meat Inspection Act, or the Poultry Products Inspection Act. Another FDA regulation (21 CFR 181.5(a)) states that a prior sanction exists only for a specific use(s) of a substance in food, *i.e.,* the level(s), condition(s), product(s), etc., for which there was explicit approval by FDA or the U.S. Department of Agriculture (USDA) before September 6, 1958. The ''explicit approval'' needed to establish a prior sanction may be either formal or informal. If a formal approval, such as a food standard regulation issued under the FD&C Act before 1958, does not exist, correspondence issued by authorized FDA officials can constitute an informal prior sanction.

In accordance with FDA's general regulations regarding prior sanctions found at 21 CFR 181.1(b) and 181.5(c), we may revoke a prior-sanctioned use of a food ingredient where scientific data or information demonstrate that prior-sanctioned use of the food ingredient may be injurious to health and, thus, adulterates the food under section 402 of the FD&C Act.

VI. Description of the Direct Final Rule

This rule:

- Amends the food standard for canned tuna at § 161.190 to no longer include partially hydrogenated vegetable oil as an optional ingredient for seasoning in canned tuna packed in water;
- Amends the food standard for peanut butter at § 164.150 to no longer include partially hydrogenated vegetable oil as an optional stabilizing ingredient in peanut butter;
- Revises § 184.1472 to delete references to partially hydrogenated menhaden oil;
- Revises § 184.1555 to delete references to partially hydrogenated LEAR oil;
- Revokes § 186.1551, which permits the use of partially hydrogenated fish oil in cotton and cotton fabrics used for dry food packaging; and
- Revokes the prior sanctions for the use of PHOs in margarine, shortening, and bread, rolls, and buns.

A. Amendment of Standard of Identity Regulations

Standard of identity regulations for food are issued under section 401 of the FD&C Act and do not provide either an authorization or an exemption from regulation as a food additive under section 409 of the FD&C Act. FDA's standards of identity, among other things, establish the common or usual name for a food and define the basic nature of the food, generally in terms of the types of ingredients that it must contain (*i.e.,* mandatory ingredients) and that it may contain (*i.e.,* optional ingredients). The purpose of food standards is to promote honesty and fair dealing in the interest of consumers. Therefore, the inclusion of PHOs in certain standards of identity does not necessarily mean that their use is permissible under section 409 of the FD&C Act. As such, our changes to these standard of identity regulations are merely for clarification purposes.

1. Canned Tuna—§ 161.190

Since 1990, our regulations, at § 161.190(a) have described canned tuna as processed flesh of fish of the species enumerated in § 161.190(a)(2), commonly known as tuna, in any of the forms of pack specified in § 161.190(a)(3) (55 FR 45795). The standard of identity for canned tuna includes, as an optional ingredient, edible vegetable oil or partially hydrogenated vegetable oil, excluding olive oil, to be used alone or in combination, as seasoning in canned tuna packed in water (§ 161.190(a)(6)(viii)).

The rule deletes the words ''or partially hydrogenated vegetable oil'' and ''alone or in combination'' from the list of optional ingredients in canned tuna (§ 161.190(a)(6)(viii)). The remaining term ''edible vegetable oil'' does not include the use of any partially hydrogenated oils in canned tuna. (See Ref. 1.)

2. Peanut Butter—§ 164.150

Since 1968, our regulations at § 164.150 have described standardized peanut butter as a product prepared by grinding one of the shelled and roasted peanut ingredients provided for by § 164.150(b), to which may be added safe and suitable seasoning and stabilizing ingredients provided for by § 164.150(c), if such seasoning and stabilizing ingredients do not, in the aggregate, exceed 10 percent of the weight of the finished food (33 FR 10506).

The standard of identity for peanut butter, at § 164.150(c), includes oil products as optional stabilizing ingredients, which must be hydrogenated vegetable oils; for purposes of § 164.150(c), hydrogenated vegetable oil is considered to include partially hydrogenated vegetable oil.

The rule revises the standard of identity for peanut butter by deleting the reference to partially hydrogenated vegetable oil in § 164.150(c). The rule also makes a minor editorial change by replacing ''shall'' with ''must.''

B. Amendment/Revocation of GRAS Affirmation Regulations

1. Menhaden Oil—§ 184.1472

Since 1997, our GRAS affirmation regulations for menhaden oil at § 184.1472(a) have described menhaden oil as being prepared from fish of the genus *Brevoortia,* commonly known as menhaden, by cooking and pressing (62 FR 30756, June 5, 1997). The resulting crude oil is then refined using the following steps: storage (winterization), degumming (optional), neutralization, bleaching, and deodorization.

Our regulations, at § 184.1472(b), address the preparation of partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(1)), the specifications for partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(2)), the uses of partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(3)), and the name to be used on the product's label (§ 184.1472(b)(4)).

The rule amends the GRAS affirmation regulation for menhaden oil at § 184.1472 to delete references to partially hydrogenated menhaden oil from § 184.1472(b), (b)(1), (b)(2), (b)(2)(iv), (b)(3), and (b)(4). The rule also changes the iodine value specification for hydrogenated menhaden oil from the current specification of ''not more than 10,'' to ''not more than 4.'' This is consistent with our definition of PHOs in the Order. For the purposes of the Order, we defined PHOs as fats and oils that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value greater than 4 (80 FR 34650 at 34651). The rule also makes minor editorial changes, such as referring to hydrogenated menhaden oil (singular) rather than to hydrogenated menhaden oils (plural) and substituting ''is'' for ''are'' to reflect that the rule would refer to only hydrogenated menhaden oil.

2. Low Erucic Acid Rapeseed Oil—§ 184.1555

Since 1985, our GRAS affirmation regulations for LEAR oil, at § 184.1555(c) have described LEAR oil, also known as canola oil, as the fully refined, bleached, and deodorized edible oil obtained from certain varieties of *Brassica napus* or *B. campestris* of the family *Cruciferae* (50 FR 3745 at 3755). The plant varieties are those producing oil-bearing seeds with a low erucic acid content. Chemically, low erucic acid rapeseed oil is a mixture of triglycerides, composed of both saturated and unsaturated fatty acids, with an erucic acid content of no more than 2 percent of the component fatty acids. The regulation provides for the partial hydrogenation of LEAR oil (§ 184.1555(c)(2)) and discusses the oil's purity (§ 184.1555(c)(3)) and uses in food (§ 184.1555(c)(4)).

The rule deletes § 184.1555(c)(2) entirely, deletes all mention of partially hydrogenated LEAR oil from § 184.1555(c)(3) and (4), and redesignates current § 184.1555(c)(3) and (4) as § 184.1555(c)(2) and (3), respectively.

3. Hydrogenated Fish Oil—§ 186.1551

Since 1979, our GRAS affirmation regulations for hydrogenated fish oil at § 186.1551 have described hydrogenated fish oil as a class of oils produced by the partial hydrogenation of oils expressed from fish, primarily menhaden and secondarily herring or tuna (44 FR 28323). The regulation allows the use of this oil as a constituent of cotton and cotton fabrics used for dry food packaging. It was noted in the final rule entitled ''Substances Generally Recognized as Safe and Indirect Food Substances Affirmed as Generally Recognized as Safe; Hydrogenated Fish Oil'' that no reports of a prior-sanctioned use for hydrogenated fish oil were submitted in response to the proposed rule, and therefore, in accordance with that proposal, any right to assert a prior sanction for a use of hydrogenated fish oil under conditions different from those set forth in this regulation had been waived (44 FR 28323). Prior sanctions for hydrogenated fish oil that differ from the use set forth in the GRAS affirmation regulations do not exist or have been waived (§ 186.1551(e)).

The rule deletes the GRAS affirmation regulations for hydrogenated fish oil at § 186.1551 entirely. Our earlier determination that there are no prior sanctions for this ingredient different from the use provided for in § 186.1551 or that any other prior sanctions have been waived remains in effect.

C. Comments on Prior-Sanctioned Uses of PHOs

We stated in our tentative determination that we were not aware

that FDA or USDA had granted any explicit approval for any use of PHOs in food before the 1958 Food Additives Amendment to the FD&C Act (78 FR 67169 at 67171) and requested comments on whether there was knowledge of an applicable prior sanction for the use of PHOs in food (78 FR 67169 at 67174). We discuss the comments in this section. In addition, we conclude that any prior sanctions for other uses of PHOs in food different from the uses discussed in sections VI.C.1, 2, and 3 of this document do not exist or have been waived.

1. GRAS Affirmation Regulations for Menhaden Oil, LEAR Oil, and Hydrogenated Fish Oil

As noted in the Order we acknowledged that we had, in our regulations, previously affirmed as GRAS the use of PHOs in certain foods or food contact substances (80 FR 34650 at 34651). We describe these regulations and our revocation elsewhere in this rule. Although some comments on our tentative determination suggested that these uses are prior-sanctioned, in each case the regulation affirming the status of the use as GRAS post-dates 1958. We have no evidence that the uses affirmed for menhaden oil (§ 184.1472) or LEAR oil (§ 184.1555) are prior-sanctioned. In the case of hydrogenated fish oil (§ 186.1551), any prior sanctions for this ingredient different from the use in the GRAS affirmation regulation do not exist or have been waived (§ 186.1551(e)).

2. Canned Tuna and Peanut Butter Standards of Identity

Some comments identified the standards of identity for canned tuna (§ 161.190) and peanut butter (§ 164.150) as providing proof of prior sanction of PHOs because ''partially hydrogenated vegetable oil'' is explicitly listed as an optional ingredient in each of those regulations. As discussed in section VI.A of this document, the standards of identity for canned tuna and peanut butter both post-date 1958. We have no evidence of any prior sanctions for the use of PHOs as described in the standards of identity for canned tuna and peanut butter.

3. Mayonnaise, French Dressing, and Salad Dressing Standards of Identity

Some comments identified the pre-September 6, 1958, standards of identity for mayonnaise (21 CFR 169.140), salad dressing (21 CFR 169.150), and French dressing (21 CFR 169.115 (revoked effective February 14, 2022 (87 FR 2038))) and claimed that they constituted prior sanctions for PHOs. The comments acknowledged that these standards did not explicitly list PHOs but argued that because the standards allow use of ''edible vegetable oil'' in the standardized products, they were understood by both FDA and industry to include PHOs because vegetable oil can be hydrogenated.

We issued the standards of identity for mayonnaise, French dressing, and salad dressing in 1950 (15 FR 5227, August 12, 1950). They permit use of ''edible vegetable oil'' in the standardized products. No comments to our tentative determination identified any reference to hydrogenation of oils in the rulemaking issuing these standards. No comments suggested that industry used PHOs in these products at the time or that industry is currently using PHOs in these products. We understand that, since at least 1940, hydrogenation changes the physical properties of an oil and therefore, changes a product's identity (see Ref. 1, discussing labeling for, among other things, ''vegetable oils which have not had their identity changed through hydrogenation. . .''). Thus, the references to ''edible vegetable oil'' in these standards, without mention of hydrogenation or hardening, do not include PHOs or fully hydrogenated oils. Therefore, the evidence does not provide an adequate basis on which to establish a prior sanction.

4. Margarine, and Bread, Rolls, and Buns Standards of Identity, and Shortening

Some comments identified the pre-September 6, 1958, standards of identity for bread, rolls, and buns (§ 136.110 (21 CFR 136.110)), and margarine (§ 166.110 (21 CFR 166.110)), and claimed that they constituted prior sanctions for PHOs. The comments acknowledged that these standards did not explicitly list PHOs but argued that because the standards allow use of ''shortening'' (bread, rolls, and buns), and ''oil'' (margarine) in the standardized products, they were understood by both FDA and industry to include PHOs because shortening and oil can be hydrogenated. Moreover, the comments acknowledged that, while there is no standard of identity for shortening that mentions PHOs specifically, historical evidence shows that shortening was generally understood to contain PHOs before 1958.

We issued the standard of identity for margarine in 1941 (6 FR 2761, June 7, 1941). At that time, the standard of identity stated that oleomargarine is prepared with one or more of several optional fat ingredients, including the rendered fat, or oil, or stearin derived therefrom (any or all of which may be hydrogenated), of cattle, sheep, swine, or goats or any vegetable food fat or oil, or oil or stearin derived therefrom (any or all of which may be hydrogenated) (6 FR 2761 at 2762). The standard of identity, as it existed in 1941, contained no specific limitations on these ingredients. The current standard of identity (now codified at § 166.110) states, in relevant part, that margarine may include edible fats and/or oils from animals, vegetables, or fish, or mixtures of these, which may have been subjected to an accepted process of physico-chemical modification (§ 166.110(a)(1)). The standard of identity for margarine also states that margarine ''may contain small amounts of other lipids, such as phosphatides or unsaponifiable constituents, and of free fatty acids naturally present in the fat or oil'' (id.).

We issued the standard of identity for bread, rolls, and buns in 1952 (17 FR 4453, May 15, 1952). The standard of identity, which is now codified at § 136.110, identifies ''shortening'' as an optional ingredient. We initially proposed a more detailed description of the term ''shortening'' in 1941 that was very similar to the term used in the margarine standard issued that same year; that description indicated that shortening is composed of fat or oil from animals, vegetables, or fish, any or all of which may be hydrogenated, or of butter, or any combination of two or more such articles (6 FR 2771, June 7, 1941). However, the final rule that we issued in 1952 simply referred to ''shortening'' and did not prescribe the contents of or otherwise define ''shortening'' (17 FR 4453). Similarly, the current standard of identity mentions ''shortening,'' but does not prescribe the contents of or otherwise define ''shortening'' (see § 136.110(c)(5)). Additionally, the standard of identity, as it existed in 1952, contained no specific limitations on these ingredients.

In addition to identifying these standards of identity, some comments to our tentative determination stated that the reference to hydrogenation in the pre-September 6, 1958, standard of identity for margarine was likely to have meant partially hydrogenated oils as a practical matter, based on the inherent difference in the functional characteristics of partially and fully hydrogenated oils and the history of use of PHOs in margarine products.

Other comments submitted historical evidence relating to widespread use of PHOs in margarine and shortening before 1958. This evidence included a 1945 USDA publication, ''Foods—Enriched, Restored, Fortified'' (Ref. 2),

that described margarine by saying: ''As it is made by 41 manufacturing plants in the United States, margarine contains a mixture of animal fats and vegetable oils or one or the other—fats that have been used as food for centuries. These are partially hydrogenated and blended to give the right spreading consistency.'' The comments also submitted two patents, one from 1915 for ''[a] homogeneous lard-like food product consisting of an incompletely hydrogenized vegetable oil,'' (Ref. 3) and one from 1957 for ''fluid shortening,'' stating ''[s]hortenings heretofore available for baking have included . . . compounded or blended shortenings, made from mixtures of naturally hard fats or hydrogenated vegetable oils with liquid, soft, or partially hydrogenated vegetable oils'' (Ref. 4). One comment cited a Supreme Court decision regarding the patentability of the product of partial hydrogenation of vegetable oil for use as shortening (*Berlin Mills Co.* v. *Procter & Gamble Co.,* 254 U.S. 156 (1920)). In finding the 1915 patent invalid, the Court held that ''it was known before [the patentee] took up the subject that a vegetable oil could be changed into a semi-solid, homogeneous, substance by a process of hydrogenation arrested before completion and that it might be edible'' (*Berlin Mills,* 254 U.S. at 165).

Some comments said that we intended to include PHOs in the terms ''shortening'' and ''oil . . . (any or all of which may be hydrogenated)'' used in these pre-1958 standards of identity. One comment said that we have, in other contexts, used the term ''hydrogenated oils'' when we intended to refer to PHOs (see, *e.g.,* 68 FR 41434 at 41443, July 11, 2003 (''*trans* fatty acids provided by food sources of hydrogenated oil'')) and that the term ''partially hydrogenated'' did not appear in our regulations until 1978 (43 FR 12856, March 28, 1978 (amending the food labeling regulations by substituting ''hydrogenated'' and ''partially hydrogenated'' for ''saturated'' and ''partially saturated'' when describing a fat or oil ingredient)). Additionally, in trade correspondence in 1940, we described three general types of shortening in response to a question about ingredient labeling; we said that the types of shortening were: ''(1) vegetable shortenings composed wholly of mixtures of edible vegetable oils, which have been subjected to a chemical hardening process known as hydrogenation; (2) mixtures of vegetable oils with or without varying proportions of hardened vegetable oils and with edible animal fats; and (3) hydrogenated mixtures of vegetable oils and marine animal oils (Ref. 1).'' In addition, during a rulemaking regarding oils and fats, we used the phrase ''oil . . . (any or all of which may be hydrogenated)'' and acknowledged that this category included PHOs (36 FR 11521, June 15, 1971). We proposed that, if the vegetable fats or oils present are hydrogenated, the ingredient declaration should include the term ''hydrogenated,'' ''partially hydrogenated,'' or ''hardened,'' and gave an example of ''partially hydrogenated cottonseed oil'' (36 FR 11521).

Thus, a prior sanction, as provided for in section 201(s)(4) of the FD&C Act, exists for the uses of PHOs in margarine, shortening, and bread, rolls, and buns. However, as discussed in the next section, we are revoking the prior sanction for these uses.

VII. Revocation of Prior-Sanctioned Uses of PHOs

We have concluded that there are prior-sanctioned uses of PHOs in margarine, shortening, and bread, rolls, and buns, and that these uses may be injurious to health and may adulterate food under section 402 of the FD&C Act. Therefore, we are revoking the prior sanction for the uses of PHOs in margarine, shortening, and bread, rolls, and buns. Our conclusion is based on our current review of scientific data and information, as well as previous safety reviews performed in support of various FDA actions regarding *trans* fat and PHOs spanning 1999 to 2018 (see 64 FR 62746, November 17, 1999; 68 FR 41434, July 11, 2003; 78 FR 67169, November 8, 2013; 80 FR 34650, June 17, 2015; 83 FR 23382, May 21, 2018). In our review for this rule, we estimated the dietary exposure for IP–TFA from the prior-sanctioned uses of PHOs in margarine, shortening, and bread, rolls, and buns (Ref. 5) and conducted a quantitative risk assessment for the coronary heart disease (CHD) and cardiovascular disease (CVD) risks associated with this estimated exposure to IP–TFA (Ref. 6). We also conducted an updated scientific review of published studies and evaluations by expert panels on the safety of *trans* fat (Ref. 7).

As for the standards of identity for margarine and bread, rolls, and buns, no corresponding revision to these regulations are necessary. Each standard, as currently written, is limited so that only ''safe and suitable'' ingredients may be used, and neither current standard expressly refers to hydrogenation or partial hydrogenation (see §§ 136.110(b) and 166.110(a)). Moreover, our regulations provide that no provision of any regulation prescribing a definition and standard of identity is to be construed as affecting the concurrent applicability of the general provisions of the FD&C Act and our regulations (see § 130.3(c) (21 CFR 130.3(c))). For example, all standard of identity regulations contemplate that the food and all articles used as components or ingredients must not be poisonous or deleterious (see § 130.3(c); see also § 130.3(d) (further defining ''safe and suitable'')). As for shortening, our standards of identity do not describe the contents of or otherwise define ''shortening,'' so no amendment is necessary.

VIII. Trans Fat Consumption Health Effects

A. Updated Scientific Literature and Expert Opinion Review

Our Order referenced three safety memoranda prepared by FDA that document our review of the available scientific evidence regarding human health effects of *trans* fat, focusing on the adverse effects of *trans* fat on risk of CHD (Refs. 8 to 10). In addition, we previously reviewed the health effects of IP–TFA and PHOs in 2013 in support of our tentative determination regarding the GRAS status of PHOs (78 FR 67169, Docket No. FDA–2013–N–1317). Our Order announced our final determination that there is no longer a consensus among qualified experts that PHOs are GRAS for any use in human food (80 FR 34650). The safety reviews for the Order, together with the previous safety reviews of IP–TFA and PHOs, provided important scientific background information for our review and denial of a food additive petition for certain uses of PHOs in 2018 (83 FR 23382).

We based our Order on the available scientific evidence that included results from controlled feeding studies on *trans* fatty acid consumption in humans, findings from long-term prospective epidemiological studies, and the opinions of expert panels that there is no threshold intake level for IP–TFA that would not increase an individual's risk of CHD. We also published a safety review for specific uses of PHOs in a notice denying a food additive petition for certain uses of PHOs in food (83 FR 23382, Docket No. FDA–2015–F–3663). This safety review reinforced our 2015 scientific review supporting the final determination that PHOs are not GRAS for use in human food. We denied the food additive petition because we determined that the petition did not contain convincing evidence to support the conclusion that the proposed uses of

PHOs were safe (83 FR 23382 at 23391). All the previously mentioned safety reviews of IP–TFA and PHOs provide important scientific background information for review of the health effects of the prior-sanctioned uses of PHOs.

We are not aware of any new, scientific literature on the safety of IP–TFA and PHOs that would cause us to reconsider our previous safety conclusions. International and U.S. expert panels, using additional scientific evidence available since 2015, have continued to recognize the positive linear relationship between increased *trans* fat intake and increased low density lipoprotein cholesterol blood levels associated with increased CHD risk, have concluded that *trans* fats are not essential nutrients in the diet, and have recommended that *trans* fat consumption be kept as low as possible.

B. Estimated Exposure to Trans Fat From Prior-Sanctioned Uses of PHOs

For this direct final rule, in order to estimate the risks to CHD and CVD associated with consumption of IP–TFA from prior-sanctioned uses of PHOs, we first had to estimate dietary exposure to IP–TFA from these uses of PHOs. We used two non-consecutive days of 24-hour dietary recall data from the 2011–2014 National Health and Nutrition Examination Survey (NHANES) to estimate dietary exposure to IP–TFA from the use of PHOs in margarine and shortening (which includes the prior-sanctioned uses in bread, rolls, and buns due to the use of margarine and/or shortening in the food). We included all foods reported in NHANES that contained margarine or shortening as an ingredient in our analysis. We applied levels of *trans* fat commonly used in margarine and shortening manufactured before the publication of the tentative determination in 2013. These use levels reflect our conservative assumption that manufacturers may revert back to using PHOs at these higher use levels in margarine and shortening if prior sanctions are not revoked by this direct final rule. For the U.S. population aged 2 years and older, we estimated a cumulative mean dietary IP–TFA exposure of 0.3 grams per person per day for typical *trans* fat levels, for both margarine and shortening, based on 53 percent of the population consuming margarine or shortening (Ref. 5). The mean IP–TFA exposure for the total population (*i.e.,* per capita intake) was also determined (Ref. 7). Expressed as a percentage of total energy intake per day (%en) based on a 2000 calorie diet, the mean per-capita IP–TFA exposure for typical IP–TFA levels in foods was estimated to be 0.07%en (Ref. 7).

C. Risk Estimates Associated With Prior-Sanctioned Uses of PHOs

We used four risk methods to estimate change in CHD and CVD risk associated with 0.07%en IP–TFA exposure from prior-sanctioned uses of PHOs (Ref. 6). Our assessment methodology is documented in our memorandum (Ref. 6).

Our quantitative risk assessments demonstrate that there is a substantial health risk associated with 0.07%en from IP–TFA from prior-sanctioned uses of PHOs (Ref. 6). Along with our Order, our denial of the food additive petition for certain uses of PHOs in food, and our recent updated scientific literature review on the safety of PHOs and *trans* fat (Ref. 7), these analyses provide further support for the revocation of the prior-sanctioned uses of PHOs. The scientific consensus is that there is no threshold intake level of IP–TFA that would not increase an individual's risk of CHD (Ref. 7). Thus, based on the available data, we conclude that PHOs used in food may cause the food to be injurious to health and that the use of PHOs as ingredients in margarine, shortening, and bread, rolls, and buns would adulterate these foods under section 402(a)(1) of the FD&C Act.

IX. Economic Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801, Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all costs, benefits and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.'' OIRA has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 Section 3(f)(1).

Because this rule is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in the Congressional Review Act/Small Business Regulatory Enforcement Fairness Act, OIRA has determined that this rule falls within the scope of 5 U.S.C. 804(2).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule may require some small business entities to undertake costly reformulations, we find that the final rule will have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

The benefits of this rule are expected to accrue from the number of coronary heart diseases averted from discontinued use of foods made with PHOs. The removal of PHO containing foods from the marketplace will limit their access by most consumers. Such action will protect the public by reducing the health risk of developing CHDs and improving population health among those who would otherwise consume products containing PHOs. Continual use of PHOs is associated with increased CHD and CVDs. Per capita higher intake of PHOs can lead to elevated risk of CHD and CVDs among the U.S. population. Therefore, FDA notes that the benefit of this rule relative to baseline market conditions are expected to decrease over time as PHO containing products exit the marketplace. The annualized benefits of this rule at a 7 percent discount rate over a 20-year period is $61.5 million for the primary estimate with a lower bound of $20.1 million and an upper bound of $120.7 million.

The quantified costs of the rule are from reformulating manufactured products currently produced with PHOs, relabeling products that contain PHOs, changing recipes for some PHO containing breads by retail bakeries, finding substitute ingredients as well as costs arising from functional and sensory product properties such as taste and texture. The annualized cost of the rule at a 7 percent discount rate over a 20-year period has a primary estimate of $24.5 million with a lower bound estimate of $20.8 million and an upper bound estimate of $29.7 million.

Table 1 presents a summary of costs and benefits of this rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF FINAL RULE, IN 2020 MILLION DOLLARS

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$61.5	$20.1	$120.7	2020	7	20	
	58.3	19.1	114.3	2020	3	20	
Annualized Quantified	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
Qualitative							
Costs:							
Annualized Monetized $millions/year	24.5	20.8	29.7	2020	7	20	
	20.2	17.1	33.2	2020	3	20	
Annualized Quantified	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year	.....	.....	.....	.....	7		
	.....	.....	.....	.....	3		
From/To	From:			To:			
Other Annualized	.....	.....	.....	.....	7		
Monetized $millions/year	.....	.....	.....	.....	3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: None.
Small Business: Potential impact on small business entities that are currently continuing to use or produce PHOs and PHO containing ingredients in their products.
Wages: None.
Growth: None.

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 11) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

X. Analysis of Environmental Impacts

We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that would 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. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XIII. Federalism

We have analyzed this rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XIV. References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *http://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Trade Correspondence TC–62 (February 15, 1940), reprinted in

Kleinfeld, Vincent A. and Charles Wesley Dunn, *Federal Food, Drug, and Cosmetic Act Judicial and Administrative Record 1938–1949.*
2. U.S. Bureau of Human Nutrition and Home Economics (1945). *Foods—Enriched, Restored, Fortified.* USDA at page 11, available at *https://naldc.nal.usda.gov/download/5804422/PDF.*
3. Serial No. 591,726, Record No. 1,135,351, U.S. Patent Office, Official Gazette of the U.S. Patent Office, April 13, 1915, at 492; available at: *https://www.uspto.gov/learning-and-resources/official-gazette/official-gazette-patents.*
4. Serial No. 639,222, Record No. 2,909,432, U.S. Patent Office, Official Gazette of the U.S. Patent Office, October 20, 1959, at 697; available at: *https://www.uspto.gov/learning-and-resources/official-gazette/official-gazette-patents.*
5. FDA, Memorandum from D. Doell to E. Anderson, Exposure to *Trans* Fat from the Prior-Sanctioned Uses of Partially Hydrogenated Oils (PHOs), October 23, 2019.
6. FDA, Memorandum from J. Park to E. Anderson, Toxicology Prior Sanction PHO Review Memo One: Agency-initiated Quantitative Coronary Heart and Cardiovascular Disease Risk Assessment of Industrially-Produced *Trans* Fatty Acids (IP–TFA) Exposure from Prior-Sanctioned Uses of Partially Hydrogenated Vegetable Oils (PHOs), October 22, 2019.
7. FDA, Memorandum from J. Park to E. Anderson, Toxicology Prior Sanction PHO Review Memo Two: Scientific Literature Review of Safety Information Regarding Prior-Sanctioned Uses of Partially Hydrogenated Oils (PHOs) in Margarine and Shortenings, October 22, 2019.
8. FDA, Memorandum from J. Park to M. Honigfort, Scientific Update on Experimental and Observational Studies of *Trans* Fat Intake and Coronary Heart Disease Risk, June 11, 2015.
9. FDA, Memorandum from J. Park to M. Honigfort, Literature Review, June 11, 2015.
10. FDA, Memorandum from J. Park to M. Honigfort, Quantitative Estimate of Industrial *Trans* Fat Intake and Coronary Heart Disease Risk, June 11, 2015.
11. FDA, ''Revocation of Uses of Partially Hydrogenated Oils in Foods'' Regulatory Impact Analysis, Regulatory Flexibility Analysis, Unfunded Mandates Reform Analysis. Also available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

21 CFR Part 164

Food grades and standards, Nuts, Peanuts.

21 CFR Part 184

Food additives.

21 CFR Part 186

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 161, 164, 184, and 186 are amended as follows:

PART 161—FISH AND SHELLFISH

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 2. In § 161.190, revise paragraph (a)(6)(viii) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(6) * * *

(viii) Edible vegetable oil, excluding olive oil, used in an amount not to exceed 5 percent of the volume capacity of the container, with or without any suitable form of emulsifying and suspending ingredients that has been affirmed as GRAS or approved as a food additive to aid in dispersion of the oil, as seasoning in canned tuna packed in water.

* * * * *

PART 164—TREE NUT AND PEANUT PRODUCTS

■ 3. The authority citation for part 164 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. In § 164.150, revise paragraph (c) to read as follows:

§ 164.150 Peanut butter.

* * * * *

(c) The seasoning and stabilizing ingredients referred to in paragraph (a) of this section are suitable substances which are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act. Seasoning and stabilizing ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, chemical preservatives, and color additives are not suitable ingredients in peanut butter. Oil products used as optional stabilizing ingredients must be hydrogenated vegetable oils.

* * * * *

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 5. The authority citation for part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 6. In § 184.1472, revise paragraph (b) to read as follows:

§ 184.1472 Menhaden oil.

* * * * *

(b) *Hydrogenated menhaden oil.* (1) Hydrogenated menhaden oil is prepared by feeding hydrogen gas under pressure to a converter containing crude menhaden oil and a nickel catalyst. The reaction is begun at 150 to 160 °C and after 1 hour the temperature is raised to 180 °C until the menhaden oil is fully hydrogenated.

(2) Hydrogenated menhaden oil meets the following specifications:

(i) *Color.* Opaque white solid.

(ii) *Odor.* Odorless.

(iii) *Saponification value.* Between 180 and 200.

(iv) *Iodine number.* Not more than 4.

(v) *Unsaponifiable matter.* Not more than 1.5 percent.

(vi) *Free fatty acids.* Not more than 0.1 percent.

(vii) *Peroxide value.* Not more than 5 milliequivalents per kilogram of oil.

(viii) *Nickel.* Not more than 0.5 part per million.

(ix) *Mercury.* Not more than 0.5 part per million.

(x) *Arsenic (as As).* Not more than 0.1 part per million.

(xi) *Lead.* Not more than 0.1 part per million.

(3) Hydrogenated menhaden oil is used as edible fat or oil, as defined in § 170.3(n)(12) of this chapter, in food at levels not to exceed current good manufacturing practice.

(4) The name to be used on the label of a product containing hydrogenated menhaden oil must include the term ''hydrogenated,'' in accordance with § 101.4(b)(14) of this chapter.

■ 7. In § 184.1555, revise paragraphs (c)(2) and (3) and remove (c)(4) to read as follows:

§ 184.1555 Rapeseed oil.

* * * * *

(c) * * *

(2) In addition to limiting the content of erucic acid to a level not exceeding 2 percent of the component fatty acids, low erucic acid rapeseed oil must be of a purity suitable for its intended use.

(3) Low erucic acid rapeseed oil is used as an edible fat and oil in food, except in infant formula, at levels not to exceed current good manufacturing practice.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 8. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 186.1551 [Removed]

■ 9. Remove § 186.1551.

Dated: July 29, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023–16725 Filed 8–8–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 2

[234A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF64

Appeals From Administrative Actions

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is finalizing updates to its regulations governing the process for pursuing administrative review of actions by Indian Affairs officials. These updates provide greater specificity and clarity to the Department's appeals process; and reflect changes in the structure and nomenclature within Indian Affairs.

DATES: This rule is effective on September 8, 2023.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, *RACA@bia.gov*.

SUPPLEMENTARY INFORMATION: This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 Departmental Manual (DM) 8.

Table of Contents

I. Executive Summary

This final rule revises the Department of the Interior's (Department) regulations governing administrative appeals of decisions by officials subordinate to the Assistant Secretary-Indian Affairs (AS–IA). These regulations, at 25 CFR part 2, have not been updated since 1989. These revisions, set out in plain English, will facilitate the Secretary's fulfillment of fiduciary responsibilities to Tribes and individual Indians. This rule updates the regulations to align the terminology and processes with organizational changes since 1989. Additionally, the rule allows, where possible, the filing of appeal documents in Portable Document Format via email. The rule clarifies the process by which the AS–IA takes jurisdiction of an appeal to the Interior Board of Indian Appeals and for appealing inaction of an official. A new subpart allows for expediting the effectiveness of a Bureau of Indian Affairs (BIA) decision regarding recognition of a tribal representative. Another addition is the establishment of provisions allowing holders of trust accounts a mechanism for disputing the accuracy of statements of performance issued by the Bureau of Trust Funds Administration. Finally, there are provisions to resolve disputes through alternative dispute resolution. All of the revisions clarify and standardize Departmental policy.

II. Background

The regulations governing administrative appeals of actions by Indian Affairs officials are in title 25, chapter I of the Code of Federal Regulations (25 CFR part 2). The last major revision of the part 2 regulations was in 1989. See 54 FR 6478 (Feb. 10, 1989). The background of this rulemaking and Section-by-Section analysis are in the preamble to the proposed rule published on December 1, 2022 (87 FR 73688). During the 90-day comment period, the Department held two consultation sessions directly with Indian Tribes: February 17, 2022, via webinar; and February 22, 2022, via webinar. The public comment period on the proposed rule ended on March 1, 2023.

The Department revised the appeals regulations in a number of ways, as explained below:

• *Providing Mechanisms for Appealing Decisions by Indian Affairs Officials That Did Not Exist in 1989*

A number of significant changes have been made to the organization of Indian Affairs since publication of the prior part 2 regulations in 1989. In 2003, the office of the Director of the Bureau of Indian Affairs was created and charged with some of the responsibilities previously carried out by the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs. 130 DM 3 (Apr. 21, 2003). The Bureau of Indian Education, formerly an agency within the Bureau of Indian Affairs (BIA), was established as a separate Bureau. More recently, the Secretary created the Bureau of Trust Funds

Administration within the Office of the Assistant Secretary—Indian Affairs. Several other offices are not within any Bureau, reporting directly to the Assistant Secretary: the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Government. Furthermore, today more decisions are being made in the Central Office of BIA, rather than the Agency and Regional Offices. The prior part 2 regulations do not provide for such changes within the organization or allow for certain types of decisions to have administrative appeals.

Before the publication of the prior part 2 regulations, the Secretary terminated the position of Deputy Assistant Secretary, reporting directly to the Assistant Secretary, and established the position of Deputy to the Assistant Secretary, within the BIA and reporting to the Commissioner of Indian Affairs. Sec. Order 3112. The prior part 2 regulations include the Deputies to the Assistant Secretary among the BIA officials whose decisions are subject to appeal to the IBIA (with the exception of the Deputy to the Assistant Secretary (Indian Education Programs)). Shortly after publication of the prior part 2 regulations, the Department re-instated Deputy Assistant Secretaries within the office of the Assistant Secretary, and retitled the Deputies to the Assistant Secretary as Office Directors within the BIA. Consequently, the revisions bring the regulatory language in line with the structure of Indian Affairs, and clarify that the Assistant Secretary has jurisdiction over appeals of actions by Deputy Assistant Secretaries.

• *Presenting the Regulations in Plain English*

Subsequent to the 1989 promulgations of the prior part 2 regulations, Congress and the President directed Federal agencies to use plain and direct language in agencies' regulations. See the Plain Writing Act of 2010 (124 Stat. 2861), E.O. 12866 (1993), and E.O. 13565 (2011). Theses revisions comply with those directives.

• *Authorizing, Where Possible, the Filing of Appeal Documents in Portable Document Format (pdf) via Email*

The shift from paper documents sent via United States mail, to electronic documents sent via the internet, is one of the defining transformations of our era. But the greater convenience, speed, and economy that make a modern paperless case-filing system so superior cannot be enjoyed until necessary infrastructure is in place. For the BIA, as well as for stakeholders across Indian country, it will be some time before such infrastructure is fully enabled.

Revised subpart B, at § 2.214(i), authorizes BIA officials to permit electronic filings, but preserves the default of reliance on hard copies.

• *Clarifying the Process by Which the Assistant Secretary—Indian Affairs Takes Jurisdiction of an Appeal to the Interior Board of Indian Appeals (IBIA); and the Process Employed Whenever the Assistant Secretary—Indian Affairs Exercises Appellate Authority*

Revised subpart E, at §§ 2.508, 2.509, and 2.510, addresses the Assistant Secretary's authority to take jurisdiction over an appeal to the IBIA, and clarifies the processes applicable to any appeals to the Assistant Secretary. In order to ensure that the Assistant Secretary has sufficient time to scrutinize a notice of appeal to the IBIA, and decide whether to assume jurisdiction over it, the deadline by which the Assistant Secretary must notify the IBIA of a decision to take jurisdiction has been extended, from 20 days after IBIA's receipt of the Notice of Appeal under the current regulations, to 40 days after IBIA's receipt of the Notice of Appeal.

• *Making Certain Changes to the Process for Appealing Inaction of an Official*

Revised subpart F sets out the process by which a person may try to compel a BIA official to take action on a request or appeal. In the prior part 2, comparable provisions are at 25 CFR 2.8. The prior regulations directed such appeals to the next official or entity in the appeals process. For example, an appeal from the inaction of a BIA Regional Director would go to the IBIA, which has no supervisory authority over the Regional Director. The revisions, on the other hand, direct all such appeals of inaction up the chain of command of the official whose alleged inaction gave rise to the appeal. Under the revisions, the only action to be taken by the superior official is to direct the subordinate official to take action.

• *Establishing a New Subpart To Expedite the Effectiveness of a BIA Decision Regarding Recognition of a Tribal Representative*

Congress exercises plenary authority over the relationship between Tribes and non-Tribal governments in the United States. Congress has delegated the responsibility for ''the management of public business relating to Indians'' to the Secretary of the Interior. 43 U.S.C. 1457; see also 25 U.S.C. 2. A vital component of such management is the ''responsibility for carrying on government relations with [Tribes].'' *Goodface* v. *Grassrope,* 708 F.2d 335, 339 (8th Cir. 1983).

Revised subpart G sets out an appeals process intended to minimize the time during which a BIA tribal representative recognition decision does not go into effect due to being appealed. The revised regulations make the decision of the first-level reviewing official (typically, the Regional Director) immediately effective. Interested parties may appeal the reviewing official's decision as provided in part 2, or initiate Federal litigation pursuant to the Administrative Procedures Act (APA).

• *Establishing a New Subpart Providing Holders of Trust Accounts a Mechanism for Disputing the Accuracy of Statements of Performance Issued by the Bureau of Trust Funds Administration*

Previously, there was no administrative appeal procedure by which the recipient of a statement of performance may dispute the information presented on the statement. Revised subpart H sets out such an administrative appeals procedure. Like all administrative appeal provisions, those in revised subpart H serve two important purposes—to provide an opportunity for the agency to correct its own errors, and to ensure development of a complete administrative record for a court to review in the event of an APA challenge to the final agency action.

• *Establishing a New Subpart Setting Out the Process for Resolving Challenges to Administrative Actions by Alternative Dispute Resolution Instead of by Formal Appeals*

In 2001, the Secretary established the Department's Office of Collaborative Action and Dispute Resolution (CADR). CADR manages the Department's dispute resolution program, providing employees and outside stakeholders an alternative mechanism for resolving disputes. Revised subpart I identifies the process by which a person seeking to challenge an agency action can make use of the CADR's dispute resolution program.

III. Comments on the Proposed Rule and Responses to Comments

The Department sought public comment on the proposed rule, as well as Tribal input through two consultation sessions. In total, the Department received one written comment submission from an Indian Tribe commenting on the proposed rule, specifically concerning Subpart H of the proposed rule. This comment is available for public inspection. To view

this comment, search by Docket Number ''BIA–2022–0002–0003'' in *https://www.regulations.gov.* The Department has decided to proceed to the final rule stage after careful consideration of all comments, both written and during the consultation sessions. The Department's response to this one written comment is detailed below.

• *Summary of Subpart H*

The Department promulgated Subpart H to create a process by which Tribal or Individual Indian Money (IIM) account holders may dispute the accuracy of account balances contained within a Statement of Performance. Presently there is no administrative appeal process by which account holders may dispute their account balances.

Statements of Performance and decisions rendered pursuant to this rule will be deemed accurate and complete when the deadline for submitting an objection to the Statement of Performance or an appeal to the decision on an objection has expired and the account holder has not submitted an objection or an appeal.

The rule also notes that, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a Statement of Performance, the language in the settlement agreement will control.

This subpart applies only to the data on the Statement of Performance itself. If an account holder wants to challenge the underlying lease or other action that generated the proceeds deposited into their trust account, that challenge must be made (using the process in subpart A at 2.103 and subpart B) to the individual BIA Agency or Region that approved the underlying lease or other action.

• *Written Comment*

The Department received one written comment on the proposed rule. The commenter asserted that the new subpart H improperly requires all account holders to appeal their Statement of Performance. In fact, subpart H allows account holders the same administrative appeal rights for the accuracy of their Statement of Performance that they have regarding all other actions taken by the Department concerning their trust property. The addition of subpart H allows all account holders, whether their account balance is $10.00 or $100.000.00, the opportunity to file an administrative appeal.

Additionally, the commenter took the position that adding Subpart H to the rule reduces the general federal statutory six-year statute of limitations for challenging federal actions. The rule does not affect the time limitation for filing a federal lawsuit. It does, however, provide an economical means for an account holder to challenge agency action, and for the agency to correct its own mistakes, before going through the time and expense of litigation. The Department's decision on any such administrative appeal is the final agency action; the six-year statute of limitations begins to run when the decision is rendered.

Finally, the commenter was concerned that even though they entered into a settlement agreement with the United States that contained agreement amongst the parties as to how to dispute issues with their trust funds, the rule would supersede their settlement agreement. That was not the intent of the language provided in the proposed rule. The Department reviewed the concern expressed by the commenter. In this Final Rule at § 2.803, we have clarified that where a Tribe has entered into a settlement agreement with the United States about their trust funds, that document would continue to control if there were issues concerning the challenge of a Statement of Performance.

IV. Summary of Final Rule and Changes From Proposed Rule to Final Rule

A. Subpart A—Purpose, Definitions, and Scope of This Part

This revised subpart expands the definitions that will be used throughout the rule, including definitions for the current structure of Indian Affairs. The prior regulations provided minimal definitions, and a considered effort was made to include appropriate definitions to provide clarity for the parties. Previously there existed confusion about what constitutes an administrative record. The final rule rectifies that confusion. The final rule also provides definitions to distinguish between a deciding official and a reviewing official, as well as defining who has standing to make an appeal.

The prior regulations stated that part 2 only applies to appeals from decisions made by BIA officials. Since the part 2 regulations were promulgated in 1989, the prior structure of Indian Affairs has changed. Now, in addition to decisions made by officials in the BIA, decisions are made by officials in the Bureau of Indian Education, the Bureau of Trust Funds Administration, the Office of Indian Gaming, the Office of Indian Economic Development, and the Office of Self-Governance. The prior regulations did not provide a process for the administrative appeal of actions by the officials of any of those offices.

The final rule provides an avenue for decisions made by the various offices within Indian Affairs to be appealed. Subject to any exceptions to this part and other applicable law or regulation, an individual may appeal any discrete written decision made by a decision-maker that adversely affects his or her legally protected interests, including a determination by the decision-maker that he or she lacks the authority to take the action that was requested. The final rule also contains a chart identifying actions that are not appealable under this part because those actions are appealable under some other part in title 25 of the CFR, or under provisions in title 5, 41, 42, or 48 of the CFR.

Under the IBIA's current regulations, the IBIA's general appellate authority is limited to decisions by BIA officials. 43 CFR 4.1(b)(2); 4.330. Therefore, the revised part 2 regulations vest AS–IA with appellate authority over decisions by Indian Affairs officials who are not within the BIA. If IBIA's jurisdictional scope is expanded in the future, the Assistant Secretary may consider revising part 2 to vest in the IBIA jurisdiction over appeals from decisions by Indian Affairs officials who are not within the BIA.

In an effort to provide further clarity for the public, the regulations provide the precise language for the notice of appeal rights that must be included in decisions that are appealable under this part. The final rule states that a copy of an appealable decision will be mailed to all known interested parties at their address of record.

No changes were made from the proposed rule to final rule.

B. Subpart B—Appealing Administrative Decisions

This revised subpart aims to provide clarity regarding whether you have standing to appeal a decision, whether you are required to have a lawyer represent you to file an appeal, and timeframes for filing appeals. The subpart provides a chart at § 2.202 that clarifies who a decision-maker is and who would be the reviewing official responsible for reviewing an appeal of the decision. Deadlines are discussed in detail with explanations about how those deadlines are calculated and how appeals are to be filed.

The final rule also provides detailed information on how to submit a notice of appeal and includes a list of what information must be included in a notice of appeal. There is an explanation of who must receive copies of the notice of appeal, the deadlines for

interested parties to file responses, and the information that a response must contain. The final rule details the role of the decision-maker in the appeals process, which is to compile the administrative record and provide it to the reviewing official.

No changes were made from the proposed rule to final rule.

C. Subpart C—Effectiveness and Finality of Decisions

This revised subpart clarifies when an agency action is effective and when it becomes a final agency action (with definitions for both of those terms). The final rule aims to reflect IBIA case law interpreting the current regulations.

No changes were made from the proposed rule to final rule.

D. Subpart D—Appeal Bonds

This revised subpart provides that an interested party (as defined in the revised regulations) may request an appeal bond where the delay caused by an appeal may result in a measurable and substantial financial loss or damage to a trust asset that is the subject of the appeal. The subpart also states that the reviewing official may on his or her own initiative require an appeal bond be posted. Previously the regulations permitted appeal bonds, but did not specify what is an acceptable appeal bond. The final rule details acceptable forms of appeal bonds and states that the bond must have a market value at least equal to the total amount of the bond. The final rule makes clear that a decision on an appeal bond cannot itself be appealed.

No changes were made from the proposed rule to final rule.

E. Subpart E—Deciding Appeals

This revised subpart provides information concerning consolidation of appeals, partial implementation of appealed decisions, withdrawal of appeals, dismissal of appeals, and applicable deadlines.

When assessing an appeal, the reviewing official will consider all relevant documents submitted by the decision-maker and the participants that were filed within the applicable deadlines, the applicable laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

The revised subpart includes a chart at § 2.507 that provides details concerning who is a reviewing official and who will be the official responsible for considering an appeal of the reviewing official's decision. There is specific language stating that AS–IA may assume jurisdiction over an appeal to the IBIA within 40 days from the date that the IBIA received the appeal. The final rule provides clear language stating that interested parties may not petition AS–IA to take jurisdiction over an appeal. The rule sets forth the process for AS–IA to decide an appeal when jurisdiction is assumed from the IBIA.

These regulations do not impact the power of the Secretary or the Director of the Office of Hearings and Appeals to take jurisdiction over an appeal pursuant to 43 CFR 4.5.

No changes were made from the proposed rule to final rule.

F. Subpart F—Appealing Inaction of an Agency Official

This revised subpart sets out a process by which a person can attempt to compel an agency official's action where there has been inaction. The prior regulations require an individual to notify the official of their inaction, require the individual to submit certain documentation, and require the official to provide a decision within 10 days of receipt or provide a reasonable time period to issue a decision not to exceed 60 days. The final rule expands the time period for the official to issue a response from 10 days to 15 days. The 60-day deadline for the reviewing official's decision does not change.

The final rule then provides the appropriate chain of command for the Indian Affairs official so that individuals know to whom to submit their appeal of inaction. The rule also states that continued inaction is grounds for an appeal. The final rule establishes deadlines for each level of appeal. The rule states that if you exhaust the provisions of this subpart without obtaining a decision, the inaction is considered a final agency action. The rule clearly states that inaction by the IBIA and AS–IA is not appealable under this part.

No changes were made from the proposed rule to final rule.

G. Subpart G—Special Rules Regarding Recognition of Tribal Representatives

This revised subpart sets out an appeals process differing in some ways from the process in the rest of revised part 2, to shorten the time frames for appeals of BIA tribal representative recognition decisions. Pursuant to the revised subpart, a reviewing official's decision is immediately effective, but not final for the Department. The revised subpart provides that an interested party may elect to pursue further administrative review, or file an APA challenge in Federal court.

No changes were made from the proposed rule to final rule.

H. Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

This revised subpart sets out a process by which Tribal or Individual Indian Money (IIM) account holders may dispute the accuracy of account balances contained within a Statement of Performance. Previously there was no opportunity for account holders to question their account balance administratively.

Account holders would receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon limited activity. The Statement of Performance contains specific information: (1) the source, type, and status of the funds; (2) the beginning balance; (3) the gains and losses; (4) receipts and disbursements; and (5) the ending balance. If an account holder believes that the balance contained within the Statement of Performance is not accurate, this subpart will provide them with an opportunity to dispute the accuracy. The appeal process must be initiated within 60 calendar days of the statement date located on the Statement of Performance.

This subpart is designed to provide an account holder with an opportunity to submit to the deciding official an objection to the Statement of Performance. The deciding official is required to acknowledge receipt of the account holder's objection within 10 calendar days. The deciding official will review the information contained within the objection, make a determination about the accuracy of the account balance, and issue a decision on the objection within 30 calendar days from the date of receipt of your objection. The account holder then has an opportunity to submit an appeal of that decision to the Director, Bureau of Trust Funds Administration. This appeal must be filed within 30 calendar days of the issuance of the decision being appealed. The Director, Bureau of Trust Funds Administration will issue a ruling within 30 calendar days of the receipt of the account holder's appeal. The account holder may then appeal the Director, Bureau of Trust Funds Administration ruling to the AS–IA. AS–IA will make a final decision on the account holder's appeal.

Statements of Performance and decisions rendered pursuant to this subpart is deemed accurate and complete when the deadline for

submitting an objection to the Statement of Performance or an appeal to the decision on an objection has expired and the account holder has not submitted an objection or an appeal.

The final rule also notes that, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a Statement of Performance, the language in the settlement agreement will control over these regulations.

This revised subpart applies only to the data on the Statement of Performance itself. If an account holder wants to challenge the underlying lease that generated the proceeds deposited into their trust account, that challenge must be made (using the process in subpart A at § 2.103 and subpart B) to the individual BIA Agency or Region that approved the lease.

Changes from the proposed rule to final rule in this subpart include:

- In this final Rule at § 2.803, the Department clarified that where a Tribe has entered into a settlement agreement with the United States about their trust funds, that document would continue to control if there were issues concerning the challenge of a Statement of Performance.

I. Subpart I—Alternative Dispute Resolution

The Secretary established the Office of Collaborative Action and Dispute Resolution (CADR) in 2001. The Department has embraced alternative dispute resolution as an option in certain circumstances where the parties agree to participate. Adding this subpart to the part 2 regulations reaffirms the Department's commitment to providing another avenue to resolve disputes between the Department and parties.

IV. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

Executive Orders 12866 and 14094 provide that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. This rule is consistent with these requirements.

(1) This rule does not have an annual effect on the economy of $200 million or more(adjusted every 3 years by the Administrator of 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) This rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) This rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and

(4) This rule does not raise legal or policy issues.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will only affect internal agency processes.

C. Congressional Review Act (CRA)

This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rulemaking, if adopted, does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order l3132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required because this final rule only affects internal agency processes for appeals of actions taken by officials subordinate to the Assistant Secretary—Indian Affairs.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department strives to strengthen its nation-to-nation relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally-recognized Indian Tribes that will result from this rule.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

J. National Environmental Policy Act (NEPA)

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 25 CFR Part 2

Administrative practice and procedure, Indians-tribal government.

For the reasons stated in the preamble, the Bureau of Indian Affairs, Department of the Interior, revises 25 CFR part 2 to read as follows:

PART 2—APPEALS FROM ADMINISTRATIVE DECISIONS

Subpart A—Purpose, Definitions, and Scope of this Part

Subpart B—Appealing Administrative Decisions

Subpart C—Effectiveness and Finality of Decisions

Subpart D—Appeal Bonds

Subpart E—Deciding Appeals

Subpart F—Appealing Inaction of an Agency Official

Subpart G—Special Rules Regarding Recognition of Tribal Representatives

Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

Authority: 43 U.S.C. 1457; 25 U.S.C. 9; 5 U.S.C. 301.

Subpart A—Purpose, Definitions, and Scope of this Part

§ 2.100 What is the purpose of this part?

If you are adversely affected by certain decisions of a Bureau of Indian Affairs (Bureau) official, you can challenge (appeal) that decision to a higher authority within the Department of the Interior (Department) by following the procedures in this part. Except as otherwise provided in this part or in other applicable laws and regulations, you must exhaust the appeal mechanisms available under this part before you can seek review in a Federal district court under the Administrative Procedure Act (5 U.S.C. 704).

§ 2.101 What terms do I need to know?

Administrative record means all documents and materials that were considered directly or indirectly, or were presented for consideration, in the course of making the decision that is the subject of the appeal.

Adversely affected means the decision on appeal has caused or is likely to cause injury to a legally protected interest.

Agency means the Department of the Interior, inclusive of all its offices and bureaus.

Appeal means:

(1) A written request for administrative review of a decision-maker's decision or inaction that is claimed to adversely affect the interested party making the request; or

(2) The process you must follow when you seek administrative review of a decision-maker's decision or inaction.

Appellant means the person or entity who files an appeal.

AS–IA means the Assistant Secretary—Indian Affairs, Department of the Interior. AS–IA also means the Principal Deputy Assistant Secretary—Indian Affairs or other official delegated the authority of the AS–IA when the office of the AS–IA is vacant, when the AS–IA is unable to perform the functions of the office, or when the AS–IA is recused from the matter.

BIA means the Bureau of Indian Affairs.

BIE means the Bureau of Indian Education.

BTFA means the Bureau of Trust Funds Administration.

Days mean calendar days, unless otherwise provided. Days during which the agency is closed because of a lapse in appropriations do not count as days for purposes of calculating deadlines for actions by Federal officials under this part.

Decision means an agency action that permits, approves, or grants permission, requires compliance, or grants or denies requested relief.

Decision-maker means the Indian Affairs official whose decision or inaction is being appealed.

Effective means that the decision will be implemented by the Department.

Final agency action means a decision that represents the consummation of the agency's decision-making process and is subject to judicial review under 5 U.S.C. 704. Final agency actions are immediately effective unless the decision provides otherwise.

IBIA means the Interior Board of Indian Appeals within the Office of Hearings and Appeals.

IED means the Office of Indian Economic Development.

Indian Affairs means all offices and personnel subject to the authority of the AS–IA.

Interested party means a person or entity whose legally protected interests are adversely affected by the decision on appeal or may be adversely affected by the decision of the reviewing official.

Local Bureau Official (''LBO'') means the Superintendent, Field Representative, or other BIA official who serves as the primary point of contact between BIA and a Tribe or individual Indian.

Notice of Appeal (''NOA'') means a written document that an appellant files with the reviewing official and serves on the decision-maker and interested parties.

OIG means the Office of Indian Gaming.

OJS means the Office of Justice Services.

OSG means the Office of Self Governance.

Participant means the appellant, any interested party who files a response as provided for in § 2.209, and any Tribe that is an interested party.

Person means an individual human being or other entity.

Reviewing official means an Indian Affairs official who is authorized to review and issue decisions on appeals filed under this part, and the IBIA, unless otherwise provided in this part.

Trust Asset means trust lands, natural resources, trust funds, or other assets held by the Federal Government in trust for Indian Tribes and individual Indians.

We, us, and *our,* mean the officers and employees of Indian Affairs.

You (in the text of each section) and *I* (in the section headings) mean an interested party who is considering, pursuing, or participating in an administrative appeal as provided for in this part.

§ 2.102 What may I appeal under this part?

(a) Subject to the exceptions in this part and other applicable law or regulation, you may appeal:

(1) Any discrete, written decision made by a decision-maker that adversely affects you, including a determination by the decision-maker that she or he lacks either the duty or authority to take the action that you have requested; and

(2) Inaction by Indian Affairs officials by following the procedures in subpart F of this part.

(b) You may not appeal in the following circumstances.

(1) You may not separately appeal the issuance of component documents of the administrative record, including, but not limited to, appraisals or market studies, reports, studies, investigations, notices of impoundment or public sale, recommendations, or National Environmental Policy Act documents. The adequacy of these types of documents cannot be challenged unless and until an appealable decision is made in reliance upon these documents.

(2) You may not appeal an agency's notification to you that it is pursuing or

is considering pursuing action against you in Federal district court, unless separate regulations in this title require you to follow administrative appeal procedures in accordance with this part or other regulations such as those listed in § 2.103 to appeal the notification. Such notifications include, but are not limited to, notices that could lead the agency to pursue actions for money damages against you, such as actions for trespass, ejectment, eviction, nuisance, conversion, or waste to Indian land under the Federal common law or statute.

(3) You may not appeal final agency actions (though you may be able to seek review in Federal district court).

(c) Any challenge to preliminary, procedural, or intermediate actions by a reviewing official must be submitted to the reviewing official prior to that official's issuing the decision. The reviewing official will address such challenges in the final decision. Such a challenge is not a separate appeal.

§ 2.103 Are all appeals subject to this part?

Not all appeals are subject to this part. Decisions by some Indian Affairs officials may be appealed to the Interior Board of Indian Appeals, subject to the regulations at 43 CFR part 4. Other regulations govern appeals of administrative decisions regarding certain topics. Table 1 to this section lists some decision topics that are subject to different appeals regulations, in whole or in part, and where to find those regulations.

TABLE 1 TO § 2.103

For appeal rights related to . . .	Refer to . . .
Access to student records	25 CFR part 43.
Acknowledgment as a federally recognized Indian Tribe	25 CFR part 83.
Adverse employment decisions against Bureau of Indian Affairs employees	43 CFR part 20.
Any decision by a Court of Indian Offenses	25 CFR part 11.
Appointment or termination of contract educators	25 CFR part 38.
Debts owed by Federal employees	5 CFR part 550.
Determination of heirs, approval of wills, and probate proceedings	43 CFR part 4; 43 CFR part 30; 25 CFR part 16; 25 CFR part 17.
Indian School Equalization Program student count	25 CFR part 39.
Eligibility determinations for adult care assistance, burial assistance, child assistance, disaster, emergency and general assistance, and the Tribal work experience program.	25 CFR part 20.
Certain adverse enrollment decisions	25 CFR part 62.
Freedom of Information Act requests	43 CFR part 2.
Grazing permits for trust or restricted lands	25 CFR part 166.
Indian Reservation Roads Program funding	25 CFR part 170.
Leasing of trust or restricted lands	25 CFR part 162.
Matters subject to the Contract Disputes Act	48 CFR part 33; 48 CFR part 6101.
Privacy Act requests	43 CFR part 2.
Restricting an Individual Indian Money account	25 CFR part 115.
Rights-of-way over or across trust or restricted lands	25 CFR part 169.
Secretarial elections	25 CFR part 81.
Self-Determination contracts	25 CFR part 900.
Self-Governance compacts	25 CFR part 1000.
Student rights and due process	25 CFR part 42.
Tribally controlled colleges and universities	25 CFR part 41.
Departmental quarters	41 CFR part 114.

§ 2.104 How will I know what decisions are appealable under this part?

(a) When an Indian Affairs official makes a decision that is subject to an appeal under this part, she or he will transmit the decision to interested parties by U.S. Mail or, upon request, by electronic mail. Unless the decision is immediately effective, and except for decisions that are subject to appeal to IBIA, the official will include the following notice of appeal rights at the end of the decision document:

This decision may be appealed by any person or entity who is adversely affected by the decision. Appeals must be submitted to the—[appropriate reviewing official]—at—[address, including email address]. The appeals process begins when you file with the reviewing official a notice of appeal, complying with the provisions of 25 CFR 2.205–2.207.

Deadline for Appeal. Your notice of appeal must be submitted in accordance with the provisions of 25 CFR 2.214 within 30 days of the date you receive notice of this decision pursuant to 25 CFR 2.203. If you do not file a timely appeal, you will have failed to exhaust administrative remedies as required by 25 CFR part 2. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Appeal Contents and Packaging. Your notice of appeal must comply with the requirements in 25 CFR 2.214. It must clearly identify the decision being appealed. If possible, attach a copy of this decision letter. The notice and the envelope in which it is mailed should be clearly labeled, ''Notice of Appeal.'' If electronic filing is available, ''Notice of Appeal'' must appear in the subject line of the email submission. Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them and this office copies of the notice by any of the mechanisms permitted for transmitting the NOA to the BIA.

Where to Send Copies of Your Appeal.

[For appeals to IA officials, not IBIA]: In addition to sending your appeal to—[the reviewing official],—you must send a copy of your appeal to this office at the address on the letterhead—[if an email address is included in the letterhead, you may submit your appeals documents via email, with ''Notice of Appeal'' in the subject line of the email submission].

[For appeals to the IBIA]: If the reviewing official is the IBIA, you must also send a copy of your appeal to the AS–IA and to the Associate Solicitor, Division of Indian Affairs. If the reviewing official is the IBIA, your appeal will be governed by the IBIA's regulations, at 43 CFR part 4.

Assistance. If you can establish that you are an enrolled member of a federally recognized Tribe and you are not represented by an attorney, you may, within 10 days of receipt of this decision, request assistance

from this office in the preparation of your appeal. Our assistance is limited to serving your filings on the interested parties and allowing limited access to government records and other documents in the possession of this office. We cannot obtain an attorney for you or act as your attorney on the merits of the appeal.

(b) If a decision-maker issues a decision that does not include notice of appeal rights, the decision-maker will provide written notice of appeal rights and the decision may be appealed as follows:

(1) If the decision-maker discovers within 30 days of issuing the decision that the decision did not include notice of appeal rights, then the decision-maker will provide written notice of appeal rights to interested parties, and inform them that they may appeal the decision within 30 days from the date of receipt of the notice. If no appeal is filed by the new deadline, the interested parties will have failed to exhaust administrative remedies as required by this part and the decision will become effective.

(2) If the decision-maker does not discover within 30 days of issuing the decision that the decision did not include notice of appeal rights and no administrative appeal is filed within 30 days of the issuance of the decision, then the decision becomes effective 31 days after it was issued.

(3) If the decision-maker discovers, more than 30 days but less than 365 days, after the date of the decision that the decision did not include notice of appeal rights, then the decision-maker will immediately notify the interested parties that the decision was issued without the requisite notice of appeal rights. If the decision has not actually been implemented, the decision-maker shall stay the implementation of the decision and reissue the decision with the appeal rights notice as provided in this section. If the decision has been implemented, the decision maker shall notify the interested parties of that fact, and notify them that they may file a challenge to the decision in Federal court, or pursue the administrative appeal process set out in this section.

§ 2.105 Who will receive notice of decisions that are appealable under this part?

Except as provided in other regulations governing specific types of decisions (see § 2.103), the decision-maker will transmit a copy of all appealable decisions to all known interested parties at the addresses the decision-maker has on file for them.

§ 2.106 How does this part comply with the Paperwork Reduction Act?

The information collected from the public under this part is cleared and covered by Office of Management and Budget (OMB) Control Number 1076–NEW. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Appealing Administrative Decisions

§ 2.200 Who may appeal a decision?

You have a right to appeal a decision made by an Indian Affairs official if you can show, through credible statements, that you are adversely affected by the decision.

§ 2.201 Do I need a lawyer in order to file a document in an appeal?

No. You may represent yourself. If you are represented by someone else, your representative must meet the standards established in 43 CFR part 1 and must provide documentation of his or her authority to act on your behalf.

§ 2.202 Who decides administrative appeals?

Except where a specific section of this part sets out a different appellate hierarchy, table 1 to this section identifies the reviewing officials for appeals under this part:

TABLE 1 TO § 2.202

Official issuing the decision	Reviewing official or IBIA
Agency Superintendent or Field Representative, BIA	Regional Director, BIA.
Regional Director, BIA	IBIA.
District Commander, OLES	Deputy Director BIA, Office of Justice Services (OJS).
Deputy Director, BIA	Director, BIA.
Director, BIA	IBIA.
Principal of a Bureau operated School	Education Program Administrator.
Education Program Administrator	Associate Deputy Director, BIE.
Associate Deputy Director, BIE	Director, BIE.
President of a Bureau operated Post-Secondary School	Director, BIE.
Director, BIE	AS–IA.
BTFA decision-maker	Director, BTFA.
Director of: OIG; IED; OSG	Appropriate Deputy Assistant Secretary—Indian Affairs.
Deputy Assistant Secretary—Indian Affairs; Director, BTFA	AS–IA.

§ 2.203 How long do I have to file an appeal?

(a) You have 30 days after you receive a copy of the decision you are appealing to file a Notice of Appeal, except as provided in § 2.104(b).

(b) We will presume that you have received notice of the decision 10 days after the date that the decision was mailed to you, if the decision-maker mailed the document to the last address the decision-maker has on file for you.

(c) If the reviewing official receives proof that the document was delivered before the expiration of the 10-day period, you are presumed to have received notice on the date of delivery, and you have 30 days from that date to file an appeal.

§ 2.204 Will the reviewing official grant a request for an extension of time to file a Notice of Appeal?

No. No extensions of time to file a Notice of Appeal will be granted.

§ 2.205 How do I file a Notice of Appeal?

(a) To file a Notice of Appeal to an Indian Affairs official, you must submit the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.104. Your submission must comply with § 2.214.

(b) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

§ 2.206 What must I include in my Notice of Appeal?

In addition to meeting the requirements of § 2.214, your Notice of Appeal must include an explanation of how you satisfy the requirements of

standing set out in § 2.200 and a copy of the decision being appealed, if possible.

§ 2.207 Do I have to send the Notice of Appeal to anyone other than the reviewing official?

(a) Yes. You must provide copies of your Notice of Appeal to the decision-maker and all interested parties known to you. If you are an individual Indian and are not represented by an attorney, you may request that we make the copies for you and mail your appeal documents to all interested parties.

(b) If you are appealing to the IBIA, you must also send a copy of your Notice of Appeal to the AS–IA and to the Associate Solicitor for Indian Affairs at the same time you send the appeal to the IBIA.

§ 2.208 What must I file in addition to the Notice of Appeal?

No later than 10 days after filing your Notice of Appeal, you must submit to the reviewing official, the decision-maker, and interested parties a statement of reasons that:

(a) Explains why you believe the decision was wrong;

(b) Identifies relevant information or evidence you believe the decision-maker failed to consider;

(c) Describes the relief you seek;

(d) Provides all documentation you believe supports your arguments; and

(e) Complies with the requirements of § 2.214.

§ 2.209 Who may file a response to the statement of reasons?

Any interested party may file a response to the statement of reasons, thereby becoming a participant. The decision-maker may also file a response to the statement of reasons.

§ 2.210 How long does the decision-maker or an interested party have to file a response?

The decision-maker or an interested party has 30 days after receiving a copy of the statement of reasons to file a response.

§ 2.211 What must a response to the statement of reasons include?

(a) A response to a statement of reasons must comply with § 2.214. In addition, the response must:

(1) State when the interested party or decision-maker submitting the response received the statement of reasons;

(2) Explain how the interested party submitting the response is adversely affected by the decision being appealed or may be adversely affected by the reviewing official's decision; and

(3) Explain why the interested party or decision maker submitting the response believes the arguments made in the appellant's Notice of Appeal and statement of reasons are right or wrong.

(b) The response may also include statements and documents supporting the position of the interested party or decision-maker submitting.

§ 2.212 Will the reviewing official accept additional briefings?

(a) Yes. The appellant may file a reply with the reviewing official within 21 days of receiving a copy of any response brief.

(b) Any interested party may, within 10 days after receiving the table of contents of the administrative record (AR), request copies of some or all of the AR. Such party may submit a supplemental brief within 10 days after receiving the requested documents.

(c) Any interested party may ask the reviewing official for permission to file additional briefing. The reviewing official's decision on whether to grant the request is not appealable.

(d) No documents other than those specified in this part and those permitted by the reviewing official under paragraph (c) of this section may be filed.

(e) The reviewing official will not consider documents not timely filed.

§ 2.213 What role does the decision-maker have in the appeal process?

(a) The decision-maker is responsible for:

(1) Compiling the administrative record;

(2) Sending the administrative record to the reviewing official within 20 days of the decision-maker's receipt of the Notice of Appeal; and

(3) Making available a copy of the administrative record for review by interested parties. When the decision-maker transmits the administrative record to the reviewing official, the decision-maker shall transmit to the interested parties a copy of the table of contents of the administrative record. Interested parties may view the administrative record at the office of the decision-maker. Interested parties may request copies of all or part of the administrative record. Where reproduction and transmission of the administrative record imposes costs on BIA exceeding $50, BIA may charge the requestor for those costs. BIA shall not incur such costs without the requestor's approval. The decision-maker shall respond to requests for documents in the administrative record within 30 days of receipt of the request, either by providing the requested documents or identifying a date by which the documents shall be provided. The decision-maker shall redact the documents provided to the requestor as required by law (*e.g.,* the Privacy Act). The decision-maker may withhold information in the administrative record, invoking privileges available in civil litigation; such withholding being subject to judicial review. Provision of documents in the administrative record to an interested party under this part is not governed by the Freedom of Information Act. Failure of a decision-maker to respond to a request for documents under this section may be appealed as provided in subpart F of this part.

(b) If a decision-maker believes that a compacting or contracting Tribe possesses Federal records that are relevant to the analysis of the appeal, the decision-maker may request that the Tribe produce the documents. Within two weeks of receiving the decision-maker's request, the Tribe shall either provide the requested documents to the decision-maker or explain why it is not providing the documents. This section does not apply to Tribal records. See 25 U.S.C. 5329(b).

(c) The decision-maker may file a response to the statement of reasons.

§ 2.214 What requirements apply to my submission of documents?

Except where a section in this part (or 43 CFR part 4 with respect to submissions to the IBIA) sets out other requirements, you must comply with the following provisions:

(a) *Information required in every submission.* (1) The submitter's contact information, consisting of name, mailing address, telephone number, and email address if any; or the name, mailing address, telephone number, and email address of the submitter's representative;

(2) A certificate of service by the submitter that the submission was served on all interested parties known to the submitter, a list of parties served, and the date and method of service; and

(3) The signature of the interested party or his or her representative.

(b) *Filing documents.* A document is properly filed with an agency official by:

(1) Personal delivery, either hand delivery by an interested party or via private mail carrier, during regular business hours to the person designated to receive mail in the immediate office of the official;

(2) United States mail to the facility officially designated for receipt of mail addressed to the official. The document is considered filed by mail on the date that it is postmarked; and

(3) Electronic mail (email) is permissible only in accordance with the provisions in paragraph (i) of this section.

(c) *Service generally.* A copy of each document filed in a proceeding under this part must be served by the filing party on the relevant agency official(s) and all other known interested parties. If an interested party is represented by an attorney, service of any document shall be made upon such attorney. Where an interested party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(d) *Record address.* Every person who files a document in an appeal shall, at the time of the initial filing in the matter, provide his or her contact information. Such person must promptly inform the decision-maker or reviewing official of any change in address. Any successors in interest of such person shall promptly inform the decision-maker or reviewing official of his or her interest in the matter and provide contact information. Agency officials and other parties to an appeal shall have fulfilled their service requirement by transmitting documents to a party's last known address.

(e) *Computation of time for filing and service.* Documents must be filed within the deadlines established in this part (or by 43 CFR part 4 for filings submitted to the IBIA), or as established by Department officials in a particular matter. Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed from or answered was served, or the day of any other event after which the designated period of time begins to run, is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other day on which the office to which the document is addressed is not conducting business, in which event the period runs until the end of the next day on which the office to which the document is addressed is conducting business. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days shall be excluded in the computation.

(f) *Extensions of time.* (1) The deadline for filing and serving any document may be extended by the agency official before whom the proceeding is pending, except that the deadline for filing a Notice of Appeal may not be extended.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document.

(3) A request for extension of time must be filed with the same office as the document that is the subject of the request.

(g) *Formatting.* All submissions, except exhibits, must be typed in 12-point font, (double-spaced) using a standard 8½- by 11-inch word processing format, except that a document submitted by an interested party who is not represented by an attorney may be hand-written. An agency official may decline to consider an illegible hand-written submission. An agency official who declines to consider a hand-written submission shall promptly notify the submitter of the decision not to consider the submission.

(h) *Page limits for particular filings are set out in the sections addressing those filings.* Attachments and exhibits not drafted by or for the submitter do not count toward the page limit.

(i) *Submitting and serving documents by email.* Submitting documents by email to an agency official is only permitted when the receiving official has notified the known interested parties that email submissions are acceptable. Documents may only be served via email on interested parties who have stated, in writing, their willingness to accept service by email. No single email submission may exceed 10 megabytes (MB). Submissions may be divided into separate emails for purposes of complying with this requirement. Filings submitted by email shall be in PDF format. Email submissions that arrive at the agency official's office after 5:00 p.m. shall be deemed to have arrived on the next work day.

(j) *Non-compliant submissions.* An agency official may decline to consider a submission that does not comply with the requirements in this section, or take other action she/he deems appropriate. A non-compliant submission is nonetheless a Federal record, and must be preserved as other Federal records.

Subpart C—Effectiveness and Finality of Decisions

§ 2.300 When is a decision effective?

(a) Agency decisions that are subject to further administrative appeal become effective when the appeal period expires without an appeal being filed, except as provided elsewhere in this chapter.

(b) When an agency decision is effective pursuant to paragraph (c) of this section or § 2.714, the administrative appeal will proceed unless an interested party challenges the agency decision in Federal court.

(c) Agency decisions that are subject to further administrative appeal and for which an appeal is timely filed may be made immediately effective by the reviewing official based on public safety, Indian education safety, protection of trust resources, or other public exigency.

(1) A decision-maker whose decision has been appealed may ask the reviewing official to make the appealed decision immediately effective or the reviewing official may make the appealed decision immediately effective on his or her own initiative.

(2) A reviewing official's decision to make an appealed decision immediately effective must explain why public safety, Indian education safety, protection of trust resources, or other public exigency justifies making the decision immediately effective. Any challenge to the decision to put an appealed decision into immediate effect shall be incorporated into the ongoing appeal.

(3) A decision by a reviewing official (other than the IBIA) to place an appealed decision into immediate effect must be in writing and include the following notice of appeal rights:

> As explained above, based on concerns about public safety, Indian education safety, protection of trust resources, or other exigency, I have placed the challenged decision into immediate effect, as authorized by 25 CFR 2.300. I will continue with my review of the matter on appeal unless and until an interested party files suit in federal court challenging the agency decision.

§ 2.301 When is a decision a final agency action?

An agency decision that is not subject to administrative appeal is a final agency action and immediately effective when issued unless the decision provides otherwise.

Subpart D—Appeal Bonds

§ 2.400 When may the reviewing official require an appeal bond?

(a) Any interested party who may suffer a financial loss or damage to Indian Trust Assets as a result of an appeal may ask the reviewing official to require the appellant to post an appeal bond.

(b) The reviewing official may decide on his or her own initiative to require an appeal bond in accordance with this subpart.

§ 2.401 How will the reviewing official determine whether to require an appeal bond?

The reviewing official may require an appeal bond if the party requesting the

appeal bond can demonstrate that the delay caused by the appeal may result in a measurable and substantial financial loss or damage to Indian Trust Assets. The amount of the appeal bond will be commensurate with the estimated financial loss or damage to Indian Trust Assets.

§ 2.402 What form of appeal bond will the reviewing official accept?

The reviewing official will only accept an appeal bond that has a market value at least equal to the total bond amount in one, or a combination of, the following forms.

(a) Negotiable U.S. Treasury securities, accompanied by a statement granting the AS–IA full authority to sell the securities and direct the proceeds to the party who was harmed by the appellant's unsuccessful appeal.

(b) Certificates of deposit that indicate on their face that AS–IA approval is required prior to redemption by any party.

(c) An irrevocable letter of credit issued by a federally insured financial institution and made payable to the Office of the AS–IA. The letter of credit must have an initial expiration date of not less than two years from the date of issuance and be automatically renewable for at least one year.

(d) A surety bond issued by a company approved by the U.S. Department of the Treasury.

§ 2.403 May I appeal the decision whether to require an appeal bond?

No. The reviewing official's decision whether to require an appeal bond is not appealable.

§ 2.404 What will happen to my appeal if I fail to post a required appeal bond?

If you are required to post a bond and fail to do so within the time allowed by the reviewing official to post the bond, the reviewing official will dismiss your appeal.

§ 2.405 How will the reviewing official notify interested parties of the decision on a request for an appeals bond?

When the reviewing official decides whether to require an appeal bond, she or he will provide the interested parties with written notice of the decision

Subpart E—Deciding Appeals

§ 2.500 May an appeal be consolidated with other appeals?

Yes. The reviewing official may, either on his or her own initiative or upon request by the decision-maker or interested party, consolidate identical or similar appeals filed by you and others or consolidate multiple appeals that you file that also contain identical or similar issues.

§ 2.501 May an appealed decision be partially implemented?

Yes. The reviewing official may identify any parts of a decision-maker's decision that have not been appealed, to allow the decision-maker to implement those parts of the decision. The reviewing official will notify interested parties of a determination to implement unchallenged components of the decision-maker's decision. An interested party who disagrees with the reviewing official's determination may seek reconsideration by the reviewing official. A request for reconsideration must be filed within 15 days of issuance of the determination.

§ 2.502 May I withdraw my appeal once it has been filed?

Yes. You may withdraw your appeal at any time before the reviewing official issues a decision. To withdraw an appeal, you must write to the reviewing official and all participants stating that you want to withdraw your appeal. If you withdraw your appeal, it will be dismissed by the reviewing official. While the dismissal of a withdrawn appeal is without prejudice, the appeals time frame set out in this part will be unaffected by a withdrawn appeal. Therefore, any refiling of a withdrawn appeal must be within the original filing deadline established pursuant to § 2.104.

§ 2.503 May an appeal be dismissed without a decision on the merits?

Yes, the reviewing official may dismiss an appeal without a decision on the merits when:

(a) You are late in filing your appeal;

(b) You lack standing because you do not meet the requirements of § 2.200 for bringing an appeal;

(c) You have withdrawn the appeal;

(d) You have failed to pay a required appeal bond;

(e) The reviewing official lacks the authority to grant the requested relief;

(f) If you are represented and your representative does not meet the standards established in 43 CFR part 1 related to eligibility to practice before the Department, and you have failed to substitute yourself or an eligible representative after being given an opportunity to do so; or

(g) The reviewing official determines there are other circumstances that warrant a dismissal and explains those circumstances in the dismissal order.

§ 2.504 What information will the reviewing official consider?

(a) The reviewing official will consider:

(1) The administrative record for the decision, prepared by the decision-maker under § 2.213;

(2) All relevant documents submitted by the decision-maker and participants that were filed in accordance with applicable deadlines; and

(3) Laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

(b) If the reviewing official considers documentation that was not included in the administrative record, the reviewing official will:

(1) Provide a copy of that documentation to the decision-maker and interested parties; and

(2) Establish a schedule for the decision-maker and interested parties to review and comment on the documentation.

§ 2.505 When will the reviewing official issue a decision on an appeal?

(a) The reviewing official (other than the IBIA) will issue a written decision, including the basis for the decision, within 90 days after the latest of:

(1) The filing of the statement of reasons;

(2) The filing of any responses, replies, or supplemental briefs under §§ 2.209 through 2.212; or

(3) The filing of any comments on additional material under § 2.504(b).

(b) A reviewing official (other than the IBIA) may, for good cause and with notice to the decision-maker and participants, extend the deadline for the official's decision one time by no more than 90 days.

§ 2.506 How does the reviewing official notify the appellant and other interested parties of a decision?

The reviewing official will send the decision to the decision-maker and interested parties.

§ 2.507 How do I appeal a reviewing official's decision?

(a) To appeal a reviewing official's decision that is not a final agency action, you must file your appeal in accordance with the instructions for appeal contained in the decision.

(b) The decision will include instructions that briefly describe how to appeal the decision, to whom the appeal should be directed, and the deadline for filing an appeal, and will refer interested parties to the regulations governing the appeal.

(c) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43 CFR part 4.

(d) Except where a specific section of this part sets out a different appellate hierarchy, table 1 to this paragraph (d) indicates the official to whom subsequent appeals should be addressed.

TABLE 1 TO PARAGRAPH (d)

Reviewing official (or IBIA) whose decision is being appealed	Official to whom the appeal is addressed
Regional Director	IBIA.
Principal of a Bureau operated school	Education Program Administrator.
Education Program Administrator	Associate Deputy Director, Bureau of Indian Education.
Associate Deputy Director, BIE	Director, BIE.
President of a Bureau operated post-secondary school	Director, BIE.
Deputy Director BIA, Office of Justice Services (OJS)	IBIA.
Director, BIE	AS–IA.
Director, BTFA	AS–IA.
Director, BIA	IBIA.
Deputy Assistant Secretary—Indian Affairs	AS–IA.
AS–IA	(Decision is final for the Department).
IBIA	(Decision is final for the Department).

§ 2.508 May the AS–IA take jurisdiction over an appeal to the IBIA?

Yes. The AS–IA has 40 days from the date on which the IBIA received your Notice of Appeal to take jurisdiction from the IBIA. The AS–IA will notify the IBIA in writing of the assumption of jurisdiction and request the administrative record of the appeal. At any time in the 40 days, the AS–IA may notify the IBIA that she or he is not going to take jurisdiction over an appeal, at which point the IBIA will assign a docket number to the appeal under its regulations in 43 CFR part 4. If the IBIA does not receive written notice from the AS–IA within the 40-day period of the AS–IA's intent to take jurisdiction over the appeal, the IBIA will assign a docket number to your appeal.

§ 2.509 May I ask the AS–IA to take jurisdiction over my appeal?

No. The AS–IA will not consider a request from any interested party to take jurisdiction over an appeal.

§ 2.510 How will the AS–IA handle my appeal?

If the AS–IA takes jurisdiction over your appeal, or if an appeal is made to the AS–IA in accordance with table 1 to paragraph (d) in § 2.507, the following procedures shall apply:

(a) Within 10 days of receipt of an appeal, or of assumption of jurisdiction over an appeal to the IBIA, the AS–IA shall transmit to the official who issued the decision being appealed and all known interested parties a notice that will include information on when and how to file briefs, access to the administrative record, and may include instructions for filing briefs via email.

(b) Briefs shall comply with § 2.214, and be submitted as follows, unless the AS–IA specifies otherwise:

(1) Initial briefs are invited from the appellant, all interested parties, and the official whose decision is on appeal. Initial briefs may not exceed 30 pages and shall be due within 21 days of the date of the AS–IA's notice. Initial briefs must include certification of service on the reviewing official and all other interested parties identified in the AS–IA's initial notice to interested parties;

(2) Answering briefs shall be due within 35 days of the date of the AS–IA's notice. Answering briefs shall not exceed 15 pages; and

(3) For good cause shown, the AS–IA may extend deadlines, may allow handwritten briefs, may provide for different page limits, and may permit submission of reply briefs.

(c) The AS–IA shall render a decision on the appeal within 60 days of the end of briefing. The AS–IA may, for good cause and with notice to the participants, extend the deadline for issuing a decision by no more than 60 days.

(d) The AS–IA may summarily affirm the decision of the official whose decision is on appeal based on the record before the official whose decision is on appeal.

(e) The AS–IA may delegate to the Principal Deputy Assistant Secretary—Indian Affairs the authority and responsibility for rendering a final agency decision on an appeal over which the AS–IA is exercising jurisdiction.

§ 2.511 May the Secretary decide an appeal?

Yes. Nothing in this part will be construed as affecting the Secretary's authority to take jurisdiction over an appeal as set out in 43 CFR 4.5(a).

§ 2.512 May the Director of the Office of Hearings and Appeals take jurisdiction over a matter?

Yes. Nothing in this part will be construed as affecting the authority vested in the Director of the Office of Hearings and Appeals to take jurisdiction over matters in front of the IBIA, as provided in 43 CFR 4.5(b).

Subpart F—Appealing Inaction of an Agency Official

§ 2.600 May I compel an agency official to take action?

(a) Yes. If a decision-maker fails to take action on a written request for action that you believe the decision-maker is required to take, you may make the decision-maker's inaction the subject of appeal.

(b) Before filing an appeal with the next official in the decision-maker's chain of command, you must:

(1) Send a written request to the decision-maker, asking that he or she take the action originally asked of him or her;

(2) Identify the statute, regulation, or other source of law that you believe requires the decision-maker to take the action being requested;

(3) Describe the interest adversely affected by the decision-maker's inaction, including a description of the loss, impairment or impediment of such interest caused by the inaction; and

(4) State that, unless the decision-maker either takes action on the written request within 15 days of receipt of your request, or establishes a date by which a decision will be made, you will appeal the decision-maker's inaction in accordance with this subpart.

(c) You must include a copy of your original request to the decision-maker, or other documentation establishing the date and nature of the original request.

§ 2.601 When must a decision-maker respond to a request to act?

A decision-maker receiving a request as specified in § 2.600 has 15 days from receiving the request to issue a written response. The response may be a decision, a procedural order that will further the decision-making process, or a written notice that a decision will be rendered by a date no later than 60 days from the date of the request.

§ 2.602 What may I do if the decision-maker fails to respond?

If the decision-maker does not respond as provided for in § 2.601, you may appeal the decision-maker's continued inaction to the next official in the decision-maker's chain of command. For purposes of this subpart:

(a) BIA's chain of command is as follows:

(1) Local Bureau Official;

(2) Regional Director (find addresses on the Indian Affairs website, currently at *https://www.bia.gov/regional-offices*);

(3) Director, Bureau of Indian Affairs (1849 C Street NW, MS 4606, Washington, DC 20240); and

(4) Assistant Secretary—Indian Affairs (1849 C Street NW, MS 4660, Washington, DC 20240).

(b) BIE's chain of command is as follows:

(1) Principal of Bureau-operated school;

(2) Education Program Administrator;

(3) Associate Deputy Director, BIE;

(4) Director, BIE; and

(5) AS–IA.

(c) The Office of Justice Services' chain of command is as follows:

(1) Deputy Director BIA, Office of Justice Services;

(2) Director, BIA; and

(3) AS–IA

(d) You may appeal inaction by an official within the Office of the AS–IA to the AS–IA.

§ 2.603 How do I submit an appeal of inaction?

You may appeal the inaction of a decision-maker by sending a written ''appeal from inaction of an official'' to the next official in the decision-maker's chain of command. You must enclose a copy of the original request for decision to which the decision-maker has not responded and a copy of the request for decision that you sent to the decision-maker pursuant to § 2.600. If filing by email is permitted, ''Appeal of Inaction'' must appear in the subject line of the email submission.

§ 2.604 What will the next official in the decision-maker's chain of command do in response to my appeal?

An official who receives an appeal from the inaction of a decision-maker that complies with the requirements of this subpart will, within 15 days of receiving the appeal, formally direct the decision-maker to respond within 15 days of the decision-maker's receipt of the official direction. The official will send to all interested parties a copy of his or her instructions to the decision-maker.

§ 2.605 May I appeal continued inaction by the decision-maker or the next official in the decision-maker's chain of command?

Yes. If the official fails to timely direct the decision-maker to respond to the request for decision, or if the decision-maker fails to respond within the time frame identified by the official pursuant to § 2.604, you may appeal the continued inaction by either agency official to the next highest officer in the chain of command above both agency officials. Your appeal must be submitted as provided for in §§ 2.602 and 2.603. The official will respond as provided for in § 2.604.

§ 2.606 May I appeal inaction by a reviewing official on an appeal from a decision?

(a) Yes. If a reviewing official fails to take action on the appeal within the timeframes established in § 2.505, any interested party may appeal the reviewing official's inaction as provided for in this subpart.

(b) Inaction by the IBIA or by the AS–IA is not subject to appeal under this part.

§ 2.607 What happens if no official responds to my requests under this subpart?

If you exhaust all the provisions of this subpart and the Department has still not taken action on your request, the Department's inaction may be subject to judicial review pursuant to 5 U.S.C. 706(1).

Subpart G—Special Rules Regarding Recognition of Tribal Representative

§ 2.700 What is the purpose of this subpart?

The purpose of this subpart is to expedite administrative review of a Bureau decision to recognize, or to decline to recognize, a Tribal representative. Provisions in subparts A through F of this part also apply, except that, if a provision in this subpart conflicts with a provision in subparts A through F of this part, the provision in this subpart will govern.

§ 2.701 May a Local Bureau Official's decision to recognize, or decline to recognize, a Tribal representative be appealed?

Yes. A written decision by the LBO to recognize or decline to recognize a Tribal representative is appealable.

§ 2.702 How will I know what decisions are appealable under this subpart?

When an LBO issues a Tribal representative recognition decision, the official will include the following notice of appeal rights at the end of the decision document:

YOU HAVE 10 DAYS TO APPEAL THIS DECISION.

This decision may be appealed to the —[appropriate reviewing official. If the LBO is a Regional Director, the reviewing official is the Director of the BIA]—at—[address, including email address if filing by email is permitted].

Deadline for Appeal. Your notice of appeal must be submitted as provided for in 25 CFR 2.214 within 10 (ten) days of the date you receive notice of this decision. Your notice of appeal must explain how you satisfy the standing requirements in 25 CFR 2.200. If you do not file a timely appeal, you will have failed to exhaust administrative remedies required by these regulations. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

§ 2.703 How do I file a Notice of Appeal of a Tribal representative recognition decision?

To file a Notice of Appeal, you must submit, as provided in § 2.214, the Notice of Appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.702.

§ 2.704 How long do I have to file an appeal of a Tribal representative recognition decision?

You have 10 days after you receive the Tribal representative recognition decision to file a Notice of Appeal.

§ 2.705 Is there anything else I must file?

Yes. You must file a statement of reasons setting out your arguments in support of your appeal, and include any supporting documentation you wish to present to the reviewing official. Your statement of reasons must comply with the requirements set out in § 2.214.

§ 2.706 When must I file my statement of reasons?

You must submit your statement of reasons to the reviewing official and interested parties no later than 10 days after filing your Notice of Appeal.

§ 2.707 May the LBO and interested parties file a response to the statement of reasons?

Yes. Any interested party, as well as the LBO, may file a response to the statement of reasons, thereby becoming a participant.

§ 2.708 How long do interested parties have to file a response?

(a) The LBO and any interested party have 10 days after receiving a copy of the statement of reasons to file a response, which must be served on the appellant, the LBO and other interested parties.

(b) For good cause shown, the reviewing official may allow the appellant to file a reply brief.

§ 2.709 What will the LBO do in response to my appeal?

Upon receipt of your Notice of Appeal, the LBO must transmit, within 15 days, the administrative record to the reviewing official and transmit your Notice of Appeal to the AS–IA.

§ 2.710 When will the reviewing official decide a Tribal representative recognition appeal?

The reviewing official will issue a written decision, including the basis for the decision, within 30 days after the latest of the filing of your statement of reasons or interested parties' response.

§ 2.711 May the decision deadline be extended?

Yes. A reviewing official may, for good cause and with notice to the interested parties and the LBO, extend the deadline for the reviewing official's decision one time, for no more than an additional 30 days.

§ 2.712 May the AS–IA take jurisdiction over the appeal?

Yes. The AS–IA may take jurisdiction over the appeal at any time before the reviewing official issues a final decision.

§ 2.713 May I ask the AS–IA to take jurisdiction over the appeal?

No. The AS–IA will not consider a request from any interested party to take jurisdiction over the appeal.

§ 2.714 May the reviewing official's decision on Tribal representative recognition be appealed?

Yes. The reviewing official's decision is immediately effective, but not final for the Department. Therefore, any participant may appeal the reviewing official's decision as provided for in this part, or pursue judicial review in Federal court. Notwithstanding any other regulation, the reviewing official's Tribal representative recognition decision shall remain in effect and binding on the Department unless and until the reviewing official's decision is reversed by superior agency authority or reversed or stayed by order of a Federal court.

Subpart H—Appeals of Bureau of Trust Funds Administration Statements of Performance

§ 2.800 What is the purpose of this subpart?

(a) The purpose of this subpart is to allow an account holder to dispute the accuracy of the activity contained within a Statement of Performance.

(b) The appeals process in this subpart is summarized as follows:

(1) Account holders receive a Statement of Performance at least each quarter. In limited circumstances, account holders may only receive a Statement of Performance annually based upon activity.

(2) An account holder may submit an Objection to the Statement of Performance (''Objection'') to the decision-maker.

(3) The decision-maker will render a Decision on the Objection to the Statement of Performance (''Decision'').

(4) An account holder may submit an Appeal of the Decision on the Objection to the Statement of Performance (''Appeal'') to the Director, BTFA.

(5) The Director, BTFA will render the BTFA's ruling on the account holder's appeal.

(6) An account holder may appeal the BTFA's ruling to the AS–IA.

(7) The AS–IA's decision on the account holder's appeal is a final agency action.

§ 2.801 What terms do I need to know for this subpart?

Account holder means a Tribe or a person who owns the funds in a Tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Appeal of the Decision on the Objection to the Statement of Performance (''Appeal'') means your appeal of the decision-maker's decision.

Basis of Objection to the Statement of Performance (''Basis of Objection'') means the documentation you submit supporting your Objection to the Statement of Performance.

BTFA means the Bureau of Trust Funds Administration.

BTFA's Ruling means the ruling issued by Director, BTFA on your Appeal of the decision-maker's decision.

Decision on the Objection to the Statement of Performance (''Decision'') means the decision-maker's decision on your Objection to the Statement of Performance.

Decision-maker means the Director, Office of Trust Analysis and Research within the Bureau of Trust Funds Administration who reviews your Objection to the Statement of Performance.

Objection to the Statement of Performance (''Objection'') means the document you submit to the decision-maker, alleging errors in your Statement of Performance.

Reviewing official means the Director, BTFA.

Statement of Performance (SOP) means the document that is issued to each account holder that identifies:

(1) The source, type, and status of the funds;

(2) The beginning balance;

(3) The gains and losses;

(4) Receipts and disbursements; and

(5) The ending balance.

§ 2.802 What must I do if I want to challenge the accuracy of activity within a Statement of Performance?

If you want to challenge the accuracy of activity within a Statement of Performance, you must submit an Objection to the Statement of Performance within 60 calendar days of the statement date.

§ 2.803 Is every account holder allowed to challenge the accuracy of activity within a Statement of Performance?

Yes. However, if a Tribe has entered into a settlement with the United States and that settlement contains language concerning the challenge of a statement of performance, the language in the settlement agreement will control.

§ 2.804 May I challenge the underlying action that generated the proceeds deposited into my account under this subpart?

No. This subpart is solely for the purpose of challenging the accuracy of the activity within the SOP. If you want to challenge the underlying action that generated the proceeds deposited into your trust account, you must contact the BIA agency responsible for the action.

§ 2.805 May I challenge anything other than the activity in the account under this subpart?

No. The purpose of this subpart is to provide a method for account holders to dispute the activity in the account.

§ 2.806 What must my Objection to the Statement of Performance contain?

Your Objection to the Statement of Performance must be in writing and contain all of the following:

(a) Your name, address, and telephone number;

(b) The statement date of the specific Statement of Performance that you are challenging;

(c) A copy of the Statement of Performance being challenged; and

(d) The Basis of Objection.

§ 2.807 What must my Basis of Objection contain?

Your Basis of Objection must be in writing and contain:

(a) A statement that details all of the errors or omissions that you believe exist in the Statement of Performance, with as much explanatory detail as possible;

(b) A statement describing the corrective action that you believe BTFA should take; and

(c) All information that you believe relates to the error(s) or omission(s) in the specific Statement of Performance.

§ 2.808 To whom must I submit my Objection to the Statement of Performance?

(a) You must submit your Objection to the Statement of Performance to the decision-maker at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, Office of Trust Analysis and Research, 1849 C Street NW, Washington, DC 20240.

(b) Your submission must comply with the provisions of § 2.214.

§ 2.809 When must I submit my Objection to the Statement of Performance?

You must submit your Objection to the Statement of Performance within 60 calendar days of the statement date on the Statement of Performance you are challenging.

§ 2.810 Will the decision-maker acknowledge receipt of my Objection to the Statement of Performance?

Yes. The decision-maker will provide an acknowledgement of receipt of your Objection to the Statement of Performance within 10 calendar days of receipt in the form of a letter that will be mailed to the address you provided in your Objection.

§ 2.811 May I request an extension of time to submit my Objection to the Statement of Performance?

Yes. Within 60 calendar days of the statement date on your Statement of Performance, you may request an extension of time, submitted in compliance with the provisions of § 2.214, from the decision-maker to submit your Objection to the Statement of Performance. The decision-maker may grant one 30-day extension of time in which to submit your Objection to the Statement of Performance.

§ 2.812 May I appeal the denial of my request for an extension of time?

No. The denial of an extension of time to submit the Objection to the Statement of Performance is not appealable.

§ 2.813 If I fail to submit either an Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines, what is the consequence?

If you fail to submit either the Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines:

(a) The Statement of Performance at issue will be deemed accurate and complete for all purposes;

(b) You will have waived your right to invoke the remainder of the review and appeals process as to that Statement of Performance; and

(c) You will have failed to exhaust the administrative remedies available within the Department.

§ 2.814 How long will the decision-maker have to issue a Decision on my Objection to the Statement of Performance?

The decision-maker will have 30 calendar days from the date of receipt of your Basis of Objection to the Statement of Performance to issue a Decision on your Objection to the Statement of Performance. If your Basis of Objection is not received when you submit your Objection to the Statement of Performance and an extension of time was not asked for and granted, the decision-maker will dismiss your Objection to the Statement of Performance.

§ 2.815 What information will the Decision on my Objection to the Statement of Performance contain?

The Decision on your Objection to the Statement of Performance will contain an explanation as to whether the decision-maker agrees or disagrees with your Objection to the Statement of Performance. If the decision-maker agrees with your Objection to the Statement of Performance, a correction will be made and reflected on your Statement of Performance. If the decision-maker disagrees with your Objection to the Statement of Performance, the Decision will provide information about your right to appeal the Decision.

§ 2.816 May I appeal the Decision on my Objection to the Statement of Performance?

Yes. The Decision issued by the decision-maker is appealable to the reviewing official, who is the Director, BTFA.

§ 2.817 What must my Appeal of the Decision on the Objection to the Statement of Performance contain?

Your Appeal must comply with the instructions in § 2.214 and must include the statement date of the specific Statement of Performance that you are appealing.

§ 2.818 To whom must I submit my Appeal of a Decision on my Objection to the Statement of Performance?

You must submit your Appeal, as provided in § 2.214, to the reviewing official, at: U.S. Department of the Interior, Bureau of Trust Funds Administration, Attn: Director, BTFA, 1849 C Street NW, Washington, DC 20240.

§ 2.819 When must my Appeal be filed?

You must file your Appeal within 30 calendar days of the date that the decision-maker issued the Decision.

§ 2.820 May I submit any other documents in support of my Appeal?

No. You may not submit any other documents in support of your Appeal. The reviewing official may only consider the documents that were reviewed by the decision-maker.

§ 2.821 May I request an extension of time to submit my Appeal?

No. You must submit the Appeal within 30 calendar days of the issuance of the Decision. The reviewing official will not grant an extension of time to submit your appeal of a Decision.

§ 2.822 What happens if I do not submit my Appeal within the 30-day deadline?

If you fail to submit your Appeal within the 30-day deadline:

(a) The decision-maker's decision will be effective;

(b) The Statement of Performance at issue will be deemed accurate and complete;

(c) You will have waived your right to invoke the remainder of the review and appeals process as to that same Statement of Performance; and

(d) You will have failed to exhaust the administrative remedies available within the Department.

§ 2.823 When will the reviewing official issue the BTFA's ruling?

The reviewing official will issue the BTFA's ruling within 30 calendar days of receipt of your Appeal of a Decision on your Objection to the Statement of Performance. The ruling will provide information about your right to further appeal.

§ 2.824 May I appeal the BTFA's ruling?

Yes. The BTFA's ruling may be appealed to the AS–IA. The procedures,

requirements, and deadlines set out in §§ 2.816, 2.817, and 2.819 through 2.821 apply to appeals to the AS–IA under this subpart. Submit your Appeal to: U.S. Department of the Interior, Office of the Assistant Secretary—Indian Affairs, MS 4660, 1849 C Street NW, Washington, DC 20240, as provided in § 2.214.

§ 2.825 When does the Statement of Performance or a Decision become final?

(a) Statements of Performance, and decisions rendered by Department officials under this subpart, are final when the deadline for submitting an Objection to the Statement of Performance or an Appeal has expired and the account holder has not submitted an Objection to the Statement of Performance or an Appeal.

(b) A decision rendered by the AS–IA is a final agency action.

Subpart I—Alternative Dispute Resolution

§ 2.900 Is there a procedure other than a formal appeal for resolving disputes?

Yes. We strongly encourage parties to work together to reach a consensual resolution of disputes whenever possible. Use of an alternative approach to dispute resolution can save time and money, produce more durable and creative solutions, and foster improved relationships. It may be appropriate and beneficial to consider the use of alternative dispute resolution (ADR) processes and techniques at any stage in a dispute. The parties may request information from the decision-maker on the use of an ADR process.

§ 2.901 How do I request alternative dispute resolution?

If you are interested in pursuing alternative dispute resolution, you may contact the reviewing official to make a request to use ADR for a particular issue or dispute.

§ 2.902 When do I initiate alternative dispute resolution?

We will consider a request to use alternative dispute resolution at any time. If you file a Notice of Appeal, you may request the opportunity to use a consensual form of dispute resolution.

§ 2.903 What will Indian Affairs do if I request alternative dispute resolution?

If all interested parties concur, the reviewing official may stay (discontinue consideration of) the appeal while the parties pursue ADR. Where the parties agree to use ADR, Indian Affairs and other interested parties may seek assistance from the Department of the Interior's Office of Collaborative Action and Dispute Resolution (CADR). CADR can assist in planning and facilitating an effective collaboration or dispute resolution process. Parties are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.

Bryan Newland,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Parts 1206, 1208, 1217, and 1220

[Docket No. ONRR–2022–0001; DS63644000 DRT000000.CH7000 223D1113RT]

RIN 1012–AA32

Electronic Provision of Records During an Audit

AGENCY: Office of Natural Resources Revenue (''ONRR''), Interior.

ACTION: Final rule.

SUMMARY: ONRR is amending its regulations to allow ONRR and other authorized Department of the Interior (''Department'') representatives the option to require that an auditee use electronic means to provide records requested during an audit of an auditee's royalty reporting and payment.

DATES: This final rule is effective 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For questions concerning this final rulemaking, contact Ginger Hensley, Regulatory Specialist, by phone at 303–231–3171, or by email at *ONRR_RegulationsMailbox@onrr.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Final Rulemaking

ONRR is responsible for the efficient, timely, and accurate collection and disbursement of revenue originating from the leasing and production of natural resources and energy, including oil, gas, coal, geothermal and other solid minerals, from Federal and Indian lands. *See* 30 U.S.C. 1711; Sec. Order. 3299, as amended; U.S. Department of the Interior Departmental Manual, 112 DM 34 (Dec. 9, 2020). To verify that lessees and other persons accurately report and pay royalties and other amounts due, ONRR audits royalty and other reporting and payment. 30 U.S.C. 1711(c).

Various sections of ONRR's regulations, which were adopted in accordance with the Congressional directive found in 30 U.S.C. 1711(a), provide for audits by ONRR and other Department representatives. These sections include:

(1) 30 CFR 1206.250(c), which addresses audits for Federal coal leases.

(2) 30 CFR 1206.350(b), which addresses audits for Federal geothermal leases.

(3) 30 CFR 1206.450(c), which addresses audits for Indian coal leases.

(4) 30 CFR 1208.15, which addresses audits for Federal royalty oil taken in kind.

(5) 30 CFR 1217.50, which addresses audits for Federal and Indian oil and gas leases.

(6) 30 CFR 1217.300, which addresses audits for Federal geothermal leases.

(7) 30 CFR 1220.033(e), which addresses audits for oil and gas net profit share leases.

States or Indian Tribes sometimes perform the audits authorized by these sections under delegations or cooperative agreements with ONRR. *See* 30 U.S.C. 1732 and 1735; 30 CFR parts 1227 and 1228.

Congress and the President mandate that Federal agencies use new technologies to improve Government operations. For example, the Paperwork Reduction Act of 1995, Public Law 104–13, and the Information Technology Management Reform Act of 1996, Public Law 104–106, authorize the use of new technologies to improve the productivity, efficiency, and effectiveness of Government programs. *See* 44 U.S.C. 3501(10), 44 U.S.C. 3504(a)(1)(B)(vi) and (h), 40 U.S.C. parts 11302 and 11303. In addition, the Office of Management and Budget (''OMB'') issued a memorandum on June 28, 2019, entitled ''Transition to Electronic Records'' (M–19–21), directing Federal agencies to ensure that all Federal records are created, retained, and managed in electronic formats, with appropriate metadata.

To meet these Federal mandates and to take advantage of rapidly improving technologies for the electronic transmission and storage of records, ONRR is amending its regulations to allow ONRR and other Department representatives the option to require that records be provided for an audit by secure electronic means. Because this amendment applies to all oil, gas, geothermal, coal, and other solid mineral royalty audits performed by ONRR or other Department representatives, this final rule:

(1) Adds a new section, 30 CFR 1217.10, under the general provisions to 30 CFR part 1217—Audits and Inspections, to specify the methods by which ONRR or other Department representatives can require an auditee to provide records during an audit.

(2) Adds references to Part 1217 in §§ 1206.250(c), 1206.350(b), 1206.450(c), 1208.15, and 1220.033(e) to clarify that ONRR or an authorized State or Tribe may require an auditee to provide records for an audit by one or more of the methods specified in the new 30 CFR 1217.10.

Auditees keep most, if not all, records for natural resources revenue reporting and payment in electronic format and generally prefer, when under audit, to provide the records electronically. For records that an auditee maintains only in electronic form, the electronic production and transmission of these records for an audit avoids printing and other costs of submitting records in paper form. For records an auditee maintains in paper form, technologies exist to readily allow for the conversion of these records to electronic form when needed for an audit. Providing records electronically helps avoid administrative costs and expenses to the Department and auditees for preparing, submitting, processing, and preserving paper records. ONRR or other Department representatives will still sometimes need to inspect paper records or to conduct an entrance or other conference at an auditee's business location. However, the option to require that records be produced and transmitted electronically should shorten or possibly eliminate onsite audit activities in appropriate situations. It will also help ONRR and auditees to better navigate disruptive events that may make onsite inspection of records more burdensome, impractical, or unavailable.

ONRR regulations specifically provide that information that ''constitutes trade secrets or commercial or financial information that is identified as privileged or confidential, or that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, shall not be available for inspection or made public or disclosed without the consent of the lessee, except as provided by law or regulation.'' 30 CFR 1210.207. To preserve the confidentiality of records produced electronically for use in an audit, this final rule allows Department representatives the option to require that records be provided electronically only by means which are secure. A secure means of transmission involves the use of password protection, encryption, or other security measures, to prevent unauthorized access to the transmission by a third-party. The Department maintains computer systems and updates or replaces software as technology changes, which allows auditees to securely transmit records for an audit. When requesting electronic production and transmission of records, a Department representative will specify the format in which the records are to be transmitted electronically and provide instructions for submitting the records securely. Factors that contribute to what ONRR or a Department representative consider acceptable include the availability and completeness of documentation and the availability of applications that can interpret it.

ONRR published the Electronic Provision of Records During an Audit proposed rule on September 16, 2022 (87 FR 59350). During the proposed rule's 60-day comment period, ONRR received one comment. The commentor stated support for initiatives and technologies to improve government operations. ONRR appreciates the commentor's support for this rulemaking. ONRR received no other comments on the proposed rule.

Following the proposed rule's publication, ONRR published a final rule to amend its regulations pertaining to Federal and Indian coal valuation. (88 FR 47003). Because that final rule amended the paragraph structure in two sections covered by this rulemaking, ONRR revised the amendatory instructions in this final rule from what it had provided in the proposed rule. Specifically, this final rule revises §§ 1206.250(c) and 1206.450(c) in the same manner ONRR's proposed rule had proposed to revise §§ 1206.250(d) and 1206.450(d).

This final rule is published pursuant to authority delegated to ONRR by the Secretary of the Interior. *See* 30 U.S.C. 189; 30 U.S.C. 1751; 43 U.S.C. 1334; 30 U.S.C. 1023; Secretary's Order 3299, sec. 5; and Secretary's Order 3306, sec. 3–4.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866, 13563 and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. ONRR developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

B. Regulatory Flexibility Act

ONRR certifies that promulgation of this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* because it only requires auditees—when the Department requests—to provide records and files electronically that they are otherwise required to provide in hard copy at their business premises.

C. Congressional Review Act

This final rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act.

This final rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers; individual industries; or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on State, local, or Tribal Governments or the private sector of more than $100 million per year. This final rule does not have a significant or unique effect on State, local, or Tribal Governments or the private sector. Therefore, ONRR is not required to provide a statement pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

E. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this final rule does not have any significant takings implications. This final rule does not impose conditions or limitations on the use of any private

property because the rule only amends how a lessee, operator, payor, and other person must produce and transmit records upon request. This final rule does not require a takings implication assessment.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This final rule does not impose administrative costs on States or local Governments or substantially and directly affect the relationship between the Federal and State Governments. Thus, a federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of E.O. 12988. Specifically, the final rule:

(1) Meets the criteria of Section 3(a), which requires that ONRR review all regulations to eliminate errors and ambiguity in order to minimize litigation.

(2) Meets the criteria of Section 3(b)(2), which requires that all regulations be written in clear language using clear legal standards.

H. Consultation With Indian Tribal Governments (E.O. 13175)

ONRR strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and in recognition of their right to self-governance and Tribal sovereignty. ONRR evaluated this final rule and the criteria in E.O. 13175 and determined that the final rule will not have substantial direct effects on Federally recognized Indian Tribes. Thus, consultation under ONRR's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This final rule does not contain any new information collection requirements or meet the definition of ''collection of information'' under 44 U.S.C. 3502(3). A submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

J. National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (''NEPA'') is not required because the final rule is categorically excluded. *See* 43 CFR 46.210(i) and the Department's Departmental Manual, Part 516, section 15.4.D. ONRR has determined that this final rule is not involved in any of the extraordinary circumstances under 43 CFR 46.215 that require further analysis under NEPA. The procedural changes resulting from these amendments have no consequence with respect to the physical environment. This final rule will not alter in any material way natural resource exploration, production, or transportation.

K. Effects on the Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in E.O. 13211 and, therefore does not require a Statement of Energy Effects.

L. Clarity of This Regulation

ONRR is required by E.O. 12866 (section 1(b)(12)), E.O. 12988 (section 3(b)(1)(B)), and E.O. 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule ONRR publishes must:

(1) Be logically organized.

(2) Use the active voice to address readers directly.

(3) Use common, everyday words and clear language rather than jargon.

(4) Be divided into short sections and sentences.

(5) Use lists and tables wherever possible.

If you feel that ONRR has not met these requirements, send your comments to *ONRR_RegulationsMailbox@onrr.gov.* To better help ONRR revise this final rule, your remarks should be as specific as possible. For example, you should tell ONRR the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects

30 CFR Part 1206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1208

Continental shelf, Government contracts, Mineral Royalties, Public lands-minerals resources, Reporting and recordkeeping requirements, Small businesses.

30 CFR Part 1217

Coal, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 1220

Accounting, Continental Shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements.

Howard Cantor,

Acting Director, Office of Natural Resources Revenue.

Authority and Issuance

For the reasons discussed in the preamble, ONRR is amending 30 CFR parts 1206, 1208, 1217, and 1220 as set forth below:

PART 1206—PRODUCT VALUATION

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.,* 25 U.S.C. 396, 396a *et seq.,* 398, 398a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

Subpart F—Federal Coal

■ 2. Amend § 1206.250 by revising (c) to read as follows:

§ 1206.250 What is the purpose and scope of this subpart?

* * * * *

(c) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized State may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

Subpart H—Geothermal Resources

■ 3. Amend § 1206.350(b) by revising the text to read as follows:

§ 1206.350 What is the purpose and scope of this subpart?

* * * * *

(b) ONRR may audit and order you to adjust all royalty and fee payments. ONRR or an authorized State may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

* * * * *

Subpart J—Indian Coal

■ 4. Amend § 1206.450 by revising the section heading and paragraph (c) to read as follows:

§ 1206.450 What is the purpose and scope of this subpart?

* * * * *

(c) ONRR may audit and order you to adjust all royalty payments. ONRR or an authorized Tribe may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

* * * * *

PART 1208—SALE OF FEDERAL ROYALTY OIL

■ 5. The authority citation for part 1208 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1701 *et seq.;* 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.;* 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

Subpart A—General Provisions

■ 6. Revise § 1208.15 to read as follows:

§ 1208.15 Audits.

Audits of the accounts and books of lessees, operators, payors, and/or purchasers of royalty oil taken in kind may be made annually or at such other times as may be directed by ONRR. Such audits will be for the purpose of determining compliance with applicable statutes, regulations, and royalty oil contracts. ONRR may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

PART 1217—AUDITS AND INSPECTIONS

■ 7. The authority citation for part 1217 continues to read as follows:

Authority: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a–f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387, unless otherwise noted.

Subpart A—General Provisions

■ 8. Add § 1217.10 to subpart A to read as follows:

§ 1217.10 Providing Records During an Audit.

(a) ONRR or an authorized State or Tribe may specify the method an auditee must use to provide records for all audits conducted under Chapter XII, statute, or agreement. The methods may include one or more of the following:

(1) Inspect records at an auditee's place of business during normal business hours;

(2) Send records using secure electronic means. When requesting that records be provided electronically, ONRR or the authorized State or Tribe will specify the format in which the records shall be produced, directions for electronic transmission, and instructions to ensure secure transmission; or

(3) Deliver hard copy records using the U.S. Postal Service, special courier, overnight mail, or other delivery service to an address specified by ONRR or an authorized State or Tribe.

(b) [Reserved]

PART 1220—ACCOUNTING PROCEDURES FOR DETERMINING NET PROFIT SHARE PAYMENT FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASE

■ 9. The authority citation for part 1220 continues to read as follows:

Authority: Sec. 205, Pub. L. 95–372, 92 Stat. 643 (43 U.S.C. 1337).

■ 10. Amend § 1220.033 by revising paragraph (e) to read as follows:

§ 1220.033 Audits.

* * * * *

(e) ONRR or its authorized agent may require you to provide records for the audit by one or more of the methods specified in 30 CFR 1217.10.

[FR Doc. 2023–17059 Filed 8–8–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2022–0893, FRL–10419–02–R10]

Air Plan Approval; AK; Revisions to Ice Fog and Sulfur Dioxide Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alaska State Implementation Plan (SIP) submitted on May 16, 2022. In the submission, Alaska revised and repealed State regulations originally put in place to limit water vapor emissions that may contribute to ice fog and to address the use of high-sulfur marine fuels near the communities of St. Paul Island and Unalaska. Alaska determined that the regulations are obsolete due to technology improvements and regulatory changes, including Federal sulfur content in fuel restrictions. The State requested that the SIP be updated to reflect the revised and repealed State regulations. We have determined the submitted revision will not interfere with attainment of the national ambient air quality standards or other applicable requirements of the Clean Air Act.

DATES: This final rule is effective September 8, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2022–0893. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kristin Hall (15–H13), EPA Region 10, 1200 Sixth Avenue (Suite 155), Seattle, WA 98101, (206) 553–6357, *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it means the EPA.

Table of Contents

I. Background

On May 16, 2022, Alaska submitted a SIP revision to the EPA. In the submission, the State revised and repealed certain air quality regulations and requested to update the federally approved SIP.[1] On May 24, 2023, we proposed to approve the submission (88 FR 33555). The reasons for our proposed approval are included in the proposal and will not be restated here. The public comment period closed on June 23, 2023. We received no comments on our proposed action and therefore we are finalizing our action as proposed.

[1] The submission also updated the State's adoption by reference of Federal air quality standards and test methods codified at 18 Alaska Administrative Code (AAC) 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

II. Final Action

The EPA is approving and incorporating by reference the ice fog and sulfur dioxide related regulatory changes submitted by Alaska on May 16, 2022.[2] Upon the effective date of this action, the Alaska SIP will include the following regulations, State effective April 16, 2022:

- 18 AAC 50.025 Visibility and other special protection areas (establishing geographic areas that may need additional pollution control because of special circumstances);
- 18 AAC 50.502 Minor permits for air quality protection (establishing which types of stationary sources must obtain minor construction and/or operating permits);
- 18 AAC 50.540 Minor permit: application (outlining the required contents of an application for a minor construction and/or operating permit); and
- 18 AAC 50.542 Minor permit: review and issuance (establishing the process the state uses to review permit applications from sources, conduct public notice and comment, and issue permits).

The EPA is also approving Alaska's request to remove the following regulation from incorporation by reference:

- 18 AAC 50.080 Ice fog, State effective January 18, 1997 (regulating water vapor emissions from industrial sources that may form ice fog).

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Alaska regulatory provisions described in section II of this preamble and set forth in the amendments to 40 CFR part 52 in this document. The EPA has made, and will continue to make, these materials reasonably available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Clean Air Act as of the effective date of the final rule of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

The EPA is also finalizing the removal of 18 AAC 50.080 Ice fog, State effective January 18, 1997, as described in section II of this preamble, from the Alaska SIP, which is incorporated by reference under 1 CFR part 51.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

The State air agency did not evaluate environmental justice considerations as part of its SIP submission; the Clean Air Act and applicable implementing regulations neither prohibit nor require such an evaluation. Consistent with the EPA's discretion under the Clean Air Act, the EPA evaluated environmental justice considerations as described in our proposed action on May 24, 2023 (88 FR 33555). Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA offered the Qawalangin Tribe of Unalaska and the Aleut Community of St. Paul Island the opportunity to consult on a government to government basis prior to this action in letters dated March 14, 2023. We received no consultation or coordination requests prior to this action.

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

[2] The submission also updated the State's adoption by reference of Federal air quality standards and test methods codified at 18 AAC 50.035 and 18 AAC 50.040. We approved these adoption updates in a separate action on March 22, 2023 (88 FR 17159).

[3] 62 FR 27968 (May 22, 1997).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart C—Alaska

■ 2. In § 52.70, paragraph (c), table 1 is amended by:

■ a. Revising the entry ''18 AAC 50.025'';

■ b. Removing the entry ''18 AAC 50.080''; and

■ c. Revising the entries ''18 AAC 50.502'', ''18 AAC 50.540'', and ''18 AAC 50.542''.

The revisions read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	* * *	*	*	*
18 AAC 50—Article 1. Ambient Air Quality Management				
*	* * *	*	*	*
18 AAC 50.025	Visibility and Other Special Protection Areas	5/16/2022	8/9/2023, [INSERT **Federal Register** CITATION]..	
*	* * *	*	*	*
18 AAC 50—Article 5. Minor Permits				
18 AAC 50.502	Minor Permits for Air Quality Protection	5/16/2022	8/9/2023, [INSERT **Federal Register** CITATION].	
*	* * *	*	*	*
18 AAC 50.540	Minor Permit: Application	5/16/2022	8/9/2023, [INSERT **Federal Register** CITATION].	
18 AAC 50.542	Minor Permit: Review and Issuance	5/16/2022	8/9/2023, [INSERT **Federal Register** CITATION].	
*	* * *	*	*	*

* * * * *

[FR Doc. 2023–16796 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0406; FRL–10991–02–R4]

Air Plan Approval; North Carolina; Bulk Gasoline Plants, Terminals Vapor Recovery Systems

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the North Carolina Department of Environmental Quality (NCDEQ), Division of Air Quality (DAQ), via a letter dated April 13, 2021. This SIP revision includes changes to NCDEQ's regulations regarding bulk gasoline terminals and plants, gasoline cargo tanks and vapor collection

systems, and leak tightness and vapor leak requirements. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective September 8, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2021–0406. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mrs. Sheckler can be reached via electronic mail at *sheckler.kelly@epa.gov* or via telephone at (404) 562–9222.

SUPPLEMENTARY INFORMATION:

I. This Action

EPA is approving changes to North Carolina's SIP that were provided to EPA through NCDEQ via a letter dated April 13, 2021.[1] Specifically, EPA is approving changes to 15A North Carolina Administrative Code (NCAC), Subchapter 02D, Rules .0926, *Bulk Gasoline Plants;*[2] .0927, *Bulk Gasoline Terminals;*[3] .0932, *Gasoline Cargo Tanks and Vapor Collection Systems;* and .2615, *Determination of Leak Tightness and Vapor Leaks.*[4] These changes include adding, removing, and revising definitions; removing obsolete language; clarifying some requirements; and making general grammar and formatting updates. Through a notice of proposed rulemaking (NPRM), published on June 13, 2023, (88 FR 38436), EPA proposed to approve the April 13, 2021, changes to North Carolina Rules 15 NCAC 02D .0926, .0927, .0932, and .2615. The details of North Carolina's submission, as well as EPA's rationale for approving the changes, are described in more detail in the June 13, 2023, NPRM. Comments on the June 13, 2023, NPRM were due on or before July 13, 2023. No comments were received on the June 13, 2023, NPRM, adverse or otherwise.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of 15A NCAC Subchapter 02D, Rules .0926, *Bulk Gasoline Plants,*[5] and .0927, *Bulk Gasoline Terminals,*[6] both state-effective on November 1, 2020; as well as Rules .0932, *Gasoline Cargo Tanks and Vapor Collection Systems,* and .2615, *Determination of Leak Tightness and Vapor Leaks,* both state-effective October 1, 2020. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the 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.[7]

III. Final Action

EPA is approving the aforementioned changes to the SIP. Specifically, EPA is finalizing the approval of the April 13, 2021, SIP revision that incorporate changes to North Carolina's rules in 02D Section .0926, *Bulk Gasoline Plants;* .0927, *Bulk Gasoline Terminals;* .0932, *Gasoline Cargo Tanks and Vapor Recovery Collection Systems;* and .2615, *Determination of Leak Tightness and Vapor Leaks* into the federally approved SIP.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because

[1] EPA notes that the April 13, 2021, submittal was received by EPA on April 14, 2021.

[2] In Paragraph (n) of Rule .0926, North Carolina's Rule references Rule 02D .0960 which is not in the SIP. DAQ has withdrawn that reference in Paragraph (n) from the April 13, 2021, SIP revision.

[3] Similar to the changes in Rule 02D .0926(n), Rule 02D .0927(k) also references Rule 02D .0960 which is not in the SIP. DAQ has withdrawn that reference in Paragraph (k) from the April 13, 2021, SIP revision.

[4] EPA notes that the Agency received several revisions to the North Carolina SIP transmitted with the same April 13, 2021, cover letter. EPA is not acting on revisions to the North Carolina SIP in this document that are not explicitly identified herein, and EPA may act on these other SIP revisions in separate rulemakings.

[5] Except for references to Rule 02D .0960 found in paragraph .0926(n).

[6] Except for references to Rule 02D .0960 found in paragraph .0927(k).

[7] *See* 62 FR 27968 (May 22, 1997).

application of those requirements would be inconsistent with the CAA.

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

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

DAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA 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 EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. In § 52.1770, amend the table in paragraph (c)(1) by removing the entries ''Section .0926,'' ''Section .0927,'' ''Section .0932,'' and ''Section .2615'' and adding in their place entries ''Rule .0926,'' ''Rule .0927,'' ''Rule .0932,'' and ''Rule .2615,'' respectively, to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section .0900 Volatile Organic Compounds				
*	*	*	*	*
Rule .0926	Bulk Gasoline Plants	11/1/2020	8/9/2023, [Insert citation of publication].	Except for references to Rule 02D .0960 found in paragraph .0926(n).
Rule .0927	Bulk Gasoline Terminals	11/1/2020	8/9/2023, [Insert citation of publication].	Except for references to Rule 02D .0960 found in paragraph .0927(k).
*	*	*	*	*
Rule .0932	Gasoline Cargo Tanks and Vapor Collection Systems.	10/1/2020	8/9/2023, [Insert citation of publication].	
*	*	*	*	*
Section .2600 Source Testing				
*	*	*	*	*
Rule .2615	Determination of Leak Tightness and Vapor Leaks.	10/1/2020	8/9/2023, [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. 2023–16564 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0428; FRL–9991–02–R4]

Air Plan Approval; North Carolina; Air Quality Control, Revisions to Particulates From Fugitive Dust Emissions Sources Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ) through a letter dated September 10, 2021. The SIP revision includes changes to the State's air pollution control requirements in the SIP that modify several definitions, clarify its applicability requirements, adjust the requirement for fugitive dust control plan submissions, and make minor language and formatting changes. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective September 8, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2022–0428. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, North Carolina 30303–8960. The telephone number is (404) 562–9144. Ms. Williams-Miles can also be reached via electronic mail at *WilliamsMiles.Pearlene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 2021, NCDAQ submitted a revision to North Carolina's Rule 15A North Carolina Administrative Code (NCAC) 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources.*[1] [2] The submittal makes changes to the State's air pollution control requirements by revising several definitions, clarifying applicability requirements, updating language, and making other minor changes to the corresponding particulate matter fugitive emission control regulation in the North Carolina SIP.[3] EPA believes that the changes to Rule 02D .0540 provide additional clarity to the applicability of control plans and control plan procedures, rule exemptions, and definitions for fugitive dust emission sources. EPA has determined that the changes to the SIP do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

Through a notice of proposed rulemaking (NPRM), published on March 23, 2023 (88 FR 17479), EPA proposed to approve the September 10, 2021, changes to North Carolina Rule 15 NCAC 02D .0540. The details of North Carolina's submission, as well as EPA's rationale for approving the changes, are described in more detail in the March 23, 2023, NPRM. Comments on the March 23, 2023, NPRM were due on or before April 24, 2023. No comments were received on the March 23, 2023, NPRM.

[1] EPA received the September 10, 2021, submittal on September 14, 2021. For clarity, throughout this rulemaking EPA will refer to the September 14, 2021, submission by its cover letter date of September 10, 2021.

[2] The September 10, 2021, submittal included several changes to other North Carolina SIP-approved rules that are not addressed in this rulemaking. EPA will act on those rule revisions in separate actions.

[3] NCDAQ submitted a letter to EPA on January 25, 2023, withdrawing the changes to Rule .0540(e)(1) from consideration for inclusion in the North Carolina SIP. For this reason, EPA is not acting on the changes to paragraph (e)(1) in this rulemaking.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in section I of this preamble, EPA is finalizing the incorporation by reference of 15A NCAC 02D .0540, *Particulates from Fugitive Dust Emission Sources,* State effective on September 1, 2019, into the North Carolina SIP with the exception of paragraph (e)(1).[4] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the 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.[5]

III. Final Action

EPA is finalizing the approval of the September 10, 2021, SIP revision to incorporate various changes to North Carolina's fugitive emission dust control regulation. Specifically, EPA is proposing to approve various changes to Rule 02D .0540, *Particulates from Fugitive Dust Emission Sources,* as explained herein. EPA is proposing to approve these changes for the reasons discussed above.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[4] Paragraph (e)(1) remains in the SIP with a State effective date of August 1, 2007.

[5] *See* 62 FR 27968 (May 22, 1997).

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

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, 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.''

NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA 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 EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: May 22, 2023.

Daniel Blackman,

Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

■ 2. In § 52.1770, amend the table in paragraph (c)(1) by revising the entry for ''Rule .0540'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section .0500 Emission Control Standards				
*	*	*	*	*
Rule .0540	Particulates from Fugitive Dust Emission Sources.	9/1/2019	8/9/2023, [Insert citation of publication]	With the exception of paragraph (e)(1), which has a State effective date of August 1, 2007.
*	*	*	*	*

* * * * *

[FR Doc. 2023–16603 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0535; FRL–11020–02–R4]

Air Plan Approval; TN; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Tennessee's July 31, 2019, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each State's implementation plan to contain adequate provisions prohibiting the interstate transport of air pollution in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other State. EPA has determined that Tennessee will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other State. Therefore, EPA is approving the July 31, 2019, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

DATES: This rule is effective September 8, 2023.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0535. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Evan Adams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Adams can be reached via phone number (404) 562–9009 or via electronic mail at *adams.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations. *See* 75 FR 35520 (June 22, 2010). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may describe. These SIPs, which EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that structural components of each State's air quality management program are adequate to meet the State's responsibility under the CAA. Section 110(a) of the CAA requires States to make a SIP submission to EPA for a new or revised NAAQS, but the contents of individual State submissions may vary depending upon the facts and circumstances. The content of the changes in such SIP submissions may also vary depending upon what provisions the State's approved SIP already contains. Section 110(a)(2) requires States to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one State from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in another State. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment of the NAAQS) and prong 2 (interference with maintenance of the NAAQS).

On July 31, 2019, the Tennessee Department of Environment & Conservation (TDEC) submitted a revision to the Tennessee SIP [1] addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[2] TDEC completed updated transport modeling for the Eastman Chemical facility in Sullivan County, Tennessee, and submitted it to EPA on November 30, 2021, to supplement the July 31, 2019 submission.[3] EPA is approving TDEC's July 31, 2019, SIP submission because the State has demonstrated that Tennessee will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO_2 NAAQS in any other State. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for Tennessee are addressed in separate rulemakings.[4]

In a notice of proposed rulemaking (NPRM) published on June 26, 2023 (88 FR 41344), EPA proposed to approve TDEC's July 31, 2019, SIP submission for the 2010 1-hour SO_2 NAAQS. The details of the SIP revision and the rationale for EPA's action is explained in the June 26, 2023, NPRM.[5] Comments on the June 26, 2023, NPRM were due on or before July 26, 2023. No comments were received on the June 26, 2023, NPRM, adverse or otherwise.

II. Final Action

EPA is approving Tennessee's July 31, 2019, SIP submission as meeting the good neighbor provision of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. EPA is finalizing approval based on the information and analysis detailed in EPA's proposed rule, which demonstrates that Tennessee will not contribute significantly to nonattainment, or interfere with

[1] TDEC submitted its SIP revision on August 1, 2019, through a transmittal letter dated July 31, 2019.

[2] On March 13, 2014, TDEC submitted a SIP revision addressing all infrastructure elements with respect to the 2010 1-hour SO_2 NAAQS with the exception of prongs 1 and 2 of CAA 110(a)(2)(D)(i)(I).

[3] EPA officially received the supplemental file dated November 30, 2021, on December 7, 2021.

[4] EPA acted on all other infrastructure elements for the 2010 1-hour SO_2 NAAQS in Tennessee's March 13, 2014, SIP revision on November 28, 2016 (81 FR 85410) and September 24, 2018 (83 FR 48237).

[5] Additional details regarding EPA's evaluation of TDEC's modeling are provided in the Modeling Technical Support Document (TSD) available in the docket supporting this final action.

maintenance, of the 2010 1-hour SO_2 NAAQS in any other State. This action is being taken under section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

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

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

TDEC did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA 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 EJ for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 28, 2023.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart RR—Tennessee

■ 2. In § 52.2220(e), amend the table by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* *	*	*	* *	* *
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour SO_2 NAAQS.	Tennessee	7/31/2019	8/9/2023, [Insert citation of publication].	Addressing prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[FR Doc. 2023–16433 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 70

[EPA–R03–OAR–2022–0166; FRL–10673–02–R3]

Air Plan Approval; Pennsylvania; Revisions To Plan Approval and Operating Permit Fees Rule and Title V Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving both a State implementation plan (SIP) revision and Title V operating permits program revision submitted by the Pennsylvania Departmental of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania. The SIP revision pertains to Pennsylvania's general provisions regarding air resources, operating permit requirements, and plan approval and operating permit fees. This includes increases to existing plan approval application and operating permit fees. The Title V operating permit program revision amends the Title V operating permit program fee schedules that fund the Pennsylvania Title V operating permit program. EPA is approving these revisions to the Pennsylvania SIP and Title V operating permit program in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on September 8, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2022–0166. 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.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2339. Mr. He can also be reached via electronic mail at *He.Yongtian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2023 (88 FR 14104), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of both a State implementation plan (SIP) revision and Title V operating permits program revision. EPA did not receive any comments.

The formal SIP revision and Title V program revision was submitted by PADEP on July 20, 2021, with a clarification letter sent on January 3, 2023. The revisions amend 25 Pennsylvania (PA) Code Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). Pennsylvania indicates that these revisions are necessary to ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (42 U.S.C. 7661a(b)) and section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. section 4006.3).

A. SIP Revision

Section 110(a)(2)(L) of the CAA mandates that SIPs require the owner or operator of each major stationary source to pay to the permitting authority a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit.

The SIP revision approves into Pennsylvania's SIP amended versions of 25 PA Code Chapters 121 and 127, specifically sections 121.1, 127.424, 127.702 and 127.703. This SIP revision also adds sections 127.465, 127.709 and 127.710. EPA has previously approved Pennsylvania code Chapter 121 general provisions definitions at 25 PA code 121.1, Chapter 127 public notice requirement in section 127.424, and Pennsylvania's plan approval and operating permit fee regulations at 25 PA Code 127.701, 127.702, 127.703 and 127.707, into the Pennsylvania SIP in accordance with section 110 of the CAA. See 61 FR 39597 (July 30, 1996).

B. Title V Operating Permit Program Revision

EPA granted full approval of the Pennsylvania Title V operating permits program on July 30, 1996. See 61 FR 39597. Under 40 CFR 70.9(a) and (b), an approved state Title V operating permit program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs. CAA 502(b)(3)(A).

Pennsylvania's initial Title V operating permit emission fee was established in 1994 at 25 PA Code 127.705 and was last increased in 2014. In a February 11, 2014 Title V operating permit program revision, Pennsylvania

revised 25 PA Code 127.705 to increase annual emission fees for Title V sources, noting that annual emissions fees were no longer sufficient to cover costs. See 80 FR 40922 (July 14, 2015).

In the July 20, 2021 submission, PADEP indicated that the currently approved fee structure is insufficient to continue to support the Title V program, and as a result, PADEP has revised sections 127.704 and 127.705, and has submitted these revisions for EPA action pursuant to CAA 502(d). EPA is approving these revisions into Pennsylvania's Title V operating permit program.

II. Summary of SIP Revision and EPA Analysis

A. SIP Revision

PADEP added the definition of ''synthetic minor facility'' in the definition section 121.1 and corrected a cross-reference error in public notice section 127.424. PADEP amended section 127.702 that establishes plan approval fees, and section 127.703 that establishes operating permit fees under Subchapter F (State Operating Permit Requirements) for future years in details based on year and permit categories. The newly added section 127.465 establishes the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit. New section 127.709 establishes fees for requests for determination, for whether a plan approval, an operating permit, or both, are needed for the change to the facility. Section 127.710 establishes application fees for the use of general plan approvals and general operating permits for stationary or portable sources.

The revisions to Pennsylvania's SIP satisfy CAA section 110(a)(2)(L), referenced above. The revisions update the Pennsylvania SIP with current fee schedules and meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

B. Title V Operating Permit Program Revision

The revision to Pennsylvania's Title V program approves PADEP's amendments to Chapter 127 sections 127.704 and 127.705. Section 127.704 establishes Title V operating permit fees, and section 127.705 requires the owner or operator of a Title V facility to pay annual Title V emission fees.

Pennsylvania indicates that these amendments to its Title V operating permit program ensure that fees will remain sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the CAA and section 6.3 of the APCA.

Based on the 40 CFR part 70 presumptive minimum fee rate from the October 3, 2022, EPA Office of Air Quality Planning and Standards memorandum,[1] the requirements of 40 CFR 70.9(b)(2) and the economic analysis by PADEP, EPA finds that the July 20, 2021 PADEP submission has met the requirements of CAA section 502(b)(1)–(10), and is consistent with applicable EPA requirements in the Title V operating permit program of the CAA and 40 CFR part 70.

III. Final Action

EPA is approving Pennsylvania's July 20, 2021 revision to both the Pennsylvania SIP and Pennsylvania's approved Title V operating permit program. The SIP revision is in accordance with requirements in section 110(a)(2)(L) of the CAA and implementing regulations. The Title V submittal meets the requirements of CAA section 502(d) and implementing regulations.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Pennsylvania Regulation described in the amendments to 25 PA Code 121 and 127, as discussed in section II.A of this rulemaking. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

[1] *www.epa.gov/system/files/documents/2022-09/FEE70_2023.pdf.*

[2] 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Under the CAA, the Administrator approves Title V operating permit program revisions that comply with the Act and applicable Federal Regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing SIP and Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

The air agency 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 SIP action. Consideration of EJ is not required as part of this SIP 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.

Additionally, Executive Order 12898 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.

EPA believes that this Title V action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This Title V action merely approves into Pennsylvania's part 70 operating permit program the relevant Pennsylvania regulations for fees that are required to administer the Title V program in Pennsylvania. Those fees are already being collected by the State. This Title V action therefore does not directly address emission limits or otherwise directly affect any human health or environmental conditions in the commonwealth of Pennsylvania. In addition, EPA provided meaningful involvement on this rulemaking through the notice and comment process, which received no comments, and is in addition to the State-level notice and comment process held by Pennsylvania.

B. Submission to Congress and the Comptroller General

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).

C. 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 October 10, 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 approving Pennsylvania SIP and Title V permit program revisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Operating permits, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ a. Revising the entries for ''Section 121.1'' and ''Section 127.424'';

■ b. Adding an entry for ''Section 127.465'' in numerical order;

■ c. Revising the entries for ''Section 127.702'' and ''Section 127.703''; and

■ d. Adding entries for ''Section 127.709'' and ''Section 127.710'' in numerical order.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) EPA—APPROVED PENNSYLVANIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources				
Chapter 121—General Provisions				
Section 121.1	Definitions	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Added the definition of ''synthetic minor facility''
*	*	*	*	*
Chapter 127—Construction, Modification, Reactivation, and Operation of Sources				
*	*	*	*	*
Subchapter F—Operating Permit Requirements				
*	*	*	*	*
Review of Applications				
*	*	*	*	*
Section 127.424	Public Notice	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Corrected a cross-reference error in public notice section
*	*	*	*	*
Operating Permit Modifications				
*	*	*	*	*
Section 127.465	Significant operating permit modification procedures.	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Added section 127.465 to establish the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit
*	*	*	*	*
Subchapter I—Plan Approval and Operating Permit Fees				
*	*	*	*	*
Section 127.702	Plan approval fees	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Amended section 127.702
Section 127.703	Operating permit fees under subchapter F	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Amended section 127.703
*	*	*	*	*
Section 127.709	Fees for requests for determination	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Added section 127.709 to establish fees for requests for determination

(1) EPA—APPROVED PENNSYLVANIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Section 127.710	Fees for the use of general plan approvals and general operating permits under Subchapter H..	1/16/2021	*8/9/2023,* [*INSERT* ***FEDERAL REGISTER*** *CITATION*].	Added section 127.710 to establish application fees for the use of general plan approvals and general operating permits for stationary or portable sources
*	*	*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (e) to the entry for Pennsylvania to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

Pennsylvania

* * * * *

(e) The Pennsylvania Department of Environmental Protection submitted a program revision to amends Chapter 127 sections 127.704 and 127.705 on July 20, 2021; approval effective on August 9, 2023.

* * * * *

[FR Doc. 2023–16734 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0226; FRL–11264–01–OCSPP]

Flg22-Bt Peptide; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of Flg22-Bt Peptide in or on all food commodities when used as a plant regulator and inducer of local and systemic resistance in accordance with label directions and good agricultural practices. Elemental Enzymes Ag & Turf, LLC submitted a petition, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), requesting an exemption from the requirement of a tolerance for the biochemical pesticide Flg22-Bt Peptide. This regulation eliminates the need to establish a maximum permissible level for residues of Flg22-Bt Peptide under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective August 9, 2023. Objections and requests for hearings must be received on or before October 10, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0226, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1599; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, greenhouse owner, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0226 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 10, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0226 by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

II. Background and Statutory Findings

In the **Federal Register** of April 22, 2021 (86 FR 21317) (FRL–10022–59), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 0F8889) by Elemental Enzymes Ag & Turf, LLC, 1685 Galt Industrial Blvd. Saint Louis, MO 63132. The petition requested that 40 CFR part 180 be amended to establish an exemption from the requirement of a tolerance for residues of Flg22-Bt Peptide, when used as a plant regulator and an inducer of local and systemic resistance in accordance with label directions and good agricultural practices. That document referenced a summary of the petition prepared by Elemental Enzymes Ag & Turf, LLC, which is available in the docket at *https://www.regulations.gov.* No comments were received on the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. If EPA is able to determine that a tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to Flg22-Bt Peptide, including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with Flg22-Bt Peptide follows.

A. Toxicological Profile

Flg22-Bt Peptide is a synthetically produced and purified peptide containing 22 amino acids. The amino acid sequence is naturally occurring and is derived from the *Bacillus thuringiensis* flagellin protein. *Bacillus thuringiensis* is a ubiquitous soil-dwelling bacterium and is a common active ingredient in microbial pesticide products. Mode-of-action claims for the active ingredient include activation of multiple plant defense mechanisms, promotion of plant growth and increased vigor. With regard to activation of plant defenses, it is proposed that the active ingredient activates plant cell-surface receptor Flagellin-Sensing 2, which results in the initiation of various intra- and extra-cellular responses that ultimately inhibit pathogen growth.

As an active ingredient in pesticidal end-use products (EPs), Flg22-Bt Peptide is intended to be applied as part of a solution, primarily as a spray applied to crops, but also as a commercial seed treatment and an injection for trees. Potential exposures to the biochemical active ingredient Flg22-Bt Peptide are not expected to result in any risks of toxicological concern. The active ingredient is naturally occurring and is derived from the *Bacillus thuringiensis* flagellin Deleprotein to which humans are already exposed. (Flagellin is the major structural protein of the flagella of Gram-negative bacteria, including *Bacillus thuringiensis,* and these microbes are ubiquitous in the environment.) Flg22-Bt Peptide is not expected to pose a risk through any pathways for the following reasons. (1) Flg22-Bt Peptide degrades in the gastrointestinal tract as it is digested by the common digestive enzyme Pepsin. (2) This peptide sequence is dissimilar to any allergenic peptide sequences. As such, the potential for any allergenicity is negligible. (3) Negligible potential for allergenicity notwithstanding, Flg22-Bt Peptide is rapidly degraded under simulated mammalian gastric conditions and will not persist long enough under these conditions to induce an allergic response. (4) Flg22-Bt Peptide degrades rapidly in the environment and is not anticipated to be present in any concentration outside potential naturally occurring background levels. (5) No toxicological endpoints have been identified for Flg22-Bt Peptide. All the data submitted in support of the registration of this peptide confirm its low toxicity profile.

With regard to the overall toxicological profile, Flg22-Bt Peptide is of low toxicity. Acute toxicity data indicate that Flg22-Bt Peptide is Toxicity Category IV for acute oral toxicity, acute dermal toxicity, dermal irritation, and eye irritation, and Toxicity Category III for acute inhalation toxicity. The available data also suggest it is not a skin sensitizer. Guideline

studies were submitted for all the acute toxicity data requirements.

All subchronic data requirements for the active ingredient Flg22-Bt Peptide (90-day oral toxicity, 90-day dermal toxicity and 90-day inhalation toxicity) were satisfied with acceptable waiver rationales, based on low toxicity and low exposure. The 90-day oral toxicity rationale provided the following points of support: (1) Flg22-Bt Peptide is of low acute oral toxicity (Toxicity Category IV); (2) based on an acceptable *in vitro* digestion study using simulated gastric fluid, Flg22-Bt Peptide is anticipated to be rapidly and completely degraded in the gastrointestinal tract; (3) a search of *in silico* databases revealed no similarity in sequence between the Flg22-Bt Peptide and any known protein toxins, indicating low toxicity through its structural relationships; (4) Flg22-Bt Peptide is naturally occurring and is derived from the *Bacillus thuringiensis* flagellin protein to which humans are regularly exposed.; and (5) dietary exposure is expected to be negligible based on low application rates (*e.g.,* maximum rate of 0.00052 lb AI/acre for foliar applications) and rapid degradation in the environment. The 90-day dermal toxicity data requirement was also addressed with an acceptable rationale that contained the same information provided to address the 90-day oral toxicity requirement combined with the following additional information: (1) the active ingredient is of low acute dermal toxicity (Toxicity Category IV), is only slightly irritating to the skin (Toxicity Category IV), and is not a skin sensitizer; and (2) significant repeat dermal exposure is not anticipated as the proposed end-use products containing this peptide will not be directly applied to the skin and will be applied in low concentrations (0.002–0.012%, by weight) at low application rates. As a final limitation to dermal exposure, personal protective equipment (PPE) required for pesticides using Flg22-Bt Peptide (*i.e.,* long-sleeved shirt and long pants, shoes plus socks, and waterproof gloves) will mitigate dermal exposure to pesticide applicators and other handlers. The 90-day inhalation toxicity data requirement was also addressed with an acceptable rationale that contained the same information used to address the 90-day oral toxicity requirement combined with the following additional information: (1) Flg22-Bt Peptide is of low acute inhalation toxicity; (2) because Flg22-Bt Peptide is of low acute toxicity for all paths of exposure, there is minimal concern for localized or portal-of-entry inhalation effects; (3) significant repeat inhalation exposure is not anticipated as the proposed end-use products will be applied at low concentrations of active ingredient (0.002–0.012%, by weight) and at low application rates; and (4) based on its physical and chemical properties, such as low vapor pressure and high water solubility, inhalation exposure due to volatilization is not expected for Flg22-Bt Peptide.

The data requirements for developmental toxicity were also satisfied with the submission of an acceptable rationale, which was nearly identical to that submitted to satisfy the subchronic toxicity data requirements. For details of that rationale, refer to the points of support in the preceding paragraph. In short, Flg-22 Bt Peptide is of low toxicity and significant exposure from use as a pesticide is not anticipated and, as such, is not expected to pose any risks with regard to developmental toxicity.

As for the mutagenicity data requirements, those were satisfied through the submission of guideline studies. There were no indications of genotoxicity or mutagenicity in the submitted guideline *in vitro* studies. Specifically, there was no evidence of induced mutant colonies over background with or without metabolic activation in the reverse gene mutation assay in bacteria; and there was no evidence of inducted mutant colonies over background with or without metabolic activation in the mammalian forward gene mutation assay in Chinese hamster ovary cells. All submitted data indicate that Flg22-Bt Peptide is non-genotoxic and non-mutagenic.

B. Toxicological Points of Departure/ Levels of Concern

No toxicological endpoints have been identified for Flg22-Bt Peptide. The active ingredient is of low toxicity, and significant exposure is not expected based on the low application rates and rapid degradation in the environment.

C. Exposure Assessment

1. *Dietary exposure from food, feed uses, and drinking water.* As part of its qualitative risk assessment for Flg22-Bt Peptide, the Agency considered the potential for dietary exposure to residues of the chemical. EPA concludes that dietary (food and drinking water) exposures are possible, but they are expected to be negligible based on low application rates and rapid degradation in the environment and are not anticipated in any concentration outside potential naturally occurring background levels. Moreover, no toxicological endpoint of concern was identified for Flg22-Bt Peptide; and therefore, a quantitative assessment of dietary exposure is not necessary. Dietary risk is not of a concern.

2. *Non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables). There are currently no proposed residential uses for this active ingredient, although there is a potential for residential post-application exposure from pesticide applications to turf. However, no risks of concern have been identified for this turf application due to the low toxicity of the Flg22-Bt Peptide and negligible exposure based on low application rates and rapid degradation in the environment. Therefore, a quantitative assessment of residential exposure is not necessary.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found that Flg22-Bt Peptide shares a common mechanism of toxicity with any other substances, and it does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed Flg22-Bt Peptide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

FFDCA Section 408(b)(2)(C) provides that EPA shall retain an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor. In applying this provision, EPA

either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. An FQPA safety factor is not required at this time for Flg22–Bt Peptide because no toxicological endpoints have been established and the qualitative risk assessment has concluded that Flg22–BT Peptide is of low toxicity and that no significant exposures are expected.

E. Aggregate Risk

In accordance with the FFDCA, OPP must consider and aggregate (add) pesticide exposures and risks from three major sources: food, drinking water, and residential exposures. In an aggregate assessment, exposures from relevant sources that have the same toxicological endpoints are added together and compared to quantitative estimates of hazard, or the risks themselves can be aggregated. When aggregating exposures and risks from various sources, EPA considers both the route and duration of exposure. A qualitative aggregate risk assessment has been conducted for the proposed use of Flg22–Bt Peptide based on the lack of identified endpoints in the toxicological database and minimal exposure to the active ingredient. No risks of concern have been identified.

A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the April 7, 2023, document entitled ''Product Chemistry Review and Human Health Assessment for a FIFRA Section 3 Registration of Flg22–BtPeptide Technical, Containing 70% Flg22–Bt Peptide as the Active Ingredient.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

IV. Determination of Safety for U.S. Population, Infants and Children

Based on the Agency's assessment, EPA concludes that there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of Flg22–Bt Peptide.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

VI. Conclusion

Therefore, EPA is establishing an exemption from the requirement of a tolerance for residues of Flg22–BtPeptide in or on all food commodities when used as a plant regulator and inducer of local and systemic resistance in accordance with label directions and good agricultural practices.

VII. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 3, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1405 to subpart D to read as follows:

§ 180.1405 Flg22–Bt Peptide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of Flg22–Bt Peptide in or on all food commodities when used as a plant regulator and inducer of local and systemic resistance in accordance with label directions and good agricultural practices.

[FR Doc. 2023–17019 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1110

Removal of Freedom of Information Act Regulations

AGENCY: National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: This rule rescinds the National Foundation on the Arts and the Humanities' (the ''Foundation'') regulations implementing the Freedom of Information Act (''FOIA''). These regulations are obsolete because each of the Foundation's constituent agencies—the National Endowment for the Arts (''NEA''), the National Endowment for the Humanities (''NEH''), the Institute of Museum and Library Services (''IMLS''), and the Federal Council on the Arts and the Humanities (''FCAH'')—either have adopted their own, agency-specific regulations, or are not required to implement Freedom of Information Act regulations.

DATES: These regulations are effective August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Assistant General Counsel, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5418.

SUPPLEMENTARY INFORMATION:

1. Background

The Foundation operates under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*), and consists of the NEA, NEH, IMLS, and FCAH (collectively, the ''Foundation's constituent agencies'').

The Foundation's FOIA regulations located at 45 CFR 1100 are now obsolete. The NEA, NEH, and IMLS have each adopted their own, agency-specific regulations. On February 27, 2019, the NEA promulgated FOIA regulations to 45 CFR Chapter XI, Subchapter B (45 CFR part 1148), which only apply to the NEA, effectively superseding the Foundation's FOIA regulations and rendering them duplicative. NEH and IMLS had previously added NEH- and IMLS-specific FOIA regulations to 45 CFR, Subchapters D and E (45 CFR parts 1171 & 1184), respectively, which replaced the Foundation's FOIA regulations with respect to NEH and IMLS. FCAH relies upon the NEA and NEH for its administration and does not maintain any systems of records of its own; thus, any requests for information or documents would be better directed to the other two constituent agencies of the Foundation to obtain the same information.

Accordingly, on May 3, 2023, the Foundation's constituent agencies published a notice of proposed rulemaking (NPRM) for rescinding the Foundation's regulations located at 45 CFR 1100.

Public Comment: No comments were received during the 30-day comment period. The Foundation's constituent agencies now publish the final regulation rescinding the Foundation's regulations located at 45 CFR 1100.

2. Compliance

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

Executive Order 12866 (E.O. 12866) established a process for review of rules by the Office of Information and Regulatory Affairs, which is within the Office of Management and Budget (OMB). Only ''significant'' proposed and final rules are subject to review under this Executive Order. ''Significant,'' as used in E.O. 12866, means ''economically significant.'' It refers to rules (1) with an impact on the economy of $100 million or more or that adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public safety or health, or State, local or tribal Governments or communities; or that (2) were inconsistent or interfered with an action taken or planned by another agency; (3) materially altered the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; or (4) raised novel legal or policy issues.

This final rule would not be a significant policy change, and OMB has not reviewed this final rule under E.O. 12866. We have made the assessments required by E.O. 12866 and determined that this final rule: (1) will not have an effect of $100 million or more on the economy and will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and (4) does not raise novel legal or policy issues.

Executive Order 12988: Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988. Specifically, this final rule is written in clear language designed to help reduce litigation.

Paperwork Reduction Act of 1995 (''PRA'')

This final rule does not impose an information collection burden under the PRA. This final rule contains no provisions constituting a collection of information under the PRA.

Regulatory Flexibility Act of 1980 (''RFA'')

This final rule will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

Unfunded Mandates Reform Act of 1995 (''UMRA'')

This final rule does not contain a Federal mandate that will result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector of $100 million or more in any one year.

Executive Order 13132 (Federalism)

This final rulemaking does not have federalism implications, as set forth in E.O. 13132. As used in this order, federalism implications mean ''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.'' The NEA has determined that this final rule will not have federalism implications within the meaning of E.O. 13132.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Under the criteria in E.O. 13175, we have evaluated this final rule and determined that it would have no potential effects on Federally recognized Indian Tribes.

Executive Order 12630: Takings

Under the criteria in E.O. 12630, this final rule does not have significant takings implications. Therefore, a takings implication assessment is not required.

List of Subjects in 45 CFR Part 1110

Administrative practice and procedure, Archives and records, Freedom of information.

For the reasons stated in the preamble, and under the authority of 5 U.S.C. 552, the National Endowment for the Arts, National Endowment for the Humanities (for itself and on behalf of Federal Council on the Arts and the Humanities, for which it provides legal counsel), and Institute of Museum and Library Services amend 45 CFR Chapter XI Subchapter A by removing part 1100.

Valencia Rainey,

Acting General Counsel, National Endowment for the Arts.

Michael P. McDonald,

General Counsel, National Endowment for the Humanities.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

[FR Doc. 2023–16608 Filed 8–8–23; 8:45 am]

BILLING CODE 7537–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 501

[GSAR Case 2022–G518; Docket No. GSA–GSAR–2023–0021; Sequence No. 1]

General Services Administration Acquisition Regulation: Update to OMB Approval Table for Paperwork Reduction Act

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule; technical amendment.

SUMMARY: The General Services Administration is issuing this final rule as a technical amendment to the General Services Administration Acquisition Regulation to update the table of approved acquisition related information collections from the Office of Management and Budget under the Paperwork Reduction Act.

DATES: Effective September 8, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Curtis Hasuchildt, GSA Acquisition Policy Division, at 817–253–7858 or *GSARPolicy@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegsec@gsa.gov.* Please cite GSAR Case 2022–G518.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 35, *et seq.*) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The General Services Acquisition Regulation (GSAR) at 501.106 includes a table that identifies all OMB approved control numbers for GSA (3090 series) and the Federal Acquisition Regulation (FAR) (9000 series) that are applicable to GSA acquisition requirements. As part of the regulatory review process, GSA realized that the table required a correction to the listed OMB control number pertaining to GSAR clause 552.238–85.

Therefore, within the table at 501.106, GSA is correcting the OMB control number from 3090–0303 to OMB control numbers 3090–0235 and 3090–0306 specific to GSAR Clause 552.238–85.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707. Subsection (a)(1) of 41 U.S.C. 1707 requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because the change is technical in nature and makes conforming updates to the title and number of a referenced policy document.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

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

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section II. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VI. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 501

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR part 501 as follows:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. In section 501.106, amend the table by revising the entry for ''552.238–85'' to read as follows:

501.106 OMB approval under the Paperwork Reduction Act.

* * * * *

GSAR reference	OMB control No.
* * * * *	
552.238–85	3090–0235, 3090–0306
* * * * *	

[FR Doc. 2023–16904 Filed 8–8–23; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XD073]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the Angling Category Gulf of Maine Area Trophy Fishery for 2023

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Angling category Gulf of Maine area fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels when fishing recreationally.

DATES: Effective 11:30 p.m., local time, August 5, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Lisa Crawford, *lisa.crawford@noaa.gov*, 301–427–8503 or Larry Redd, Jr., *larry.redd@noaa.gov*, 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements, such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on and after the effective date and time of a closure action for that category, for the remainder of the fishing year, until the opening of the subsequent quota period or until such date as specified.

As of January 1, 2023, the previous Angling category Trophy North subquota area was divided into two zones: north and south of 42° N lat. (off Chatham, MA) (87 FR 59966, October 3, 2022). These newly formed areas are named the Gulf of Maine Trophy area and the Southern New England Trophy area. The 2023 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2023. The Angling category season opened January 1, 2023, and continues through December 31, 2023. The Angling category baseline quota is 297.4 metric tons (mt), of which 9.2 mt is suballocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 2.3 mt allocated for each of the following areas: North of 42° N lat. (the Gulf of Maine area); south of 42° N lat. and north of 39°18′ N lat. (the southern New England area); south of 39°18′ N lat., and outside of the Gulf of Mexico (the southern area); and the Gulf of Mexico region. Trophy BFT measure 73 inches (185 cm) curved fork length or greater. This action applies to the Gulf of Maine area.

Angling Category Trophy Bluefin Tuna Gulf of Maine Fishery Closure

Based on landings data from the NMFS Automated Catch Reporting System, as well as average catch rates and anticipated fishing conditions, NMFS projects the Angling category Gulf of Maine area trophy BFT subquota of 2.3 mt has been reached and exceeded. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT in the Gulf of Maine area by persons aboard HMS Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally) must cease at 11:30 p.m. local time on August 5, 2023. This closure will remain effective through December 31, 2023. This action applies to HMS Angling and HMS Charter/Headboat permitted vessels when fishing recreationally for BFT, and is taken consistent with the regulations at § 635.28(a)(1). This action is intended to prevent further overharvest of the Angling category Gulf of Maine area trophy BFT subquota. NMFS previously closed the 2023 trophy BFT fishery in the southern area on February 12, 2023 (88 FR 11820, February 24, 2023), in the Gulf of Mexico area on May 17, 2023 (88 FR 30234, May 11, 2023), and in the southern New England area on June 5, 2023 (88 FR 37175, June 7, 2023). Therefore, with this closure of the Gulf of Maine area trophy BFT fishery, the Angling category trophy BFT fishery will be closed in all areas for 2023.

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches (185 cm), and any further Angling category adjustments, is available at *https://www.hmspermits.noaa.gov* or by calling 978–281–9260. Fishermen aboard HMS Angling and HMS Charter/Headboat permitted vessels may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

HMS Angling and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *https://www.hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling

888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity to provide comment on this action, as notice and comment would be impracticable and contrary for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and its amendments provide for inseason adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and delaying this action could result in further excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the Gulf of Maine area trophy BFT fishery before additional landings of these sizes of BFT occur. Taking this action does not raise conservation and management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 3, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–16993 Filed 8–4–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 230508–0124; RTID 0648–XD179]

Fisheries Off West Coast States; Modification of the West Coast Salmon Fisheries; Inseason Action #17

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

ACTION: Inseason modification of 2023 management measures.

SUMMARY: NMFS announces one inseason action for the 2023–2024 ocean salmon fishing season. This inseason action modifies the July–September subquota for the treaty Indian salmon fisheries in the area from the U.S./Canada border to Cape Falcon, Oregon.

DATES: The effective date for this inseason action is set out in this document under the heading ''Inseason Action'' and the actions remain in effect until superseded or modified.

FOR FURTHER INFORMATION CONTACT: Shannon Penna, 562–980–4239, *Shannon.Penna@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The annual management measures for the 2023 and early 2024 ocean salmon fisheries (88 FR 30235, May 11, 2023) govern the commercial and recreational fisheries in the area from the U.S./Canada border to the U.S./Mexico border, effective from 0001 hours Pacific Daylight Time (PDT), May 16, 2023, until the effective date of the 2024 management measures, as published in the **Federal Register**. NMFS is authorized to implement inseason management actions to modify fishing seasons and quotas as necessary to provide fishing opportunity while meeting management objectives for the affected species (50 CFR 660.409). Inseason actions in the salmon fishery may be taken directly by NMFS (50 CFR 660.409(a)—Fixed inseason management provisions) or upon consultation with the Chairman of the Pacific Fishery Management Council (Council), and the appropriate State Directors (50 CFR 660.409(b)—Flexible inseason management provisions).

Management of the salmon fisheries is divided into two geographic areas: north of Cape Falcon (NOF) (U.S./Canada border to Cape Falcon, OR), and south of Cape Falcon (SOF) (Cape Falcon, OR, to the U.S./Mexico border). The action described in this document affects the NOF treaty tribal salmon fisheries, as set out under the heading ''Inseason Action'' below.

Inseason Action

Inseason Action #17

Description of the action: Inseason action #17 modifies the July–September subquota for the treaty Indian salmon fishery north of Cape Falcon that was set preseason at 22,500 Chinook salmon, to 38,265 Chinook salmon through an impact-neutral rollover of unused May–June subquota.

Effective dates: Inseason action #17 took effect on July 1, 2023, and remains in effect until the end of the 2023 treaty Indian salmon season on September 15, 2023.

Reason and authorization for the action: The tribal fisheries reported a remaining catch of 15,765 Chinook salmon in the May–June fishery subquota of 20,000. The Salmon Technical Team determined the overage can be rolled over to the July–September fishery on an impact-neutral basis with a new Chinook salmon subquota of 38,265. The treaty tribes notified staff from NMFS, Council, and the Washington Department of Fish and Wildlife of the need for modification of the July–September quota. The NMFS West Coast Regional Administrator (RA) concurred with the quota modification. This inseason action modifies quotas and/or fishing seasons under 50 CFR 660.409(b)(1)(i).

All other restrictions and regulations remain in effect as announced for the 2023 ocean salmon fisheries (88 FR 30235, May 11, 2023; 88 FR 44737, July 13, 2023; 88 FR 51250, August 3, 2023) except as previously modified by inseason actions.

The RA determined that this inseason action was warranted based on the best available information on Pacific salmon abundance forecasts, landings and effort patterns to date, anticipated fishery effort and projected catch, and the other factors and considerations set forth in 50 CFR 660.409. The states and tribes manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone (3–200 nautical miles; 5.6–370.4 kilometers) off the coasts of the States of Washington, Oregon, and California consistent with these Federal actions. As provided by the inseason notice procedures at 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the time the actions became

effective, by telephone hotline numbers 206–526–6667 and 800–662–9825.

Classification

NMFS issued this action pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action is authorized by 50 CFR 660.409, which was issued pursuant to section 304(b) of the MSA, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Prior notice and opportunity for public comment on this action was impracticable because NMFS had insufficient time to provide for prior notice and the opportunity for public comment between the time Chinook and coho salmon abundance, catch, and effort information were developed and fisheries impacts were calculated, and the time the fishery modifications had to be implemented in order to ensure that fisheries are managed based on the best scientific information available. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotlines and radio notifications. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (88 FR 30235, May 11, 2023), the Pacific Salmon Fishery Management Plan (FMP), and regulations implementing the FMP under 50 CFR 660.409 and 660.411.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date, as a delay in effectiveness of this action would allow fishing at levels inconsistent with the goals of the FMP and the current management measures.

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

Dated: August 4, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–17051 Filed 8–4–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 152
Wednesday, August 9, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2023–0623]

Policy for Type Certification of Very Light Airplanes as a Special Class of Aircraft

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

ACTION: Notice of proposed policy, request for comments.

SUMMARY: The FAA is requesting comments on its proposed policy for the type certification of Very Light Airplanes (VLA) as a special class of aircraft under the Federal Aviation Regulations.

DATES: Send comments on or before September 8, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2023–0623 using any of the following methods:

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

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery of Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Hieu Nguyen, Product Policy Management, AIR–62B, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration; telephone 816–329–4123; email *hieu.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of this proposed policy by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed policy, explain the reason for any recommended change, and include supporting data.

Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA may consider comments filed late if it is possible to do so without incurring delay. The FAA may change the proposed policy based on the comments received.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, the FAA will post all comments it receives, without change, to *https://www.regulations.gov/,* including any personal information you provide. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://www.dot.gov/privacy.*

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 proposed policy contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these proposed airworthiness criteria, 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 the indicated comments will not be placed in the public docket for this notice. Send submissions containing CBI to the individual listed under For Further Information Contact. Comments that the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this notice.

Background

In 1992, the FAA issued Advisory Circular (AC) 21.17–3,[1] ''Type Certification of Very Light Airplanes Under [14 CFR] 21.17(b)'' (AC 21.17–3), to provide guidance on acceptable means of compliance for type, production, and airworthiness certification for very light airplanes (VLA). AC 21.17–3 designates the Joint Aviation Authorities (JAA) of Europe publication, ''Joint Aviation Requirements for Very Light Aeroplanes'' (April 26, 1990) (JAR–VLA), as acceptable airworthiness criteria that provides an equivalent level of safety under 14 CFR 21.17(b) for FAA type certification of VLA as a special class of aircraft. After the European Aviation Safety Agency (now the European Union Aviation Safety Agency) (EASA) was formed, EASA developed its VLA certification standards (CS–VLA) from JAR–VLA, with CS–VLA becoming effective on November 14, 2003.

In 2016, the FAA promulgated amendment 23–64 of 14 CFR part 23, Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes. 81 FR 96572.[2] In the preamble to that final rule, the FAA stated that it intended to continue to allow CS–VLA airplanes to be approved as a special, stand-alone class of airplane while also allowing eligibility for certification in accordance with part 23 using accepted means of compliance. In 2017, EASA issued CS–23 Amendment 5 and EASA recognized

[1] Available at *https://drs.faa.gov.*

[2] *https://www.regulations.gov;* Docket No. FAA–2015–1621.

CS–VLA as an acceptable means of compliance to CS–23 Amendment 5.

AC 21.17–3 considers a VLA as a special class of aircraft, and defines a VLA as an airplane with a single engine (spark- or compression-ignition), not more than two seats, a maximum certificated takeoff weight of not more than 750 kg (approximately 1,654 pounds), and a stalling speed of not more than 45 knots (CAS) in the landing configuration, and limited to normal category maneuvers and day visual flight rule (VFR) operations only. AC 21.17–3 states that, ''VLA operations at night and under [instrument flight rule] (IFR) conditions would be acceptable, provided the VLA is certificated to the JAR–VLA requirements plus certain additional [14 CFR] part 23 requirements, including those related to night and IFR operations, and that both the engine and propeller installed [are] type certificated under [14 CFR] part 33 (or JAR–E) and part 35 (or JAR–P).''

This notice of proposed policy contains additional airworthiness criteria that are an acceptable means of compliance for design features that differ from the VLA limits defined in AC 21.17–3 or that are not adequately addressed by CS–VLA or JAR–VLA. The FAA previously applied some of these additional airworthiness criteria to specific VLA type designs,[3] and these additional airworthiness criteria are among those included in this notice of proposed policy.

Discussion

The FAA establishes airworthiness criteria and issues type certificates to ensure the safe design and operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. VLA can be type certificated by the FAA as a special class of aircraft because VLA airworthiness standards have not yet been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are the portions of the requirements in 14 CFR parts 23, 25, 27, 29, 31, 33, and 35 found by the FAA to be appropriate and applicable to the specific type design and any other airworthiness criteria found by the FAA to provide an equivalent level of safety to the existing standards.

With the adoption of performance-based regulations in part 23, amendment 23–64, VLA airplanes are eligible for certification as normal category airplanes in accordance with part 23 using accepted means of compliance. Or, applicants may seek type certification of VLA airplanes as a ''special class'' under § 21.17(b) using CS–VLA or JAR–VLA requirements. The FAA accepts CS–VLA and JAR–VLA airworthiness criteria as providing an equivalent level of safety under § 21.17(b) for special class type certification of VLA airplanes. Special class certification may include airplane designs that differ from the limits defined in AC 21.17–3 (*e.g.,* engine mount, winglets, night-VFR, increased maximum certificated takeoff weight of not more than 850 kg (1,874 pounds), increased stall speed of not more than 50 KCAS, or lithium battery installation) provided the airplane was certificated to CS–VLA or JAR–VLA and the certification basis includes additional design requirements applicable and appropriate for the specific type design. The FAA plans to revise AC 21.17–3 to incorporate the additional acceptable airworthiness criteria proposed in this policy.

VLA airplanes meeting the limits defined in AC 21.17–3 are certificated to CS–VLA or JAR–VLA requirements. VLA airplane designs that differ from the limits defined in AC 21.17–3 or designs that incorporate features not adequately addressed by CS–VLA or JAR–VLA requirements may be certificated to CS–VLA or JAR–VLA with additional airworthiness criteria applicable and appropriate for the specific type design. Specifically, this proposed policy contains additional airworthiness criteria for such features as advanced avionic displays, engine mount to composite airframe, winglets, night VFR operations, increased maximum certificated takeoff weight and increased stall speed from those defined in AC 21.17–3, and rechargeable lithium ion battery installations.

The following are the proposed acceptable airworthiness criteria that provide an equivalent level of safety for VLA special class type certification under 21.17(b), in addition to the requirements in CS–VLA or JAR–VLA, that the FAA finds to be appropriate and applicable for specific type designs. Each of the new criteria use a ''VLA.XXX'' section-numbering scheme.

Advanced Avionic Displays

In addition to being certificated to CS–VLA or JAR–VLA requirements, designs incorporating advanced avionic displays would also need to meet the requirements of 14 CFR 23.1307, Miscellaneous Equipment, amendment 23–49; § 23.1311, Electronic Display Instrument Systems, amendment 23–62; § 23.1321, Arrangement and Visibility, amendment 23–49; and § 23.1359, Electrical System Fire Protection, amendment 23–49.

Winglets

In addition to being certificated to CS–VLA or JAR–VLA requirements, airplanes with winglets on the wings would also need to meet the requirements of JAR 23.445,[4] amendment 1, Outboard Fins or Winglets.

Engine Mount to Composite Airframe

In addition to being certificated to CS–VLA or JAR–VLA requirements, designs with engine mounting to composite airframe would also need to meet design requirements to address fire protection of the connection between the metal structure of an engine mount and composite airframe by demonstrating that the composite airframe can withstand a fire while carrying loads.

Night-VFR Operations

In addition to being certificated to CS–VLA or JAR–VLA, for certification for night VFR operations, the airplane would also need to meet design requirements to address the flight performance, design and construction, powerplant installation, equipment, and operating limitations and information, that are necessary for night VFR operations.

Increased Maximum Certificated Takeoff Weight and Increased Stall Speed

In addition to being certificated to CS–VLA or JAR–VLA, for approval of airplane designs with an increased maximum certificated takeoff weight of not more than 850 kg (1,874 pounds) and increased stall speed of not more than 50 KCAS, the airplane would also need to meet design requirements to address the flight performance, structure, crashworthiness, and performance information, that are necessary for the increased weight and stall speed.

(a) If an Equivalent Level of Safety (ELOS) to CS–VLA 1143(g) and CS–VLA 1147(b) is requested, the airplane would need to meet additional design requirements to incorporate design features to increase reliability, and

[3] Aquila GmbH Engine Mount Connection Design Criteria and Winglets for the Aquila GmbH AT01 JAR–VLA Airplane (68 FR 63841, October 20, 2003); Night VFR Under the Special Class (JAR–VLA) Regulations, Aquila Aviation by Excellence GmbH, Model AT01 (78 FR 50313, August 19, 2013); Advanced Avionics Under the Special Class (JAR–VLA) Regulations; Aquila Aviation by Excellence GmbH, Model AT01–100 (78 FR 68687, November 15, 2013).

[4] JAR–23 amendment 1: Normal, Utility, Aerobatic, and Commuter Category Aeroplanes, can be found in Docket No. FAA–2023–0623 at *https://www.regulations.gov.*

maintenance items that make the engine controls attachment not likely to separate in flight, which are necessary to ensure that if the mixture control separates at the engine fuel metering device, the airplane is capable of continued safe flight and landing.

(b) Instead of the stall-characteristics requirements in CS–VLA 201(c), CS–VLA 201(f), and CS–VLA 203(c)(4), the requirements from CS 23.201(c), CS 23.201(e), and CS 23.203(c)(4)(ii), respectively, would need to be used.

(c) In place of the handling quality attributes in CS–VLA 177(a)(2) and CS–VLA 177(a)(3), neutral lateral stability would need to be achieved by showing compliance with the requirements in VLA.170.

(d) If an ELOS to CS–VLA 161(b)(2)(ii) is requested, additional airworthiness criteria from CS 23.161(c)(4), CS 23.73 (a), CS 23.75 (a)(1), (b), (c), and (d), CS 23.77(a), CS 23.145 (b)(5) and (d), CS 23.153(a), (b), (c), and (d), CS 23.157(c) and (d), and CS 23.175(c), would need to be met to address airplane trim requirements.

Rechargeable Lithium Ion Battery

In addition to being certificated to CS–VLA or JAR–VLA, airplanes with rechargeable lithium ion battery would need to meet airworthiness criteria containing safety objectives necessary to address design and installation of rechargeable lithium ion batteries.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Authority Citation

The authority citations for these airworthiness criteria are as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

Policy

The FAA proposes to continue to allow type certification of VLA as a special class of aircraft under 14 CFR 21.17(b) using CS–VLA or JAR–VLA requirements, while also allowing eligibility for certification as a normal category airplane in accordance with part 23 using accepted means of compliance. The FAA accepts CS–VLA and JAR–VLA airworthiness criteria as providing an equivalent level of safety under § 21.17(b) special class type certification of VLA airplanes. The FAA would consider proposals for airplane designs that differ from the VLA limits defined in AC 21.17–3 for type certification as a special class of aircraft under § 21.17(b), provided the VLA were certificated to the JAR–VLA or CS–VLA requirements plus additional airworthiness criteria the FAA finds appropriate and applicable for the proposed design. Additional design requirements may include but are not limited to the airworthiness criteria identified in the following paragraphs. Other additional airworthiness criteria may be required to address specific design proposals.

Advanced Avionic Displays

If the airplane has advanced avionic displays installed, the following requirements from 14 CFR part 23 apply:

- 14 CFR 23.1307 at amendment 23–49, Miscellaneous Equipment.
- 14 CFR 23.1311 at amendment 23–62, Electronic Display Instrument Systems.
- 14 CFR 23.1321 at amendment 23–49, Arrangement and Visibility.
- 14 CFR 23.1359 at amendment 23–49, Electrical System Fire Protection.

Winglets

If the airplane has any outboard fins or winglets installed, the design must comply with JAR 23.445.

Engine Mount to Composite Airframe

VLA.001

The requirements in this section are applicable to airplanes with an engine mounting to composite airframe. Tests must be performed that demonstrate that the interface between the metallic engine mount and the glass fiber reinforced plastic fuselage withstand a fire for 15 minutes while carrying loads under the following conditions:

(a) With one lost engine mount fitting the loads are distributed over the remaining three engine mount fittings. The most critical of these fittings must be chosen for the test.

The loads are:

(1) In Z-direction the mass of the propulsion unit multiplied by a maneuvering load factor resulting from a 30° turn for 15 minutes, superimposed by a maneuvering load of 3 seconds representing the maximum positive limit maneuvering load factor of n = 3.8 from JAR–VLA 337(a).

(2) In X-direction the engine propulsion force at maximum continuous power for 5 minutes.

(b) The flame to which the component test arrangement is subjected must provide a temperature of 500 °C within the target area.

(c) The flame must be large enough to maintain the required temperature over the entire test zone, *i.e.,* the fitting on the engine compartment side.

(d) It must be shown that the test equipment, *e.g.,* burner and instrumentation are of sufficient power, size, and precision to yield the test requirements arising from paragraphs (a) through (c) of this section.

Night-VFR Operations

VLA.005

The requirements in sections VLA.005 through VLA.105 are applicable to airplanes with a single engine (spark- or compression-ignition) having not more than two seats, with a maximum certificated takeoff weight of not more than 750 kg and a stalling speed in the landing configuration of not more than 83 km/h (45 knots) (CAS), to be approved for day-VFR [visual flight rules] or for day-and night-VFR.

VLA.010

(a) Any short period oscillation not including combined lateral-directional oscillations occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be heavily damped with the primary controls—

(1) Free; and

(2) In a fixed position.

(b) Any combined lateral-directional oscillations (''Dutch roll'') occurring between the stalling speed and the maximum allowable speed appropriate to the configuration of the airplane must be damped to 1/10 amplitude in 7 cycles with the primary controls—

(1) Free; and

(2) In a fixed position.

(c) Any long period oscillation of the flight path (phugoid) must not be so unstable as to cause an unacceptable increase in pilot workload or otherwise endanger the airplane. When under the conditions specified in CS–VLA 175, the longitudinal control force required to maintain speeds differing from the trimmed speed by at least plus or minus 15% is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released.

VLA.015

The pilot compartment must be free from glare and reflections that could interfere with the pilot's vision under all operations for which the certification is requested. The pilot compartment must be designed so that—

(a) The pilot's view is sufficiently extensive, clear, and undistorted, for safe operation;

(b) The pilot is protected from the elements so that moderate rain

conditions do not unduly impair the pilot's view of the flight path in normal flight and while landing; and

(c) Internal fogging of the windows covered under paragraph (a) of this section can be easily cleared by the pilot unless means are provided to prevent fogging.

VLA.020

(a) The airplane must be so designed that unimpeded and rapid escape is possible in any normal and crash attitude.

(b) The opening system must be designed for simple and easy operation. It must function rapidly and be designed so that it can be operated by each occupant strapped in their seat, and also from outside the cockpit. Reasonable provisions must be provided to prevent jamming by fuselage deformation.

(c) The exit must be marked for easy location and operation even in darkness.

VLA.025

(a) The engine must meet the specifications of CS–E, amendment 6,[5] or 14 CFR part 33, amendment 33–36, for night-VFR operation.

(b) Restart capability. An altitude and airspeed envelope must be established for the airplane for in-flight engine restarting and the installed engine must have a restart capability within that envelope.

VLA.030

(a) For day-VFR operation, the propeller must meet the specifications of CS–22 Subpart J, amendment 3. For night-VFR operations the propeller and its control system must meet the specifications of CS–P, amendment 2,[6] or 14 CFR part 35, amendment 35–10, except for fixed pitch propellers, for which CS–22[7] subpart J is sufficient.

(b) Engine power and propeller shaft rotational speed may not exceed the limits for which the propeller is certificated or approved.

VLA.035

If an air filter is used to protect the engine against foreign material particles in the induction air supply—

(a) Each air filter must be capable of withstanding the effects of temperature extremes, rain, fuel, oil, and solvents to which it is expected to be exposed in service and maintenance; and

(b) Each air filter must have a design feature to prevent material separated from the filter media from re-entering the induction system and interfering with proper fuel metering operation.

VLA.040

(a) Each exhaust system must ensure safe disposal of exhaust gases without fire hazard or carbon monoxide contamination in the personnel compartment.

(b) Each exhaust system part with a surface hot enough to ignite flammable fluids or vapours must be located or shielded so that leakage from any system carrying flammable fluids or vapours will not result in a fire caused by impingement of the fluids or vapours on any part of the exhaust system including shields for the exhaust system.

(c) Each exhaust system component must be separated by fireproof shields from adjacent flammable parts of the airplane that are outside the engine compartment.

(d) No exhaust gases may discharge dangerously near any fuel or oil system drain.

(e) Each exhaust system component must be ventilated to prevent points of excessively high temperature.

(f) Each exhaust heat exchanger must incorporate means to prevent blockage of the exhaust port after any internal heat exchanger failure.

(g) No exhaust gases may be discharged where they will cause a glare seriously affecting the pilot's vision at night.

VLA.045

(a) The power or supercharger control must give a positive and immediate responsive means of controlling its engine or supercharger.

(b) If a power control incorporates a fuel shut-off feature, the control must have a means to prevent the inadvertent movement of the control into the shut-off position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shut-off position.

(c) Each power or thrust control must be designed so that if the control separates at the engine fuel metering device, the airplane is capable of continuing safe flight and landing.

VLA.050

(a) The control must require a separate and distinct operation to move the control toward lean or shut-off position.

(b) Each manual engine mixture control must be designed so that, if the control separates at the engine fuel metering device, the airplane is capable of continuing safe flight and landing.

VLA.055

If warning, caution, or advisory lights are installed in the cockpit, they must be—

(a) Red, for warning lights (lights indicating a hazard which may require immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action);

(c) Green, for safe operation lights; and

(d) Any other color, including white, for lights not described in paragraphs (a) through (c) of this section, provided the color differs sufficiently from the colors prescribed in paragraphs (a) through (c) of this section to avoid possible confusion.

(e) If warning, caution, or advisory lights are installed in the cockpit, they must be effective under all probable cockpit lighting conditions.

VLA.060

(a) Each instrument provided with static pressure case connections must be so vented that the influence of airplane speed, the opening and closing of windows, moisture, or other foreign matter, will not significantly affect the accuracy of the instruments.

(b) The design and installation of a static pressure system must be such that—

(1) Positive drainage of moisture is provided;

(2) Chafing of the tubing, and excessive distortion or restriction at bends in the tubing, is avoided; and

(3) The materials used are durable, suitable for the purpose intended, and protected against corrosion.

(c) Each static pressure system must be calibrated in flight to determine the system error. The system error, in indicated pressure altitude, at sea-level, with a standard atmosphere, excluding instrument calibration error, may not exceed ±9 m (±30 ft) per 185 km/h (100 knots) speed for the appropriate configuration in the speed range between 1.3 V_{SO} with flaps extended and 1.8 V_{S1} with flaps retracted. However, the error need not be less than ±9 m (±30 ft).

[5] CS–E amendment 6: Certification Specifications and Acceptable Means of Compliance for Engines can be found in Docket No. FAA–2023–0623 at *https://www.regulations.gov*.

[6] CS–P amendment 2: Certification Specifications and Acceptable Means of Compliance for Propellers can be found in Docket FAA–2023–0623 at *https://www.regulations.gov*.

[7] CS–22 amendment 3: Certification Specifications, Acceptable Means of Compliance and Guidance Material for Sailplanes and Powered Sailplanes can be found in Docket No. FAA–2023–0623 at *https://www.regulations.gov*.

VLA.065

For each airplane—

(a) Each gyroscopic instrument must derive its energy from power sources adequate to maintain its required accuracy at any speed above the best rate-of-climb speed;

(b) Each gyroscopic instrument must be installed so as to prevent malfunction due to rain, oil, and other detrimental elements; and

(c) There must be a means to indicate the adequacy of the power being supplied to the instruments.

(d) For Night VFR operation there must be at least two independent sources of power and a manual or an automatic means to select each power source for each instrument that uses a power source.

VLA.070

(a) Electrical system capacity. Each electrical system must be adequate for the intended use. In addition—

(1) Electric power sources, their transmission cables, and their associated control and protective devices, must be able to furnish the required power at the proper voltage to each load circuit essential for safe operation; and

(2) Compliance with paragraph (a)(l) of this section must be shown by an electrical load analysis, or by electrical measurements, that account for the electrical loads applied to the electrical system in probable combinations and for probable durations.

(b) Functions. For each electrical system, the following apply:

(1) Each system, when installed, must be—

(i) Free from hazards in itself, in its method of operation, and in its effects on other parts of the airplane;

(ii) Protected from fuel, oil, water, other detrimental substances, and mechanical damage; and

(iii) So designed that the risk of electrical shock to occupants and ground personnel is reduced to a minimum.

(2) Electric power sources must function properly when connected in combination or independently.

(3) No failure or malfunction of any electric power source may impair the ability of any remaining source to supply load circuits essential for safe operation.

(4) Each electric power source control must allow the independent operation of each source, except that controls associated with alternators that depend on a battery for initial excitation or for stabilization need not break the connection between the alternator and its battery.

(5) Each generator must have an overvoltage control designed and installed to prevent damage to the electrical system, or to equipment supplied by the electrical system, that could result if that generator were to develop an overvoltage condition.

(d) Instruments. There must be a means to indicate to the pilot that the electrical power supplies are adequate for safe operation. For direct current systems, an ammeter in the battery feeder may be used.

(e) Fire resistance. Electrical equipment must be so designed and installed that in the event of a fire in the engine compartment, during which the surface of the firewall adjacent to the fire is heated to 1,100 °C for 5 minutes or to a lesser temperature substantiated by the applicant, the equipment essential to continued safe operation and located behind the firewall will function satisfactorily and will not create an additional fire hazard. This may be shown by test or analysis.

(f) External power. If provisions are made for connecting external power to the airplane, and that external power can be electrically connected to equipment other than that used for engine starting, means must be provided to ensure that no external power supply having a reverse polarity, or a reverse phase sequence, can supply power to the airplane's electrical system. The location must allow such provisions to be capable of being operated without hazard to the airplane or persons.

VLA.075

(a) Each storage battery must be designed and installed as prescribed in this section.

(b) Safe cell temperatures and pressures must be maintained during any probable charging and discharging condition. No uncontrolled increase in cell temperature may result when the battery is recharged (after previous complete discharge)—

(1) At maximum regulated voltage or power;

(2) During a flight of maximum duration; and

(3) Under the most adverse cooling condition likely to occur in service.

(c) Compliance with paragraph (b) of this section must be shown by tests unless experience with similar batteries and installations has shown that maintaining safe cell temperatures and pressures presents no problem.

(d) No explosive or toxic gases emitted by any battery in normal operation, or as the result of any probable malfunction in the charging system or battery installation, may accumulate in hazardous quantities within the airplane.

(e) No corrosive fluids or gases that may escape from the battery may damage surrounding structures or adjacent essential equipment.

(f) Each nickel cadmium battery installation capable of being used to start an engine or auxiliary power unit must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of its individual cells.

(g) Nickel cadmium battery installations capable of being used to start an engine or auxiliary power unit must have—

(1) A system to control the charging rate of the battery automatically so as to prevent battery overheating;

(2) A battery temperature sensing and over-temperature warning system with a means for disconnecting the battery from its charging source in the event of an overtemperature condition; or

(3) A battery failure sensing and warning system with a means for disconnecting the battery from its charging source in the event of battery failure.

(h) In the event of a complete loss of the primary electrical power generating system, the battery must be capable of providing 30 minutes of electrical power to those loads that are essential to continued safe flight and landing. The 30-minute time period includes the time needed for the pilot(s) to recognize the loss of generated power and to take appropriate load shedding action.

VLA.080

The instrument lights must—

(a) Make each instrument and control easily readable and discernible;

(b) Be installed so that their direct rays, and rays reflected from the windshield or other surface, are shielded from the pilot's eyes; and

(c) Have enough distance or insulating material between current carrying parts and the housing so that vibration in flight will not cause shorting. (A cabin dome light is not an instrument light.)

VLA.085

Each taxi and landing light must be designed and installed so that—

(a) No dangerous glare is visible to the pilots;

(b) The pilot is not seriously affected by halation;

(c) It provides enough light for night operations; and

(d) It does not cause a fire hazard in any configuration.

VLA.090

(a) Electronic equipment and installations must be free from hazards in themselves, in their method of operation, and in their effects on other components.

(b) For operations for which electronic equipment is required, compliance must be shown with CS–VLA 1309.

VLA.095

(a) A placard meeting the requirements of this section must be installed on or near the magnetic direction indicator.

(b) The placard must show the calibration of the instrument in level flight with the engine operating.

(c) The placard must state whether the calibration was made with radio receivers on or off.

(d) Each calibration reading must be in terms of magnetic headings in not more than 30° increments.

(e) If a magnetic non-stabilized direction indicator can have a deviation of more than 10° caused by the operation of electrical equipment, the placard must state which electrical loads, or combination of loads, would cause a deviation of more than 10° when turned on.

VLA.100

The following placards must be plainly visible to the pilot:

(a) A placard stating the following airspeeds (IAS):

(1) Design maneuvering speed, V_A;

(2) The maximum landing gear operating speed, V_{LO}.

(b) A placard stating the following approved operation:

(1) For day-VFR only operation, a placard stating, ''This airplane is classified as a very light airplane approved for day-VFR only, in non-icing conditions. All aerobatic maneuvers, including intentional spinning, are prohibited. See Flight Manual for other limitations.''

(2) If night-VFR operation is approved, a placard stating, ''This airplane is classified as a very light airplane approved for day- and night-VFR operation, in non-icing conditions. All aerobatic maneuvers, including intentional spinning, are prohibited. See Flight Manual for other limitations.''

VLA.105

(a) Airspeed limitations. The following information must be furnished—

(1) Information necessary for the marking of the airspeed limits on the indicator, as required in CS–VLA 1545, and the significance of the color coding used on the indicator.

(2) The speeds V_A, V_{LO}, V_{LE} (maximum landing gear extended speed) where appropriate.

(b) Weights. The following information must be furnished:

(1) The maximum weight.

(2) Any other weight limits, if necessary.

(c) Center of gravity. The established c.g. limits required by CS–VLA 23 must be furnished.

(d) Maneuvers. Authorized maneuvers established in accordance with CS–VLA 3 must be furnished.

(e) Flight load factors. Maneuvering load factors: the following must be furnished—

(1) The factors corresponding to point A and point C in the figure for CS–VLA 333(b), stated to be applicable at V_A.

(2) The factors corresponding to point D and point E of figure 1 of CS–VLA 333(b) to be applicable at never exceed speed, V_{NE}.

(3) The factor with wing flaps extended as specified in CS–VLA 345.

(f) The kinds of operation (day-VFR or day- and night-VFR, whichever is applicable) in which the airplane may be used, must be stated. The minimum equipment required for the operation must be listed.

(g) Powerplant limitations. The following information must be furnished:

(1) Limitation required by CS–VLA 1521.

(2) Information necessary for marking the instruments required by CS–VLA 1549 through 1551.

(3) Fuel and oil designation.

(4) For two-stroke engines, fuel/oil ratio.

(h) Placards. Placards required by CS–VLA 1555 through 1561 must be presented.

Increased Maximum Certificated Takeoff Weight and Increased Stall Speed

VLA.110

If the maximum certificated takeoff weight is higher than 750 kg, but not more than 850 kg, the requirements in sections VLA.120 through VLA.210 apply.

VLA.115

If the stall speed in landing configuration is higher than 45 knots, but not more than 50 knots (CAS), the requirements in section VLA.120 through VLA.210 apply.

VLA.120

The maximum horizontal distance traveled in still air, in km per 1,000 m (nautical miles per 1,000 ft) of altitude lost in a glide, and the speed necessary to achieve this, must be determined with the engine inoperative and its propeller in the minimum drag position, and landing gear and wing flaps in the most favorable available position.

VLA.125

(a) Each seat is to be equipped with at least a 4-point harness system;

(b) The applicant shall evaluate the head strike path with validated methods, and minimize the risk of injury in case of a head contact with the aircraft structure or interior.

(c) The design shall provide reasonable precautions to minimize the lumbar compression loads experienced by occupants in survivable crash landings;

(d) Each seat/harness system shall be statically tested to an ultimate inertia load factor of 18g forward, considering an occupant's mass of 77 kg. The lapbelt should react 60% of this load, and the upper torso restraint should react 40% of this load.

VLA.130

(a) The airplane, although it may be damaged in emergency landing conditions, must be designed as prescribed in this section to protect each occupant under those conditions.

(b) The structure must be designed to give each occupant reasonable chances of escaping injury in a minor crash landing when—

(1) Proper use is made of seat belts and shoulder harnesses; and

(2) The occupant experiences the ultimate inertia forces listed below:

(i) Upward 3.0g

(ii) Forward 9.0g

(iii) Sideward 1.5g.

(c) Each item of mass within the cabin that could injure an occupant if it came loose must be designed for the ultimate inertia load factors:

(1) Upward, 3.0g;

(2) Forward, 18.0g; and

(3) Sideward, 4.5g.

Engine mount and supporting structure are included in the above analysis if they are installed behind and above the seating compartment.

(d) The structure must be designed to protect the occupants in a complete turnover, assuming, in the absence of a more rational analysis—

(1) An upward ultimate inertia force of 3g; and

(2) A coefficient of friction of 0.5 at the ground.

(e) Each airplane with retractable landing gear must be designed to protect each occupant in a landing—

(1) With the wheels retracted;

(2) With moderate descent velocity; and

(3) Assuming, in the absence of a more rational analysis;

(i) A downward ultimate inertia force of 3g; and

(ii) A coefficient of friction of 0.5 at the ground.

VLA.135

(a) Each baggage compartment must be designed for its placarded maximum weight of contents and for the critical load distributions at the appropriate maximum load factors corresponding to the flight and ground load conditions for the airplane.

(b) There must be means to prevent the contents of any baggage compartment from becoming a hazard by shifting, and to protect any controls, wiring, lines, equipment, or accessories whose damage of failure would affect safe operations.

(c) Baggage compartments must be constructed of materials which are at least flame resistant.

(d) Designs which provide for baggage to be carried must have means to protect the occupants from injury under the ultimate inertia forces specified in CS–VLA 561(b)(2).

(e) If there is no structure between baggage and occupant compartments, the baggage items located behind the occupants and those which might become a hazard in a crash must be secured for 1.33×18g.

VLA.140

(a) General. For each airplane, the following information must be furnished:

(1) The takeoff distance determined under CS–VLA 51, the airspeed at the 15 m height, the airplane configuration (if pertinent), the kind of surface in the tests, and the pertinent information with respect to cowl flap position, use of flight path control devices, and use of the landing gear retraction system.

(2) The landing distance determined under CS–VLA 75, the airplane configuration (if pertinent), the kind of surface used in the tests, and the pertinent information with respect to flap position and the use of flight path control devices.

(3) The steady rate or gradient of climb determined under CS–VLA 65 and 77, the airspeed, power, and the airplane configuration.

(4) The calculated approximate effect on takeoff distance (paragraph (a)(1) of this section), landing distance (paragraph (a)(2) of this section), and steady rates of climb (paragraph (a)(3) of this section), of variations in altitude and temperature.

(5) The maximum atmospheric temperature at which compliance with the cooling provisions of CS–VLA 1041 through 1047 is shown.

(6) The glide performance determined under VLA.120.

(b) Skiplanes. For skiplanes, a statement of the approximate reduction in climb performance may be used instead of new data for skiplane configuration, if—

(1) The landing gear is fixed in both landplane and skiplane configurations;

(2) The climb requirements are not critical; and

(3) The climb reduction in the skiplane configurations is small (0.15 to 0.25 m/s (30 to 50 feet per minute)).

(c) The following information concerning normal procedures must be furnished:

(1) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds, and

(2) The airspeeds, procedures, and information pertinent to the use of the following airspeeds:

(i) The recommended climb speed and any variation with altitude.

(ii) V_X (speed for best angle of climb) and any variation with altitude.

(iii) The approach speeds, including speeds for transition to the balked landing condition.

(d) An indication of the effect on takeoff distance of a grass surface as determined from at least one takeoff measurement on short mown dry grass must be furnished.

VLA.145

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway.

(b) V_R must not be less than stalling speed, V_{S1}.

(c) The Airplane Flight Manual must provide the rotation speed established above for normal takeoff procedures.

If an Equivalent Level of Safety (ELOS) to CS–VLA 1143(g) and CS–VLA 1147(b) is requested, VLA.150 and VLA.155 are applicable.

VLA.150

Power or supercharger control attachment design must include:

(a) Features which are not likely to separate in flight (*i.e.,* a large load-bearing washer adjacent to the outside face of the power control cable rod end fitting which attaches to the fuel-metering device);

(b) Mandatory inspection intervals;

(c) Inspection procedures;

(d) Component replacement criteria.

VLA.155

Mixture control attachment design must include:

(a) Features which are not likely to separate in flight (*i.e.,* a large load-bearing washer adjacent to the outside face of the power control cable rod end fitting which attaches to the fuel-metering device);

(b) Mandatory inspection intervals;

(c) Inspection procedures;

(d) Component replacement criteria.

VLA.160

(a) For an airplane with independently controlled roll and directional controls, it must be possible to produce and to correct roll by unreversed use of the rolling control and to produce and to correct yaw by unreversed use of the directional control, up to the time the airplane stalls.

(b) For an airplane with interconnected lateral and directional controls (2 controls) and for an airplane with only one of these controls, it must be possible to produce and correct roll by unreversed use of the rolling control without producing excessive yaw, up to the time the airplane stalls.

(c) The wing level stall characteristics of the airplane must be demonstrated in flight as follows: The airplane speed must be reduced with the elevator control until the speed is slightly above the stalling speed, then the elevator control must be pulled back so that the rate of speed reduction will not exceed 1.9 km/h (one knot) per second until a stall is produced, as shown by an uncontrollable downward pitching motion of the airplane, or until the control reaches the stop. Normal use of the elevator control for recovery is allowed after the control has been held against the stop for not less than two seconds.

(d) Except where made inapplicable by the special features of a particular type of airplane, the following apply to the measurement of loss of altitude during a stall:

(1) The loss of altitude encountered in the stall (power on or power off) is the change in altitude (as observed on the sensitive altimeter testing installation) between the altitude at which the airplane pitches and the altitude at which horizontal flight is regained.

(2) If power or thrust is required during stall recovery, the power or thrust used must be that which would be used under the normal operating procedures selected by the applicant for this maneuver. However, the power used to regain level flight may not be applied until flying control is regained.

(e) During the recovery part of the maneuver, it must be possible to prevent more than 15° of roll or yaw by the normal use of controls.

(f) Compliance with the requirements of this section must be shown under the following conditions:

(1) Wing flaps. Retracted, fully extended and each intermediate normal operating position;

(2) Landing gear. Retracted and extended;

(3) Cowl flaps. Appropriate to configuration;

(4) Power

(i) Power off; and

(ii) 75% maximum continuous power. If the power-to-weight ratio at 75% of maximum continuous power results in extreme nose-up attitudes, the test may be carried out with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 stalling speed, V_{S0}, but the power may not be less than 50% maximum continuous power.

(5) Trim. The airplane trimmed at a speed as near 1.5 V_{S1} as practicable.

(6) Propeller. Full increase rpm position for the power off condition.

VLA.165

Turning flight and accelerated stalls must be demonstrated in tests as follows:

(a) Establish and maintain a coordinated turn in a 30° bank. Reduce speed by steadily and progressively tightening the turn with the elevator until the airplane is stalled or until the elevator has reached its stop. The rate of speed reduction must be constant, and—

(1) For a turning flight stall, may not exceed 1.9 km/h (one knot) per second; and

(2) For an accelerated stall, be 5.6 to 9.3 km/h (3 to 5 knots) per second with steadily increasing normal acceleration.

(b) When the stall has fully developed or the elevator has reached its stop, it must be possible to regain level flight by normal use of controls and without—

(1) Excessive loss of altitude;

(2) Undue pitchup;

(3) Uncontrollable tendency to spin;

(4) Exceeding 60° of roll in either direction from the established 30° bank; and

(5) For accelerated entry stalls, without exceeding the maximum permissible speed or the allowable limit load factor.

(c) Compliance with the requirements of this section must be shown with—

(1) Wing Flaps. Retracted and fully extended for turning flight and accelerated entry stalls, and intermediate, if appropriate, for accelerated entry stalls;

(2) Landing Gear. Retracted and extended;

(3) Cowl Flaps. Appropriate to configuration;

(4) Power. 75% maximum continuous power. If the power-to-weight ratio at 75% of maximum continuous power results in extreme nose-up attitudes, the test may be carried out with the power required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 V_{S0}, but the power may not be less than 50% maximum continuous power.

(5) Trim. 1.5 V_{S1} or minimum trim speed, whichever is higher.

VLA.170

(a) Three-control airplanes. The stability requirements for three-control airplanes are as follows:

(1) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, and approach configurations. This must be shown with power up to maximum continuous power, and at speeds from 1.2 V_{S1} up to maximum allowable speed for the condition being investigated. The angle of skid for these tests must be appropriate to the type of airplane. At larger angles of skid up to that at which full rudder is used or a control force limit in CS–VLA 143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_A, the rudder pedal force must not reverse.

(2) The static lateral stability, as shown by the tendency to raise the low wing in a slip, must not be negative for any landing gear and flap positions. This must be shown with power up to 75% of maximum continuous power at speeds above 1.2 V_{S1}, up to the maximum allowable speed for the configuration being investigated. The static lateral stability may not be negative at 1.2 V_{S1}. The angle of slip for these tests must be appropriate to the type of airplane, but in no case may the slip angle be less than that obtainable with 10° of bank.

(3) In straight, steady slips at 1.2 V_{S1} for any landing gear and flap positions, and for power conditions up to 50% of maximum continuous power, the rudder control movements and forces must increase steadily (but not necessarily linearly) as the angle of slip is increased up to the maximum appropriate to the type of airplane. At larger slip angles up to the angle at which full rudder or aileron control is used or a control force limit contained in CS–VLA 143 is obtained, aileron control movements and forces must not reverse. Enough bank must accompany slipping to hold a constant heading. Rapid entry into, or recovery from, a maximum slip may not result in uncontrollable flight characteristics. The applicant must demonstrate that lateral static stability characteristics do not result in any unsafe handling qualities.

(b) Two-control (or simplified control) airplanes. The stability requirements for two-control airplanes are as follows:

(1) The directional stability of the airplane must be shown by showing that, in each configuration, it can be rapidly rolled from a 45° bank in one direction to a 45° bank in the opposite direction without showing dangerous skid characteristics.

(2) The lateral stability of the airplane must be shown by showing that it will not assume a dangerous attitude or speed when the controls are abandoned for 2 minutes. This must be done in moderately smooth air with the airplane trimmed for straight level flight at 0.9 V_H (maximum speed in level flight with maximum continuous power) or V_C (design cruising speed), whichever is lower, with flaps and landing gear retracted, and with a rearward center of gravity.

If an ELOS to CS–VLA 161(b)(2)(ii) is requested, VLA.175 through VLA.210 are applicable.

VLA.175

Longitudinal trim. The airplane must maintain longitudinal trim under each of the following conditions:

(a) Approach with landing gear extended and with—

(i) A 3° angle of descent, with flaps retracted and at a speed of 1.4 V_{S1};

(ii) A 3° angle of descent, flaps in the landing position(s) at reference landing approach speed, V_{REF}; and

(iii) An approach gradient equal to the steepest used in the landing distance demonstrations of CS 23.75, flaps in the landing position(s) at V_{REF}.

VLA.180

For normal, utility and aerobatic category reciprocating engine-powered airplanes of 2,722 kg (6,000 lb) or less maximum weight, the reference landing approach speed, V_{REF}, must not be less than the greater of minimum control speed, V_{MC}, determined under CS 23.149(b) with the wing flaps in the most extended takeoff setting, and 1.3 V_{SO}.

VLA.185

(a) A steady approach at not less than V_{REF}, determined in accordance with CS 23.73(a), (b) or (c) as appropriate, must be maintained down to 15 m (50 ft) height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2% (3°) down to the 15 m (50 ft) height.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, porpoise, or water loop.

(d) It must be shown that a safe transition to the balked landing conditions of CS 23.77 can be made from the conditions that exist at the 15 m (50 ft) height, at maximum landing weight, or the maximum landing weight for altitude and temperature of CS 23.63(c)(2) or (d)(2), as appropriate.

VLA.190

(a) Each normal, utility, and aerobatic category reciprocating engine-powered airplane of 2,722 kg (6,000 lb) or less maximum weight must be able to maintain a steady gradient of climb at sea-level of at least 3.3% with—

(1) Takeoff power on each engine;

(2) The landing gear extended;

(3) The wing flaps in the landing position, except that if the flaps may safely be retracted in 2 seconds or less without loss of altitude and without sudden changes of angle of attack, they may be retracted; and

(4) A climb speed equal to V_{REF}, as defined in CS 23.73(a).

VLA.195

(a) It must be possible to carry out the following maneuvers without requiring the application of single-handed control forces exceeding those specified in CS 23.143(c), unless otherwise stated. The trimming controls must not be adjusted during the maneuvers:

(1) With power off, landing gear and flaps extended and the airplane as nearly as possible in trim at V_{REF}, obtain and maintain airspeeds between 1.1 V_{S0} and either 1.7 V_{S0} or V_{FE} (maximum flap extended speed), whichever is lower, without requiring the application of two-handed control forces exceeding those specified in CS 23.143(c).

(b) It must be possible, with a pilot control force of not more than 44.5 N (10 lbf), to maintain a speed of not more than V_{REF} during a power-off glide with landing gear and wing flaps extended.

VLA.200

It must be possible, while in the landing configuration, to safely complete a landing without exceeding the one-hand control force limits specified in CS 23.143(c) following an approach to land—

(a) At a speed of V_{REF} 9.3 km/h (5 knots);

(b) With the airplane in trim, or as nearly as possible in trim and without the trimming control being moved throughout the maneuver;

(c) At an approach gradient equal to the steepest used in the landing distance demonstration of CS 23.75;

(d) With only those power changes, if any, which would be made when landing normally from an approach at V_{REF}.

VLA.205

(a) Approach—It must be possible using a favorable combination of controls, to roll the airplane from a steady 30° banked turn through an angle of 60°, so as to reverse the direction of the turn within—

(1) For an airplane of 2,722 kg (6,000 lb) or less maximum weight, 4 seconds from initiation of roll; and

(2) For an airplane of over 2,722 kg (6,000 lb) maximum weight, 1,000/W + 1,300 but not more than 7 seconds, where W is weight in kg. (W + 2800/2200 but not more than 7 seconds where W is weight in lb.).

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction in the following conditions—

(1) Flaps in the landing position(s);

(2) Landing gear extended;

(3) All engines operating at the power for a 3° approach; and

(4) The airplane trimmed at V_{REF}.

VLA.210

(a) Landing. The stick force curve must have a stable slope at speeds between 1.1 V_{S1} and 1.8 V_{S1} with—

(1) Flaps in the landing position;

(2) Landing gear extended; and

(3) The airplane trimmed at—

(i) V_{REF}, or the minimum trim speed if higher, with power off; and

(ii) V_{REF} with enough power to maintain a 3° angle of descent.

Rechargeable Lithium Ion Battery

VLA.215

The applicant must consider the following safety objectives when showing compliance with regulations applicable to the rechargeable lithium ion battery.

Each rechargeable lithium ion battery installation must:

(a) Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion;

(b) Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging, and overheating;

(c) Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane;

(d) Meet the requirements of 14 CFR 23.2325(g);

(e) Not damage surrounding structure or adjacent systems, equipment, components, or electrical wiring from corrosive or any other fluids or gases that may escape in such a way as to cause a major or more-severe failure condition;

(f) Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells;

(g) Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane;

(h) Have a monitoring and warning feature that alerts the flightcrew when its charge state falls below acceptable levels if its function is required for safe operation of the airplane;

(i) Have a means to disconnect from its charging source in the event of an over-temperature condition, cell failure, or battery failure.

Issued in Washington, DC, on August 4, 2023.

Daniel J. Elgas,

Director, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–17084 Filed 8–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1706; Project Identifier MCAI–2023–00039–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by reports that the nose wheel steering selector valve (SSV) can be slow to

deactivate under low temperature conditions. This proposed AD would require replacing the affected SSV with a re-designed SSV that has an improved response time. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by September 25, 2023.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1706; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

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

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–1706; Project Identifier MCAI–2023–00039–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–02, dated January 11, 2023 (TC AD CF–2023–02) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states that following a runway excursion on a different model, an investigation revealed that the nose wheel SSV can be slow to deactivate under low temperature conditions. A similar SSV is installed on the airplanes to which this AD is applicable. In the event of an un-commanded steering input, a slow SSV deactivation could lead to a delayed transition to free caster mode and result in an aircraft runway excursion.

The FAA is proposing 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–2023–1706.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information.

- Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.
- Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

This service information specifies procedures for replacing the affected SSV with a re-designed SSV. These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in 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 and service information referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 442 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$5,542	$5,882	Up to $2,599,844.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–1706; Project Identifier MCAI–2023–00039–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 25, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) through (6) of this AD.

(1) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.

(2) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.

(3) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.

(4) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.

(5) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.

(6) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports that the nose wheel steering selector valve (SSV) can be slow to deactivate under low temperature conditions. The FAA is issuing this AD to address a possible delayed transition to free caster mode in the event of an un-commanded steering input. The unsafe condition, if not addressed, could result in an aircraft runway excursion.

(f) Compliance

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

(g) Required Action

Within 66 months or 3,200 flight hours, whichever occurs first after the effective date of this AD: Replace SSV part number (P/N) 23600–101 with SSV P/N 23600–103 in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletin listed in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g) – *Service Bulletin References*

Model	Bombardier Service Bulletin	Issue Date
BD-700-1A10	700-32-044, Revision 01	December 7, 2022
BD-700-1A10	700-32-6021, Revision 01	December 7, 2022
BD-700-1A10	700-32-6507, Revision 01	December 7, 2022
BD-700-1A11	700-1A11-32-031, Revision 01	December 7, 2022
BD-700-1A11	700-32-5021, Revision 01	December 7, 2022
BD-700-1A11	700-32-5507, Revision 01	December 7, 2022

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable Bombardier service bulletin listed in figure 2 to paragraph (h) of this AD.

Figure 2 to paragraph (h) – *Credit Service Bulletins*

Model	Bombardier Service Bulletin	Issue Date
BD-700-1A10	700-32-044	November 24, 2022
BD-700-1A10	700-32-6021	November 24, 2022
BD-700-1A10	700-32-6507	November 24, 2022
BD-700-1A11	700-1A11-32-031	November 24, 2022
BD-700-1A11	700-32-5021	November 24, 2022
BD-700-1A11	700-32-5507	November 24, 2022

(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 manager of the International Validation 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-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2023–02, dated January 11, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1706.

(2) For more information about this AD, contact Chirayu Gupta, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.

(ii) Bombardier Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.

(iii) Bombardier Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.

(iv) Bombardier Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.

(v) Bombardier Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.

(vi) Bombardier Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA,

email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on August 1, 2023.

Victor Wicklund,

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

[FR Doc. 2023–16874 Filed 8–8–23; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 161, 164, 184, and 186

[Docket No. FDA–2019–N–4750]

RIN 0910–AI15

Revocation of Uses of Partially Hydrogenated Oils in Foods; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to amend our regulations that provide for the use of partially hydrogenated oils (PHOs) in food in light of our determination that PHOs are no longer generally recognized as safe (GRAS). We are proposing to remove PHOs as an optional ingredient in the standards of identity for peanut butter and canned tuna. We are also proposing to revise FDA's regulations affirming food substances as GRAS pertaining to menhaden oil and rapeseed oil to no longer include partially hydrogenated forms of these oils, and delete the regulation affirming hydrogenated fish oil as GRAS as an indirect food substance. We are also proposing to revoke prior sanctions (*i.e.,* pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns based on our conclusion that these uses of PHOs may be injurious to health.

DATES: Either electronic or written comments on the proposed rule or its companion direct final rule must be submitted by October 23, 2023. If FDA receives any timely significant adverse comments on the direct final rule with which this proposed rule is associated, we will publish a document withdrawing the direct final rule within 30 days after the comment period ends and we will then proceed to respond to comments under this proposed rule using the usual notice and comment procedures.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 23, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://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 *http://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–N–4750 for ''Revocation of Uses of Partially Hydrogenated Oils in Foods.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://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.'' We will review this copy, including the claimed confidential information, in our 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 *http://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 *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ellen Anderson, Center for Food Safety and Applied Nutrition, Office of Food Additive Safety (HFS–255), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1309; or Carrol Bascus, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

A. Purpose of the Proposed Rule

The purpose of this action is to propose amendments to amend our regulations and revoke prior-sanctioned uses of PHOs to conform with the current state of scientific knowledge regarding the public health risks of PHOs. In June 2015, FDA published a declaratory order (Order) setting forth our final determination, based on the available scientific evidence and the findings of expert scientific panels, that there is no longer a consensus among qualified experts that PHOs, which are the primary dietary source of industrially produced *trans* fatty acids, are GRAS for any use in human food. The Order stated that we determined that this body of evidence established the health risks associated with the consumption of *trans* fat. In the Order, we recognized that there were some uses of PHOs in foods that are expressly authorized by GRAS affirmation regulations, acknowledged that there could be some uses recognized by ''prior sanction'' (and thus could not be regulated as a food additive), and stated that we would address such uses separate from the final determination. We also stated that we would consider taking further action, including revising certain standards of identity that list PHOs as optional ingredients.

As explained in the Order, there is a lack of convincing evidence that PHOs are GRAS. FDA has not approved a food additive petition for PHOs. Accordingly, we are proposing to remove PHOs from our food regulations in light of our determination that PHOs are no longer GRAS.

Furthermore, based on our current review of scientific data and information, as well as previous safety reviews performed to support various FDA actions regarding *trans* fat, we are proposing to prohibit all prior-sanctioned uses of PHOs. A prior sanction exempts a specific use of a substance in food from the definition of food additive and from all related food additive provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) if the use was sanctioned or approved prior to September 6, 1958. In accordance with FDA's general regulations regarding prior sanctions, we may revoke a prior-sanctioned use of a food ingredient where scientific data or information demonstrate that prior-sanctioned use of the food ingredient may be injurious to health. We have tentatively determined that the prior-sanctioned uses of PHOs may render food injurious to health. Consequently, we are proposing to revoke the prior-sanctioned uses of PHOs.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule if finalized, would remove PHOs as an optional ingredient in the standards of identity for peanut butter and canned tuna, revise the regulations affirming the use of menhaden oil and rapeseed oil as GRAS to delete language regarding partially hydrogenated forms of these oils, and revoke the regulation affirming hydrogenated fish oil as GRAS as an indirect food substance. We are also proposing to revoke prior sanctions (*i.e.,* pre-1958 authorization of certain uses) for the use of PHOs in margarine, shortening, and bread, rolls, and buns.

C. Legal Authority

We are proposing this rule consistent with our authority in sections 201, 401, 402, 409, and 701 of the FD&C Act (21 U.S.C. 321, 341, 342, 348, and 371). We discuss our legal authority in greater detail in section V of this document.

D. Costs and Benefits

We estimated the costs of removing PHO-containing foods from the market including those of product reformulation, relabeling products, changing food recipes, finding substitute ingredients, and changes in functional and sensory product properties, such as taste, texture, and shelf life. The benefits of the rule accrue from reduction of coronary heart diseases. Discounted at 7 percent over a 20-year period, the annualized primary cost estimate of the rule is $24.5 million with a lower bound estimate of $20.8 million and an upper bound estimate of $29.7 million. The annualized benefits of this rule discounted at 7 percent over 20-year period is $61.5 million for the primary estimate with a lower bound of $20.1 million and an upper bound of $120.7 million.

II. Companion Document to Direct Final Rulemaking

This proposed rule is a companion to the direct final rule published in the rules section of this issue of the **Federal Register**. This companion proposed rule provides the procedural framework to finalize the rule in the event the direct final rule receives any significant adverse comment and is withdrawn. The comment period for this companion proposed rule runs concurrently with the comment period for the direct final rule. Any comments received in response to this companion proposed rule will also be considered as comments regarding the direct final rule. FDA is publishing the direct final rule because we believe the rule contains noncontroversial changes and there is little likelihood that there will be significant adverse comments opposing the rule.

A significant adverse comment is defined as a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether an adverse comment is significant and warrants terminating a direct final rulemaking, we will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. A comment recommending a regulation change in addition to those in the direct final rule would not be considered a significant adverse comment unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to a part of the direct final rule and that part can be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of the significant adverse comment.

If any significant adverse comments to the direct final rule are received during the comment period, FDA will publish,

within 30 days after the comment period ends, a notice of significant adverse comment and withdraw the direct final rule. If we withdraw the direct final rule, any comments received will be considered comments on the proposed rule and will be considered in developing a final rule using the usual notice-and-comment procedure.

If no significant adverse comment is received in response to the direct final rule during the comment period, no further action will be taken related to this proposed rule. Instead, we will publish a document confirming the effective date within 30 days after the comment period ends. Additional information about direct final rulemaking procedures is set forth in the document entitled ''Guidance for FDA and Industry: Direct Final Rule Procedures,'' announced and provided in the **Federal Register** of November 21, 1997 (62 FR 62466). The guidance may be accessed at: *https://www.fda.gov/RegulatoryInformation/Guidances/ucm125166.htm.*

III. Table of Abbreviations/Acronyms Used in This Document

Abbreviation/ acronym	What it means
CFR	Code of Federal Regulations.
CHD	Coronary heart disease.
CVD	Cardiovascular disease.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
FR	Federal Register.
GRAS	Generally Recognized as Safe.
IP–TFA	Industrially Produced *Trans* Fatty Acid.
LEAR oil	Low Erucic Acid Rapeseed Oil.
%en	Percentage of Total Energy Intake per Day.
PHOs	Partially Hydrogenated Oils.
USC	United States Code.
USDA	United States Department of Agriculture.

IV. Background

In the **Federal Register** of November 8, 2013 (78 FR 67169), we announced our tentative determination that, based on currently available scientific information, PHOs are no longer GRAS under any condition of use in human food and, therefore, are food additives. Section 201(s) of the FD&C Act (21 U.S.C. 321(s)) defines a food additive, in part, as a substance that is not GRAS, and section 402(a)(2)(C) of the FD&C Act (21 U.S.C. 342(a)(2)(C)) establishes that food bearing or containing a food additive that is unsafe within the meaning of section 409 of the FD&C Act (21 U.S.C. 348) is adulterated. Section 409 of the FD&C Act establishes that a food additive is unsafe for the purposes of section 402(a)(2)(C) of the FD&C Act unless certain criteria are met, such as conformance with a regulation prescribing the conditions under which the additive may be safely used. In the **Federal Register** of June 17, 2015 (80 FR 34650), we published a declaratory order (the Order) announcing our final determination that there is no longer a consensus among qualified experts that PHOs, the primary dietary source of industrially produced *trans* fatty acids (IP–TFA), are GRAS for any use in human food. For a discussion of the science regarding PHOs, we refer readers to the Order and to our tentative determination that PHOs are no longer GRAS for any use in food (see 78 FR 67169 at 67171).

The Order acknowledged (see 80 FR 34650 at 34651) that the regulations at 21 CFR part 184, ''Direct Food Substances Affirmed as Generally Recognized as Safe,'' (GRAS affirmation regulations) include partially hydrogenated versions of two oils: (1) menhaden oil (§ 184.1472(b) (21 CFR 184.1472(b))); and (2) low erucic acid rapeseed (LEAR) oil (§ 184.1555(c)(2) (21 CFR 184.1555(c)(2))). Partially hydrogenated menhaden oil was affirmed as GRAS for use in food (54 FR 38219, September 15, 1989) on the basis that the oil is chemically and biologically comparable to commonly used partially hydrogenated vegetable oils such as corn and soybean oils. Partially hydrogenated LEAR oil was affirmed as GRAS for use in food (50 FR 3745, January 28, 1985) based on published safety studies (*i.e.,* scientific procedures) (21 CFR 170.30). In the Order, we stated that we would amend the GRAS affirmation regulations for menhaden oil and LEAR oil (§§ 184.1472 and 184.1555) in a future rulemaking (see 80 FR 34650 at 34651, 34655, and 34667).

In addition, our GRAS affirmation regulation for hydrogenated fish oil at § 186.1551 (21 CFR 186.1551) (44 FR 28323, May 15, 1979), provides for partial hydrogenation of oils expressed from fish, primarily menhaden, and secondarily herring or tuna, used as a constituent of cotton and cotton fabrics used for dry food packaging.

Certain standard of identity regulations include PHOs as an optional ingredient. Since 1990, the standard of identity for canned tuna at § 161.190 (21 CFR 161.190) has provided for the use of PHOs as an optional seasoning or flavoring ingredient in canned tuna in water (55 FR 45795, October 31, 1990). Since 1968, the standard of identity for peanut butter at § 164.150 (21 CFR 164.150) has provided for the use of PHOs as an optional stabilizing ingredient (33 FR 10506, July 24, 1968).

In addition, based on a review of our regulations and on comments submitted in response to our tentative determination, ''prior sanctions'' exist for the use of PHOs in margarine, shortening, and bread, rolls, and buns. As discussed in more detail in section VI of this document, a prior sanction exempts a specific use of a substance in food if the use was sanctioned or approved prior to September 6, 1958, from the definition of a food additive under section 201(s)(4) of the FD&C Act and from all related food additive provisions of the FD&C Act.

V. Legal Authority

We are issuing this proposed rule under the legal authority of sections 201, 401, 402, 409, and 701 of the FD&C Act. The FD&C Act defines ''food additive,'' in relevant part, as any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of food, if such substance is not generally recognized by experts as safe under the conditions of its intended use (section 201(s) of the FD&C Act). The definition of ''food additive'' exempts any uses that are the subject of a prior sanction (section 201(s)(4) of the FD&C Act). Food additives are deemed unsafe except to the extent that FDA approves their use (section 409(a) of the FD&C Act). Food is adulterated when it contains an unapproved food additive (section 402(a)(2)(C) of the FD&C Act). In addition, we may establish standards of identity for foods to promote honesty and fair dealing in the interest of consumers (section 401 of the FD&C Act). Section 701(a) of the FD&C Act provides the authority to issue regulations for the efficient enforcement of the FD&C Act.

With respect to prior sanctions, section 201(s)(4) of the FD&C Act exempts from the definition of a food additive any substance used in accordance with a sanction or approval granted under the FD&C Act, the Meat Inspection Act, or the Poultry Products Inspection Act before the enactment of the Food Additives Amendment of 1958 on September 6, 1958. This type of sanction or approval is referred to as a ''prior sanction.'' Our regulation, at 21 CFR 170.3(l), defines this term as an explicit approval granted with respect to use of a substance in food before September 6, 1958, under the FD&C Act, the Meat Inspection Act, or the Poultry Products Inspection Act. Another FDA

regulation (21 CFR 181.5(a)) states that a prior sanction exists only for a specific use(s) of a substance in food, *i.e.,* the level(s), condition(s), product(s), etc., for which there was explicit approval by FDA or the U.S. Department of Agriculture (USDA) before September 6, 1958. The ''explicit approval'' needed to establish a prior sanction may be either formal or informal. If a formal approval, such as a food standard regulation issued under the FD&C Act before 1958, does not exist, correspondence issued by authorized FDA officials can constitute an informal prior sanction.

In accordance with FDA's general regulations regarding prior sanctions found at 21 CFR 181.1(b) and 181.5(c), we may revoke a prior-sanctioned use of a food ingredient where scientific data or information demonstrate that prior-sanctioned use of the food ingredient may be injurious to health and, thus, adulterates the food under section 402 of the FD&C Act.

VI. Description of the Proposed Rule

The proposed rule, if finalized, would:

- Amend the food standard for canned tuna at § 161.190 to no longer include partially hydrogenated vegetable oil as an optional ingredient for seasoning in canned tuna packed in water;
- Amend the food standard for peanut butter at § 164.150 to no longer include partially hydrogenated vegetable oil as an optional stabilizing ingredient in peanut butter;
- Revise § 184.1472 to delete references to partially hydrogenated menhaden oil;
- Revise § 184.1555 to delete references to partially hydrogenated LEAR oil;
- Revoke § 186.1551, which permits the use of partially hydrogenated fish oil in cotton and cotton fabrics used for dry food packaging; and
- Revoke the prior sanctions for the use of PHOs in margarine, shortening, and bread, rolls, and buns.

A. Amendment of Standard of Identity Regulations

Standard of identity regulations for food are issued under section 401 of the FD&C Act and do not provide either an authorization or an exemption from regulation as a food additive under section 409 of the FD&C Act. FDA's standards of identity, among other things, establish the common or usual name for a food and define the basic nature of the food, generally in terms of the types of ingredients that it must contain (*i.e.,* mandatory ingredients) and that it may contain (*i.e.,* optional ingredients). The purpose of food standards is to promote honesty and fair dealing in the interest of consumers. Therefore, the inclusion of PHOs in certain standards of identity does not necessarily mean that their use is permissible under section 409 of the FD&C Act. As such, our proposed changes to these standard of identity regulations are merely for clarification purposes.

1. Canned Tuna—§ 161.190

Since 1990, our regulations, at § 161.190(a) have described canned tuna as processed flesh of fish of the species enumerated in § 161.190(a)(2), commonly known as tuna, in any of the forms of pack specified in § 161.190(a)(3) (55 FR 45795). The standard of identity for canned tuna includes, as an optional ingredient, edible vegetable oil or partially hydrogenated vegetable oil, excluding olive oil, to be used alone or in combination, as seasoning in canned tuna packed in water (§ 161.190(a)(6)(viii)).

The proposed rule would delete the words ''or partially hydrogenated vegetable oil'' and ''alone or in combination'' from the list of optional ingredients in canned tuna (§ 161.190(a)(6)(viii)). The remaining term ''edible vegetable oil'' would not include the use of any partially hydrogenated oils in canned tuna. (See Ref. 1.)

2. Peanut Butter—§ 164.150

Since 1968, our regulations, at § 164.150 have described standardized peanut butter as a product prepared by grinding one of the shelled and roasted peanut ingredients provided for by § 164.150(b), to which may be added safe and suitable seasoning and stabilizing ingredients provided for by § 164.150(c), if such seasoning and stabilizing ingredients do not, in the aggregate, exceed 10 percent of the weight of the finished food (33 FR 10506).

The standard of identity for peanut butter, at § 164.150(c), includes oil products as optional stabilizing ingredients, which must be hydrogenated vegetable oils; for purposes of § 164.150(c), hydrogenated vegetable oil is considered to include partially hydrogenated vegetable oil.

The proposed rule would revise the standard of identity for peanut butter by deleting the reference to partially hydrogenated vegetable oil in § 164.150(c). The proposed rule also would make a minor editorial change by replacing ''shall'' with ''must.''

B. Amendment/Revocation of GRAS Affirmation Regulations

1. Menhaden Oil—§ 184.1472

Since 1997, our GRAS affirmation regulations for menhaden oil at § 184.1472(a) have described menhaden oil as being prepared from fish of the genus *Brevoortia,* commonly known as menhaden, by cooking and pressing (62 FR 30756, June 5, 1997). The resulting crude oil is then refined using the following steps: storage (winterization), degumming (optional), neutralization, bleaching, and deodorization.

Our regulations, at § 184.1472(b), address the preparation of partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(1)), the specifications for partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(2)), the uses of partially hydrogenated and hydrogenated menhaden oils (§ 184.1472(b)(3)), and the name to be used on the product's label (§ 184.1472(b)(4)).

The proposed rule would amend the GRAS affirmation regulation for menhaden oil at § 184.1472 to delete references to partially hydrogenated menhaden oil from § 184.1472(b), (b)(1), (b)(2), (b)(2)(iv), (b)(3), and (b)(4). The proposed rule also would change the iodine value specification for hydrogenated menhaden oil from the current specification of ''not more than 10,'' to ''not more than 4.'' This is consistent with our definition of PHOs in the Order. For the purposes of the Order, we defined PHOs as fats and oils that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value greater than 4 (80 FR 34650 at 34651). The proposed rule also would make minor editorial changes, such as referring to hydrogenated menhaden oil (singular) rather than to hydrogenated menhaden oils (plural) and substituting ''is'' for ''are'' to reflect that the rule would refer to only hydrogenated menhaden oil.

2. Low Erucic Acid Rapeseed Oil—§ 184.1555

Since 1985, our GRAS affirmation regulations for LEAR oil, at § 184.1555(c) have described LEAR oil, also known as canola oil, as the fully refined, bleached, and deodorized edible oil obtained from certain varieties of *Brassica napus* or *B. campestris* of the family *Cruciferae* (50 FR 3745 at 3755). The plant varieties are those producing oil-bearing seeds with a low erucic acid content. Chemically, low erucic acid rapeseed oil is a mixture of triglycerides, composed of both saturated and unsaturated fatty acids, with an erucic acid content of no more

than 2 percent of the component fatty acids. The regulation provides for the partial hydrogenation of LEAR oil (§ 184.1555(c)(2)) and discusses the oil's purity (§ 184.1555(c)(3)) and uses in food (§ 184.1555(c)(4)).

The proposed rule would delete § 184.1555(c)(2) entirely, delete all mention of partially hydrogenated LEAR oil from § 184.1555(c)(3) and (4), and redesignate current § 184.1555(c)(3) and (4) as § 184.1555(c)(2) and (3), respectively.

3. Hydrogenated Fish Oil—§ 186.1551

Since 1979, our GRAS affirmation regulations for hydrogenated fish oil at § 186.1551 have described hydrogenated fish oil as a class of oils produced by the partial hydrogenation of oils expressed from fish, primarily menhaden and secondarily herring or tuna (44 FR 28323). The regulation allows the use of this oil as a constituent of cotton and cotton fabrics used for dry food packaging. It was noted in the final rule entitled ''Substances Generally Recognized as Safe and Indirect Food Substances Affirmed as Generally Recognized as Safe; Hydrogenated Fish Oil'' that no reports of a prior-sanctioned use for hydrogenated fish oil were submitted in response to the proposed rule, and therefore, in accordance with that proposal, any right to assert a prior sanction for a use of hydrogenated fish oil under conditions different from those set forth in this regulation had been waived (44 FR 28323). Prior sanctions for hydrogenated fish oil that differ from the use set forth in the GRAS affirmation regulations do not exist or have been waived (§ 186.1551(e)).

The proposed rule would delete the GRAS affirmation regulations for hydrogenated fish oil at § 186.1551 entirely. Our earlier determination that there are no prior sanctions for this ingredient different from the use provided for in § 186.1551 or that any other prior sanctions have been waived remains in effect.

C. Comments on Prior-Sanctioned Uses of PHOs

We stated in our tentative determination that we were not aware that FDA or USDA had granted any explicit approval for any use of PHOs in food before the 1958 Food Additives Amendment to the FD&C Act (78 FR 67169 at 67171) and requested comments on whether there was knowledge of an applicable prior sanction for the use of PHOs in food (78 FR 67169 at 67174). We discuss the comments in this section. In addition, we tentatively conclude that any prior sanctions for other uses of PHOs in food different from the uses discussed in sections VI.C.1, 2, and 3 of this proposed rule do not exist or have been waived.

1. GRAS Affirmation Regulations for Menhaden Oil, LEAR Oil, and Hydrogenated Fish Oil

As noted in the Order we acknowledged that we had, in our regulations, previously affirmed as GRAS the use of PHOs in certain foods or food contact substances (80 FR 34650 at 34651). We describe these regulations and our proposed revocation elsewhere in this proposed rule. Although some comments on our tentative determination suggested that these uses are prior-sanctioned, in each case the regulation affirming the status of the use as GRAS post-dates 1958. We have no evidence that the uses affirmed for menhaden oil (§ 184.1472) or LEAR oil (§ 184.1555) are prior-sanctioned. In the case of hydrogenated fish oil (§ 186.1551), any prior sanctions for this ingredient different from the use in the GRAS affirmation regulation do not exist or have been waived (§ 186.1551(e)).

2. Canned Tuna and Peanut Butter Standards of Identity

Some comments identified the standards of identity for canned tuna (§ 161.190) and peanut butter (§ 164.150) as providing proof of prior sanction of PHOs because ''partially hydrogenated vegetable oil'' is explicitly listed as an optional ingredient in each of those regulations. As discussed in section VI.A of this document, the standards of identity for canned tuna and peanut butter both post-date 1958. We have no evidence of any prior sanctions for the use of PHOs as described in the standards of identity for canned tuna and peanut butter.

3. Mayonnaise, French Dressing, and Salad Dressing Standards of Identity

Some comments identified the pre-September 6, 1958, standards of identity for mayonnaise (21 CFR 169.140), salad dressing (21 CFR 169.150), and French dressing (21 CFR 169.115 (revoked effective February 14, 2022 (87 FR 2038))) and claimed that they constituted prior sanctions for PHOs. The comments acknowledged that these standards did not explicitly list PHOs but argued that because the standards allow use of ''edible vegetable oil'' in the standardized products, they were understood by both FDA and industry to include PHOs because vegetable oil can be hydrogenated.

We issued the standards of identity for mayonnaise, French dressing, and salad dressing in 1950 (15 FR 5227, August 12, 1950). They permit use of ''edible vegetable oil'' in the standardized products. No comments to our tentative determination identified any reference to hydrogenation of oils in the rulemaking issuing these standards. No comments suggested that industry used PHOs in these products at the time or that industry is currently using PHOs in these products. We understand that, since at least 1940, hydrogenation changes the physical properties of an oil and therefore, changes a product's identity (see Ref. 1, discussing labeling for, among other things, ''vegetable oils which have not had their identity changed through hydrogenation . . .''). Thus, the references to ''edible vegetable oil'' in these standards, without mention of hydrogenation or hardening, do not include PHOs or fully hydrogenated oils. Therefore, the evidence does not provide an adequate basis on which to establish a prior sanction.

4. Margarine, and Bread, Rolls, and Buns Standards of Identity, and Shortening

Some comments identified the pre-September 6, 1958, standards of identity for bread, rolls, and buns (§ 136.110 (21 CFR 136.110)), and margarine (§ 166.110 (21 CFR 166.110)), and claimed that they constituted prior sanctions for PHOs. The comments acknowledged that these standards did not explicitly list PHOs but argued that because the standards allow use of ''shortening'' (bread, rolls, and buns), and ''oil'' (margarine) in the standardized products, they were understood by both FDA and industry to include PHOs because shortening and oil can be hydrogenated. Moreover, the comments acknowledged that, while there is no standard of identity for shortening that mentions PHOs specifically, historical evidence shows that shortening was generally understood to contain PHOs before 1958.

We issued the standard of identity for margarine in 1941 (6 FR 2761, June 7, 1941). At that time, the standard of identity stated that oleomargarine is prepared with one or more of several optional fat ingredients, including the rendered fat, or oil, or stearin derived therefrom (any or all of which may be hydrogenated), of cattle, sheep, swine, or goats or any vegetable food fat or oil, or oil or stearin derived therefrom (any or all of which may be hydrogenated) (6 FR 2761 at 2762). The standard of identity, as it existed in 1941, contained no specific limitations on these ingredients. The current standard of

identity (now codified at § 166.110) states, in relevant part, that margarine may include edible fats and/or oils from animals, vegetables, or fish, or mixtures of these, which may have been subjected to an accepted process of physico-chemical modification (§ 166.110(a)(1)). The standard of identity for margarine also states that margarine ''may contain small amounts of other lipids, such as phosphatides or unsaponifiable constituents, and of free fatty acids naturally present in the fat or oil'' (id.).

We issued the standard of identity for bread, rolls, and buns in 1952 (17 FR 4453, May 15, 1952). The standard of identity, which is now codified at § 136.110, identifies ''shortening'' as an optional ingredient. We initially proposed a more detailed description of the term ''shortening'' in 1941 that was very similar to the term used in the margarine standard issued that same year; that description indicated that shortening is composed of fat or oil from animals, vegetables, or fish, any or all of which may be hydrogenated, or of butter, or any combination of two or more such articles (6 FR 2771, June 7, 1941). However, the final rule that we issued in 1952 simply referred to ''shortening'' and did not prescribe the contents of or otherwise define ''shortening'' (17 FR 4453). Similarly, the current standard of identity mentions ''shortening,'' but does not prescribe the contents of or otherwise define ''shortening'' (see § 136.110(c)(5)). Additionally, the standard of identity, as it existed in 1952, contained no specific limitations on these ingredients.

In addition to identifying these standards of identity, some comments to our tentative determination stated that the reference to hydrogenation in the pre-September 6, 1958, standard of identity for margarine was likely to have meant partially hydrogenated oils as a practical matter, based on the inherent difference in the functional characteristics of partially and fully hydrogenated oils and the history of use of PHOs in margarine products.

Other comments submitted historical evidence relating to widespread use of PHOs in margarine and shortening before 1958. This evidence included a 1945 USDA publication, ''Foods—Enriched, Restored, Fortified'' (Ref. 2), that described margarine by saying: ''As it is made by 41 manufacturing plants in the United States, margarine contains a mixture of animal fats and vegetable oils or one or the other—fats that have been used as food for centuries. These are partially hydrogenated and blended to give the right spreading consistency.'' The comments also submitted two patents, one from 1915 for ''[a] homogeneous lard-like food product consisting of an incompletely hydrogenized vegetable oil,'' (Ref. 3) and one from 1957 for ''fluid shortening,'' stating ''[s]hortenings heretofore available for baking have included . . . compounded or blended shortenings, made from mixtures of naturally hard fats or hydrogenated vegetable oils with liquid, soft, or partially hydrogenated vegetable oils'' (Ref. 4). One comment cited a Supreme Court decision regarding the patentability of the product of partial hydrogenation of vegetable oil for use as shortening (*Berlin Mills Co.* v. *Procter & Gamble Co.,* 254 U.S. 156 (1920)). In finding the 1915 patent invalid, the Court held that ''it was known before [the patentee] took up the subject that a vegetable oil could be changed into a semi-solid, homogeneous, substance by a process of hydrogenation arrested before completion and that it might be edible'' (*Berlin Mills,* 254 U.S. at 165).

Some comments said that we intended to include PHOs in the terms ''shortening'' and ''oil . . . (any or all of which may be hydrogenated)'' used in these pre-1958 standards of identity. One comment said that we have, in other contexts, used the term ''hydrogenated oils'' when we intended to refer to PHOs (see, *e.g.,* 68 FR 41434 at 41443, July 11, 2003 (''*trans* fatty acids (provided by food sources of hydrogenated oil)'') and that the term ''partially hydrogenated'' did not appear in our regulations until 1978 (43 FR 12856, March 28, 1978 (amending the food labeling regulations by substituting ''hydrogenated'' and ''partially hydrogenated'' for ''saturated'' and ''partially saturated'' when describing a fat or oil ingredient)). Additionally, in trade correspondence in 1940, we described three general types of shortening in response to a question about ingredient labeling; we said that the types of shortening were: ''(1) vegetable shortenings composed wholly of mixtures of edible vegetable oils, which have been subjected to a chemical hardening process known as hydrogenation; (2) mixtures of vegetable oils with or without varying proportions of hardened vegetable oils and with edible animal fats; and (3) hydrogenated mixtures of vegetable oils and marine animal oils (Ref. 1).'' In addition, during a rulemaking regarding oils and fats, we used the phrase ''oil . . . (any or all of which may be hydrogenated)'' and acknowledged that this category included PHOs (36 FR 11521, June 15, 1971). We proposed that, if the vegetable fats or oils present are hydrogenated, the ingredient declaration should include the term ''hydrogenated,'' ''partially hydrogenated,'' or ''hardened,'' and gave an example of ''partially hydrogenated cottonseed oil'' (36 FR 11521).

Thus, a prior sanction, as provided for in section 201(s)(4) of the FD&C Act, exists for the uses of PHOs in margarine, shortening, and bread, rolls, and buns. However, as discussed in the next section, we are proposing to revoke the prior sanction for these uses.

VII. Revocation of Prior-Sanctioned Uses of PHOs

We have tentatively concluded that there are prior-sanctioned uses of PHOs in margarine, shortening, and bread, rolls, and buns, and that these uses may be injurious to health and may adulterate food under section 402 of the FD&C Act. Therefore, we are proposing to revoke the prior sanction for the uses of PHOs in margarine, shortening, and bread, rolls, and buns. Our tentative conclusion is based on our current review of scientific data and information, as well as previous safety reviews performed in support of various FDA actions regarding *trans* fat and PHOs spanning 1999 to 2018 (see 64 FR 62746, November 17, 1999; 68 FR 41434, July 11, 2003; 78 FR 67169, November 8, 2013; 80 FR 34650, June 17, 2015; 83 FR 23382, May 21, 2018). In our review for this proposed rule, we estimated the dietary exposure for IP–TFA from the prior-sanctioned uses of PHOs in margarine, shortening, and bread, rolls, and buns (Ref. 5) and conducted a quantitative risk assessment for the coronary heart disease (CHD) and cardiovascular disease (CVD) risks associated with this estimated exposure to IP–TFA (Ref. 6). We also conducted an updated scientific review of published studies and evaluations by expert panels on the safety of *trans* fat (Ref. 7).

As for the standards of identity for margarine and bread, rolls, and buns, no corresponding revision to these regulations would be necessary. Each standard, as currently written, is limited so that only ''safe and suitable'' ingredients may be used, and neither current standard expressly refers to hydrogenation or partial hydrogenation (see §§ 136.110(b) and 166.110(a)). Moreover, our regulations provide that no provision of any regulation prescribing a definition and standard of identity is to be construed as affecting the concurrent applicability of the general provisions of the FD&C Act and our regulations (see § 130.3(c) (21 CFR 130.3(c))). For example, all standard of

identity regulations contemplate that the food and all articles used as components or ingredients must not be poisonous or deleterious (see § 130.3(c); see also § 130.3(d) (further defining ''safe and suitable'')). As for shortening, our standards of identity do not describe the contents of or otherwise define ''shortening,'' so no amendment is necessary.

VIII. Trans Fat Consumption Health Effects

A. Updated Scientific Literature and Expert Opinion Review

Our Order references three safety memoranda prepared by FDA that document our review of the available scientific evidence regarding human health effects of *trans* fat, focusing on the adverse effects of *trans* fat on risk of CHD (Refs. 8 to 10). In addition, we previously reviewed the health effects of IP–TFA and PHOs in 2013 in support of our tentative determination regarding the GRAS status of PHOs (78 FR 67169, Docket No. FDA–2013–N–1317). Our Order announced our final determination that there is no longer a consensus among qualified experts that PHOs are GRAS for any use in human food (80 FR 34650). The safety reviews for the Order, together with the previous safety reviews of IP–TFA and PHOs, provided important scientific background information for our review and denial of a food additive petition for certain uses of PHOs in 2018 (83 FR 23382).

We based our Order on the available scientific evidence that included results from controlled feeding studies on *trans* fatty acid consumption in humans, findings from long-term prospective epidemiological studies, and the opinions of expert panels that there is no threshold intake level for IP–TFA that would not increase an individual's risk of CHD. We also published a safety review for specific uses of PHOs in a notice denying a food additive petition for certain uses of PHOs in food (83 FR 23382, Docket No. FDA–2015–F–3663)). This safety review reinforced our 2015 scientific review supporting the final determination that PHOs are not GRAS for use in human food. We denied the food additive petition because we determined that the petition did not contain convincing evidence to support the conclusion that the proposed uses of PHOs were safe (83 FR 23382 at 23391). All the previously mentioned safety reviews of IP–TFA and PHOs provide important scientific background information for review of the health effects of the prior-sanctioned uses of PHOs.

We are not aware of any new, scientific literature on the safety of IP–TFA and PHOs that would cause us to reconsider our previous safety conclusions. International and U.S. expert panels, using additional scientific evidence available since 2015, have continued to recognize the positive linear relationship between increased *trans* fat intake and increased low density lipoprotein cholesterol blood levels associated with increased CHD risk, have concluded that *trans* fats are not essential nutrients in the diet, and have recommended that *trans* fat consumption be kept as low as possible.

B. Estimated Exposure to Trans Fat From Prior-Sanctioned Uses of PHOs

For this proposed rule, in order to estimate the risks to CHD and CVD associated with consumption of IP–TFA from prior-sanctioned uses of PHOs, we first had to estimate dietary exposure to IP–TFA from these uses of PHOs. We used two non-consecutive days of 24-hour dietary recall data from the 2011–2014 National Health and Nutrition Examination Survey (NHANES) to estimate dietary exposure to IP–TFA from the use of PHOs in margarine and shortening (which includes the prior-sanctioned uses in bread, rolls, and buns due to the use of margarine and/or shortening in the food). We included all foods reported in NHANES that contained margarine or shortening as an ingredient in our analysis. We applied levels of *trans* fat commonly used in margarine and shortening manufactured before the publication of the tentative determination in 2013. These use levels reflect our conservative assumption that manufacturers may revert back to using PHOs at these higher use levels in margarine and shortening if prior sanctions are not revoked. For the U.S. population aged 2 years and older, we estimated a cumulative mean dietary IP–TFA exposure of 0.3 grams per person per day for typical *trans* fat levels, for both margarine and shortening, based on 53 percent of the population consuming margarine or shortening (Ref. 5). The mean IP–TFA exposure for the total population (*i.e.,* per capita intake) was also determined (Ref. 7). Expressed as a percentage of total energy intake per day (%en) based on a 2000 calorie diet, the mean per-capita IP–TFA exposure for typical IP–TFA levels in foods was estimated to be 0.07%en (Ref. 7).

C. Risk Estimates Associated With Prior-Sanctioned Uses of PHOs

We used four risk methods to estimate change in CHD and CVD risk associated with 0.07%en IP–TFA exposure from prior-sanctioned uses of PHOs (Ref. 6). Our assessment methodology is documented in our memorandum (Ref. 6).

Our quantitative risk assessments demonstrate that there is a substantial health risk associated with 0.07%en from IP–TFA from prior-sanctioned uses of PHOs (Ref. 6). Along with our Order, our denial of the food additive petition for certain uses of PHOs in food, and our recent updated scientific literature review on the safety of PHOs and *trans* fat (Ref. 7), these analyses provide further support for the revocation of the prior-sanctioned uses of PHOs. The scientific consensus is that there is no threshold intake level of IP–TFA that would not increase an individual's risk of CHD (Ref. 7). Thus, based on the available data, we tentatively conclude that PHOs used in food may cause the food to be injurious to health and that the use of PHOs as ingredients in margarine, shortening, and bread, rolls, and buns would adulterate these foods under section 402(a)(1) of the FD&C Act.

IX. Economic Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866, 13563, and 14094 direct us to assess all costs, benefits, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of [the Office of Information and Regulatory Affairs (OIRA)] for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities.'' OIRA has determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 Section 3(f)(1).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule may require some

small business entities to undertake costly reformulations, we find that the proposed rule will have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

The benefits of this proposed rule are expected to accrue from the number of coronary heart diseases averted from discontinued use of foods made with PHOs. The removal of PHO containing foods from the marketplace will limit their access by most consumers. Such action will protect the public by reducing the health risk of developing CHDs and improving population health among those who would otherwise consume products containing PHOs. Continual use of PHOs is associated with increased CHD and CVDs. Per capita higher intake of PHOs can lead to elevated risk of CHD and CVDs among the U.S. population. Therefore, FDA notes that the benefit of this rule relative to baseline market conditions are expected to decrease over time as PHO containing products exit the marketplace. The annualized benefits of this rule at a 7 percent discount rate over a 20-year period is $61.5 million for the primary estimate with a lower bound of $20.1 million and an upper bound of $120.7 million.

The quantified costs of the rule are from reformulating manufactured products currently produced with PHOs, relabeling products that contain PHOs, changing recipes for some PHO containing breads by retail bakeries, finding substitute ingredients as well as costs arising from functional and sensory product properties such as taste and texture. The annualized cost of the rule at a 7 percent discount rate over a 20-year period has a primary estimate of $24.5 million with a lower bound estimate of $20.8 million and an upper bound estimate of $29.7 million.

Table 1 presents a summary of costs and benefits of the proposed rule.

TABLE 1—SUMMARY OF BENEFITS, COSTS AND DISTRIBUTIONAL EFFECTS OF PROPOSED RULE, IN 2020 MILLION DOLLARS

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year	$61.5	$20.1	$120.7	2020	7	20	
	58.3	19.1	114.3	2020	3	20	
Annualized Quantified					7		
					3		
Qualitative							
Costs:							
Annualized Monetized millions/year	24.5	20.8	29.7	2020	7	20	
	20.2	17.1	33.2	2020	3	20	
AnnualizedQuantified					7		
					3		
Qualitative							
Transfers:							
Federal Annualized Monetized millions/year					7		
					3		
From/To	From:			To:			
Other Annualized Monetized millions/year					7		
					3		
From/To	From:			To:			

Effects:
State, Local or Tribal Government: None.
Small Business: Potential impact on small business entities that are currently continuing to use or produce PHOs and PHO containing ingredients in their products.
Wages: None.
Growth: None.

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 11) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

X. Analysis of Environmental Impacts

We have determined under 21 CFR 25.32(m) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set

forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would 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. We invite comments from tribal officials or other interested parties, on any potential impact on Indian tribes from this proposed action.

XIII. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XIV. References

The following references are on display with the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Trade Correspondence TC–62 (Feb. 15, 1940), reprinted in Kleinfeld, Vincent A. and Charles Wesley Dunn, *Federal Food, Drug, and Cosmetic Act Judicial and Administrative Record 1938–1949.*
2. U.S. Bureau of Human Nutrition and Home Economics (1945). *Foods—Enriched, Restored, Fortified.* USDA, page 11. available at *https://naldc.nal.usda.gov/download/5804422/PDF.*
3. Serial No. 591,726, Record No. 1,135,351, U.S. Patent Office, Official Gazette of the U.S. Patent Office, April 13, 1915, at 492; available at: *https://www.uspto.gov/learning-and-resources/official-gazette/official-gazette-patents.*
4. Serial No. 639,222, Record No. 2,909,432, U.S. Patent Office, Official Gazette of the U.S. Patent Office, October 20, 1959, at 697; available at: *https://www.uspto.gov/learning-and-resources/official-gazette/official-gazette-patents.*
5. FDA, Memorandum from D. Doell to E. Anderson, Exposure to *Trans* Fat from the Prior-Sanctioned Uses of Partially Hydrogenated Oils (PHOs), October 23, 2019.
6. FDA, Memorandum from J. Park to E. Anderson, Toxicology Prior Sanction PHO Review Memo One: Agency-initiated Quantitative Coronary Heart and Cardiovascular Disease Risk Assessment of Industrially-Produced *Trans* Fatty Acids (IP–TFA) Exposure from Prior- Sanctioned Uses of Partially Hydrogenated Vegetable Oils (PHOs), October 22, 2019.
7. FDA, Memorandum from J. Park to E. Anderson, Toxicology Prior Sanction PHO Review Memo Two: Scientific Literature Review of Safety Information Regarding Prior-Sanctioned Uses of Partially Hydrogenated Oils (PHOs) in Margarine and Shortenings, October 22, 2019.
8. FDA, Memorandum from J. Park to M. Honigfort, Scientific Update on Experimental and Observational Studies of *Trans* Fat Intake and Coronary Heart Disease Risk, June 11, 2015.
9. FDA Memorandum from J. Park to M. Honigfort, Literature Review, June 11, 2015.
10. FDA, Memorandum from J. Park to M. Honigfort, Quantitative Estimate of Industrial *Trans* Fat Intake and Coronary Heart Disease Risk, June 11, 2015.
11. FDA, ''Revocation of Uses of Partially Hydrogenated Oils in Foods'' Preliminary Regulatory Impact Analysis, Initial Regulatory Flexibility Analysis, Unfunded Mandates Reform Analysis. Also available at: *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

List of Subjects

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

21 CFR Part 164

Food grades and standards, Nuts, Peanuts.

21 CFR Part 184

Food additives.

21 CFR Part 186

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose to amend 21 CFR parts 161, 164, 184, and 186 as follows:

PART 161—FISH AND SHELLFISH

■ 1. The authority citation for part 161 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 2. In § 161.190, revise paragraph (a)(6)(viii) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(6) * * *

(viii) Edible vegetable oil, excluding olive oil, used in an amount not to exceed 5 percent of the volume capacity of the container, with or without any suitable form of emulsifying and suspending ingredients that has been affirmed as GRAS or approved as a food additive to aid in dispersion of the oil, as seasoning in canned tuna packed in water.

* * * * *

PART 164—TREE NUT AND PEANUT PRODUCTS

■ 3. The authority citation for part 164 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 348, 371, 379e.

■ 4. In § 164.150, revise paragraph (c) to read as follows:

§ 164.150 Peanut butter.

* * * * *

(c) The seasoning and stabilizing ingredients referred to in paragraph (a) of this section are suitable substances which are not food additives as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act. Seasoning and stabilizing ingredients that perform a useful function are regarded as suitable, except that artificial flavorings, artificial sweeteners, chemical preservatives, and color additives are not suitable ingredients in peanut butter. Oil products used as optional stabilizing ingredients must be hydrogenated vegetable oils.

* * * * *

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 5. The authority citation for part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 6. In § 184.1472, revise paragraph (b) to read as follows:

§ 184.1472 Menhaden oil.

* * * * *

(b) *Hydrogenated menhaden oil.* (1) Hydrogenated menhaden oil is prepared by feeding hydrogen gas under pressure to a converter containing crude menhaden oil and a nickel catalyst. The reaction is begun at 150 to 160 °C and after 1 hour the temperature is raised to

180 °C until the menhaden oil is fully hydrogenated.

(2) Hydrogenated menhaden oil meets the following specifications:

(i) *Color.* Opaque white solid.

(ii) *Odor.* Odorless.

(iii) *Saponification value.* Between 180 and 200.

(iv) *Iodine number.* Not more than 4.

(v) *Unsaponifiable matter.* Not more than 1.5 percent.

(vi) *Free fatty acids.* Not more than 0.1 percent.

(vii) *Peroxide value.* Not more than 5 milliequivalents per kilogram of oil.

(viii) *Nickel.* Not more than 0.5 part per million.

(ix) *Mercury.* Not more than 0.5 part per million.

(x) *Arsenic (as As).* Not more than 0.1 part per million.

(xi) *Lead.* Not more than 0.1 part per million.

(3) Hydrogenated menhaden oil is used as edible fat or oil, as defined in § 170.3(n)(12) of this chapter, in food at levels not to exceed current good manufacturing practice.

(4) The name to be used on the label of a product containing hydrogenated menhaden oil must include the term ''hydrogenated,'' in accordance with § 101.4(b)(14) of this chapter.

■ 7. In § 184.1555, revise paragraphs (c)(2) and (3) and remove (c)(4) to read as follows:

§ 184.1555 Rapeseed oil.

* * * * *

(c) * * *

(2) In addition to limiting the content of erucic acid to a level not exceeding 2 percent of the component fatty acids, low erucic acid rapeseed oil must be of a purity suitable for its intended use.

(3) Low erucic acid rapeseed oil is used as an edible fat and oil in food, except in infant formula, at levels not to exceed current good manufacturing practice.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 8. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

§ 186.1551 [Removed]

■ 9. Remove § 186.1551.

Dated: July 28, 2023.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2023–16724 Filed 8–8–23; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271 and 441

[EPA–HQ–OLEM–2023–0081]; FRL 8687–01–OLEM

RIN 2050–AH23

Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make technical corrections that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These technical corrections correct or clarify specific provisions in the existing hazardous waste regulations that were promulgated in the Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceuticals rule, and the Definition of Solid Waste rule. This rule also makes other minor corrections that fall within the same sections of the hazardous waste regulations but are independent of these three rules. Examples of the types of corrections being made in this rule include, but are not limited to, correcting typographical errors, correcting incorrect or outdated citations, making minor clarifications, and updating addresses. In the ''Rules and Regulations'' section of this **Federal Register**, we are making these technical corrections as a direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. In the preamble to the direct final rule, we have explained our reasons for taking this action without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by October 10, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2023–0081, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Resource Conservation and Recovery Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brian Knieser, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0516, (*knieser.brian@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0517, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Why is the EPA issuing this proposed rule?

This document proposes to make technical corrections that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These technical corrections correct or clarify specific provisions in the existing hazardous waste regulations that were promulgated in the Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceuticals rule, and the Definition of Solid Waste rule. This rule also makes other minor corrections that fall within the same sections of the hazardous waste regulations but are independent of these three rules. We have published a direct final rule to codify these technical corrections and clarifications in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse

comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** informing the public about the specific regulatory paragraph or amendment that will not take effect. The corrections that are not withdrawn will become effective on the date set out in the direct final rule. We would address all public comments in any subsequent final rule based on comments and new information submitted in response to the proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document

II. Public Participation

Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2023–0081, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

III. General Information

Does this action apply to me?

Entities potentially affected by this action include hazardous waste generators, treatment, storage, and disposal facilities, healthcare facilities, reverse distributors, importers/exporters of hazardous waste, and users of the transfer-based exclusion to the definition of solid waste. Also affected are States and EPA Regions implementing the RCRA hazardous waste regulations.

IV. Statutory and Executive Orders Reviews

For a complete discussion of all the administrative requirements applicable to this action, see the direct final rule in the Rules and Regulations section of this **Federal Register**.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 441

Environmental protection, Health facilities, Mercury, Waste treatment and disposal, Water pollution control.

Michael S. Regan,

Administrator.

[FR Doc. 2023–14730 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56; FRS ID 160342]

Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on rule changes and clarifications suggested by commenters to further streamline and improve the application process for all E-Rate applicants, including Tribal and other small, rural entities. The Commission expects that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to participate in the E-Rate program.

DATES: Comments are due on or before September 25, 2023 and reply comments are due on or before October 23, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. You may submit comments, identified by CC Docket Nos. 02–6, 96–45, 97–21, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).
- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Roddy *johnny.roddy@fcc.gov* or Kate Dumouchel *kate.dumouchel@fcc.gov* in the Telecommunications Access Policy Division, Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. Requests for accommodations should 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 Commission's Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Further Notice of Proposed Rulemaking (*FNPRM*) in CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56, adopted July 20, 2023 and released July 21, 2023. The Commission also released a companion Report and Order (*Order*) in CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56, adopted July 20, 2023 and released July 21, 2023. The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street NE, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-56A1.pdf.*

I. Introduction

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and Wi-Fi equipment to connect today's students and library patrons with next-generation learning opportunities and services. In January 2022, the Commission began an initiative to increase Tribal libraries' access to E-Rate support, recognizing the valuable role that these entities serve in providing high-speed internet access to Tribal communities. The Commission first clarified that Tribal libraries are eligible to participate in the program and later launched a Tribal Library Pilot Program to ensure that Tribal library entities have equitable access to the E-Rate program. Building on those efforts, the Commission initiated a rulemaking proceeding in February 2023 to seek comment on additional rule changes to improve Tribal participation in the E-Rate program. The Commission takes steps to further enhance Tribal applicants' access to the E-Rate program through program simplifications and other changes that aim to encourage greater Tribal participation in the program. At the same time, the Commission takes steps to simplify the E-Rate processes, where appropriate, for other E-Rate applicants and seeks comment on further possible rule changes suggested by commenters in this document.

II. Further Notice of Proposed Rulemaking

2. Consistent with the changes adopted in the companion *Order,* in the *FNPRM,* the Commission seeks comment on the discrete issues that may further simplify the administration of the E-Rate program and reduce burdens for all applicants, including Tribal and other small, rural entities. Specifically, to continue meeting the program's performance goal of making the E-Rate application process and other E-Rate processes fast, simple, and efficient, the Commission seeks comment on a number of suggestions raised by commenters in response to the *Tribal E-Rate NPRM,* In the Matter of Schools and Libraries Universal Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 02–6, 96–45, 97–21, Notice of Proposed Rulemaking, rel. Feb. 17, 2023, FCC 23–10, which sought comment on streamlining or simplifying the program.

3. The Commission remains committed to protecting the integrity of its programs. As the Commission considers proposals that look to further simplify the administration of the E-Rate program and reduce barriers that may inhibit Tribal and other small, rural applicants from participating in the program, the Commission notes its intention that reducing barriers does not mean reducing its commitment to maintaining the integrity of the E-Rate program. The Commission utilizes several different resources at its disposal to ensure that protections are in place prior to implementation of any rules regarding the oversight and administration of E-Rate, as well as investigating and rooting out bad actors from the program. The Commission intends for the Wireline Competition Bureau (Bureau) to continue coordinating with the Enforcement Bureau, the Office of Managing Director, the Office of General Counsel, the Office of Economics and Analytics and other Commission resources to ensure the E-Rate program is protected. Further, the Commission intends that the Bureau and other relevant Commission offices continue consultation with other entities, such as the Government Accountability Office (GAO) and the FCC Office of Inspector General, that have a shared interest in maintaining the integrity and improving the operations of the Commission's programs. Where possible, the Commission will strive to incorporate the recommendations of the various entities in the decisional documents in an effort to establish robust protections against waste, fraud, and abuse. The Commission seeks comment on these commitments and how best to ensure that any of the proposals herein maintain and enhance safeguards to protect the integrity of the E-Rate program. For example, do commenters believe it would be beneficial to

compile and make available recommendations that were submitted as part of such consultations?

4. Updating Eligible Services. *License/Software Distinction.* The Commission first seeks comment on allowing all eligible multi-year software-based services that are purchased with category two equipment to be requested and reimbursed in the same manner. Currently, software-based services are eligible as Internal Connections service when they are necessary for the operation of a piece of eligible Internal Connections equipment, such as a client access license. However, bug fixes, security patches, and technical assistance-based software services are eligible as Basic Maintenance of Internal Connections (BMIC) services. As explained in the *Sixth Report and Order,* 75 FR 75393 (12/03/2010), ''[r]equests for basic maintenance will continue to be funded . . . if, but for the maintenance at issue, the service would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such service.'' Applicants are currently required to amortize the cost of BMIC-related services, including for example, software-based technical assistance services, across the length of the BMIC multi-year contract, and cannot receive full funding for the BMIC software-based technical assistance services in the first year of the contract, even if the applicant has prepaid for the multi-year BMIC software service with the purchase of the category two equipment. This means that the current E-Rate rules allow the applicant to receive full funding for an internal connections-related multi-year software service in the first funding year, but for other multi-year software-based services for technical assistance, like bug fixes, which are considered to be BMIC services, the applicant must split the cost of the multi-year software service evenly for each funding year, even if the applicant was required to prepay for the multi-year BMIC software-based services at the start of the contract period. This procedure stems from the Commission's efforts in 2010 to only have the E-Rate program pay for basic maintenance services that are actually provided over the course of the funding year, and to prevent the E-Rate program from being used to prepay for BMIC services that were never used or needed by the applicant.

5. In their comments to the *Tribal E-Rate NPRM,* the State E-Rate Coordinators' Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters) explain that this distinction in the treatment of multi-year software-based services causes confusion during the competitive bidding process, where applicants are concerned about funding denials if they select the incorrect service subcategory (*i.e.,* use internal connections instead of BMIC) on FCC Form 470, and places a burden on applicants that requires them to divide the cost of a prepaid multi-year BMIC software-based service request across multiple funding years. The Commission therefore seeks comment on the proposal to treat these particular software-based services (*e.g.,* bug fixes, security patches, and software-based technical assistance) in the same way it currently treats eligible Internal Connections software-based services, like client access licenses. The Commission also proposes to allow applicants that sought bids on their FCC Form 470 only for Internal Connections software services to be permitted to request funding for their multi-year BMIC software-based services without being found to have violated its competitive bidding rules for failing to check the correct box for this software request, and to allow applicants requesting these types of software-based services to be funded based on how the software-based service is contracted and invoiced with the service provider (*e.g.,* funding a multi-year software-based service for bug fixes in a single funding request during the first year of service if the service is paid for in that first year). The Commission seeks comment on these proposals.

6. *Transition of Services.* Applicants and service providers have also sought additional clarification on how to request E-Rate support when an applicant is transitioning services between two providers during the same funding year. To prevent funding duplicative services, program procedures do not allow Universal Service Administrative Company (USAC) to commit funding to two funding requests for the same service, to the same recipients, that overlap in time. At the same time, due to concerns about exceeding the E-Rate funding cap, the Commission's service substitution rules require that post-commitment service substitutions be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. As such, applicants are encouraged to work with their service providers to try to determine the cutover dates when transitioning service to a new provider during a funding year. The Commission recognizes, however, that this can be difficult to determine with accuracy, months in advance of the planned transition.

7. One approach is to allow applicants to request twelve months of service from the higher-priced service offering, and then file a post-commitment request to change the service provider once the cutover dates are known. The Commission notes that this suggestion results in the service request being funded higher than the actual costs of the services, and may inflate the overall demand for E-Rate support for that year. However, the Commission seeks comment on whether this is still the best way to allow for mid-year service provider transitions, or whether it should consider alternative guidance or a rule change regarding these types of mid-year transitions. For instance, should the Commission consider amending its service substitution rules to allow applicants in this unique situation to request a service substitution that will result in an increase in the pre-discount price if the transition occurs at a different date than had been anticipated and requested? If so, should the Commission require applicants to include an explanation in their service substitution request documenting the reasons that the change resulted in an increase in the pre-discount price? Should the Commission limit USAC's ability to grant such a service substitution request on the availability of funding for the applicable funding year under the funding cap? Based on prior years' data, the Commission does not expect this to be a large amount of funding, but it generally does not increase annual E-Rate demand post-commitment. Are there any other issues that the Commission should take into account by allowing applicants to potentially receive a commitment amount higher than the one originally approved for the services? How might such increases in funding impact the annual E-Rate cap adopted by the Commission? Are there budget control measures that the Commission should adopt to ensure this new proposal does not cause the Commission to exceed the cap? The Commission seeks comment on these questions and how mid-year service provider transitions should be handled in the E-Rate program.

8. *Duplicative Services.* The Commission next seeks comment on the Joint Commenters' request for additional clarification regarding cost-effective purchasing on services from two

different providers. In the *Second Report and Order,* 68 FR 36931 (06/20/2003), the Commission found that requests for duplicative services, or services that provide the same functionality for the same population in the same location during the same time, are ineligible and contravene the program requirements that discounts be provided based on the reasonable needs and resources of the applicant. It also found that requests for duplicative services are not cost-effective, but the Commission recognized that determining whether particular requests are functionally equivalent depends on the circumstances. In the *Macomb Order,* In the Matter of Requests for Review by Macomb Intermediate School District, Technology Consortium, Clinton Township, MI, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02–6, rel. May 8, 2007, FCC 07–64, USAC denied a funding request from the Macomb Intermediate School District Technology Consortium, which requested T–3 connections to provide internet access to its school district from three separate service providers. The Commission agreed that the school district violated § 54.511 of the Commission's rules by not selecting the most cost-effective service offering among the bids considered, but provided the school district with funding for all three T–3 connections at the amount associated with the least expensive of the three providers.

9. The Joint Commenters request clarification that applicants may seek needed services from multiple providers as part of the same procurement, so long as the applicant is limited to E-Rate funding based on the least expensive service when one provider could have met all the applicant's needs. The Commission seeks comment on this proposal and the desire by schools to purchase services from multiple providers in the same procurement. How often is the scenario in the *Macomb Order* present in current school network configurations? How can USAC best evaluate whether applicants need the services requested from multiple providers, or whether the services are actually duplicative, such as requests for redundant or failover connections? What kind of documentation can applicants and/or service providers use to demonstrate that the services are not duplicative services (*i.e.,* redundant or failover connections)? What safeguards can the Commission use to only fund services that are needed and are being used by the applicant? The rules require that price must be the primary factor in considering which service offering is the most cost-effective, but should the Commission require price to be the only factor in order to ensure applicants select the least expensive service option in these scenarios when the applicants wishes to use multiple providers for the requested services? Are additional safeguards needed to ensure competitive bidding is still effective for ensuring cost-effective services when applicants seek to contract with multiple service providers for the requested services? What information or data may need to be collected on the funding application forms to demonstrate the requested services are needed and are not duplicative services? Are there other issues that the Commission should consider in allowing multiple service providers to be selected for the same procurement and requested services? Finally, the Commission also seeks comment on whether further guidance is needed for applicants seeking redundant or resilient circuits provided by a single carrier. While redundant circuits would be considered duplicative, are there any unique types of arrangements or network configurations being used that might be needed and how can applicants and/or service providers document the need?

10. *Other Simplification Opportunities.* The Commission seeks comment on other changes to the eligible services list and cost allocation requirements that could simplify the E-Rate program, particularly for new and smaller applicants. For example, should the Commission revise the eligible services list to use the same terms as used on FCC Form 470 or FCC Form 471? For instance, would it make more sense to use the terms from FCC Form 470 like fiber, cable, copper, wireless, and other in the eligible services list of data transmission and/or internet access services, rather than listing out specific types, like ''Broadband Over Power Lines''? Are there terms in the eligible services list that should be updated or streamlined? Are there updates the Commission could make to the eligible services list process to make it easier to approve and release the list with sufficient time for review, before applicants must submit their funding applications? For cost allocation requirements, are there additional changes the Commission could make to clarify when applicants must cost allocate parts of their E-Rate funding requests? For example, are there other types of equipment similar to cabling, such as switches, for which cost allocation guidance is needed? Are there other examples of challenging cost-allocation calculations that the Commission could further streamline for Tribal applicants? Are there other examples of ancillary use unique to Tribal libraries or small entities that share buildings on which the Commission could consider providing further guidance? Are there particular challenges with cost allocation of category two services used in multipurpose buildings, that the Commission could simplify? The Commission seeks comment on these questions and other suggestions for simplifying the cost-allocation. Finally, should the Commission consider changes to the application process for certain eligible services? Specifically, the Commission seeks comment on whether a rolling category two application deadline or a second application filing window for category two services would simplify or complicate the E-Rate program. If the Commission were to consider changes to the deadline for filing for category two applications, what limits would be needed to ensure demand can be appropriately calculated?

11. Changing or Clarifying the E-Rate Competitive Bidding Requirements. The E-Rate program's competitive bidding requirements reflect the Commission's determination that competition is the most efficient and effective means for applicants to select the most cost-effective service offerings. The Commission has long held that a fair and open competitive bidding process is fundamental to the integrity of the E-Rate program. Thus, the Commission has consistently required applicants to treat all potential bidders equally throughout the procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage. Selecting the most cost-effective bid and ensuring that price of the eligible equipment and services is the primary factor considered in the bid evaluation process are other fundamental requirements of the Commission's competitive bidding rules.

12. *Competitive Bidding Exemptions.* In their comments to the *Tribal E-Rate NPRM,* the American Library Association (ALA) recommends that small libraries requesting less than $10,000 in E-Rate funding to be subject to fewer competitive bidding requirements and less rigorous review during the application process by treating funding requests under $10,000 as *de minimis.* Specifically, ALA explains that libraries rely on state and local procurement rules for these purchases and additional competitive bidding requirements are not needed

because of the low amount of requested funding. The Commission seeks comment on this proposal to create a competitive bidding exemption for E-Rate funding requests under $10,000 submitted by libraries. In the *Order,* the Commission adopted a competitive bidding exemption for libraries making category two purchases of $3,600 or less, per funding year. The Commission seeks additional comment on expanding the exemption for libraries making smaller annual E-Rate requests (*i.e.,* less than $10,000), along with data to support such a change. For example, ALA notes that 62.3% of libraries requested less than $10,000 in total support for category one and category two services in funding year 2023, and 100% of libraries in certain rural states, like Montana, did so. However, the Commission also relies on fair and open competitive bidding to result in applicants making cost-effective purchases. If the Commission adopts this proposal, how can the Commission ensure that applicants are still making cost-effective purchases? What state, local, or Tribal procurement rules are in place for purchases that are under $10,000? Should the Commission also consider permitting schools to use the competitive bidding exemption for category two purchases of $3,600 or less, per funding year, or another exemption for school entities? If the exemption is expanded to schools, how can the Commission protect the E-Rate program from waste, fraud, and abuse? For example, ALA's proposal relies on the fact that libraries are subject to state and local procurement laws and requirements; are all school entities subject to state, local or Tribal procurement requirements? For example, are private schools subject to any specific state, local, or Tribal procurement requirements? The Commission seeks comment on these questions and supporting data for adopting a competitive bid exemption for E-Rate purchases under $10,000 per funding year.

13. *Mid-Year Bandwidth Increases.* The Commission next seeks comment on adopting a limited exception to its competitive bidding rules to allow applicants to seek bandwidth increases in between E-Rate funding cycles. The E-Rate program rules require applicants to competitively bid services using FCC Form 470. This process starts at least 28 days before the applicant files their E-Rate funding requests during the annual application filing window, but can occur six months before, or—in the case or multi-year contracts—years before the funding request is submitted. Applicants are encouraged to seek bids for and sign contracts for a range of bandwidths in order to accommodate changes in bandwidth needs in the future, but applicants are not always able to anticipate changes in their bandwidth needs. In 2020, for example, the Bureau opened a second application filing window in September to address increased on-campus bandwidth needs as a result of remote learning challenges from the COVID–19 pandemic. However, in other instances, applicants may be unable to increase their bandwidth mid-funding year without potentially violating the E-Rate program competitive bidding rules.

14. The Joint Commenters therefore suggest an exception to the competitive bidding rules to allow applicants to increase bandwidth during the school year (*i.e.,* mid-funding year) by submitting a service substitution request to increase the bandwidth using their current provider at the existing committed amount without being found to have violated the program's competitive bidding rules. The Commission seeks comment on this proposal and how to allow for bandwidth increases without opening the door to applicants avoiding its competitive bidding rules or unfairly favoring incumbent service providers. What limitations would need to be adopted in order to ensure that the exception for mid-funding year bandwidth increases is not misused? How can USAC keep track of such mid-funding year bandwidth increases? Do commenters agree that applicants be allowed to request a service substitution request increasing the bandwidth, limited at the original funding commitment cost? Should such applicants be required to competitively bid for the increased bandwidth in the subsequent funding year? The Commission seeks comment on these questions and other issues the Commission should consider in adopting this exception to the E-Rate competitive bidding requirements.

15. *Providing Guidance to Applicants on When Competitive Bidding Must be Restarted.* The Commission next seeks comment on how to reduce confusion about when changes made to the information provided on FCC Form 470 or related requests for proposals (RFP) requires an applicant to restart the competitive bidding process and wait at least 28 days before selecting their service offering(s). Under the Commission's competitive bidding rules, applicants must conduct a fair and open competitive bidding process. This means that applicants must treat all potential bidders equally throughout the entire procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage. Furthermore, applicants must describe the requested services with sufficient specificity to enable potential service providers to submit responsive bids for such services. Sometimes, the facts are clear that the requested E-Rate services were not fairly competitively bid and there was a violation of the competitive bidding rules. For example, applicants may not request E-Rate support for services that were not included on FCC Form 470. Similarly, applicants that fail to indicate the existence of a RFP have also been denied E-Rate support for suppressing fair and open competitive bidding. As such, in some instances, when applicants make a change to an FCC Form 470—such as by modifying the services being requested or by including an omitted RFP—that would change whether a service provider reviewing the original FCC Form 470 could submit responsive bids, the competitive bidding process should be restarted to allow all potential bidders the opportunity to bid based on the additional or modified information, and the applicant should wait at least 28 days after making these changes before selecting the most cost-effective service offering(s). In other cases, the Commission has granted requests for review where an applicant changed information on FCC Form 470 or associated RFP without finding a competitive bidding violation because the change did not impact potential bidders' ability to be able to submit responsive bids.

16. As these examples indicate, whether a change to FCC Form 470 or RFP results in an unfair competitive bidding process is often a fact-specific inquiry. The Commission therefore seeks comment on scenarios where it can provide more guidance on whether an applicant's changes to their FCC Form 470 or RFP requires it to restart the competitive bidding process and wait at least 28 days before selecting its service offering(s). E-Rate participants are encouraged to provide examples of instances where they believe changes to FCC Form 470 and/or RFP do not result in an unfair competitive bidding process as all potential bidders would still be able to submit responsive bids although certain information was modified in FCC Form 470 and/or RFP. Are there any presumptions or safe harbors the Commission could adopt so that applicants could have more certainty about whether and when they need to restart the competitive bidding process

because of that specific change that was made to FCC Form 470 and/or RFP? For instance, should applicants correcting errors in their bandwidth requests by less than 50% not be required to restart the competitive bidding clock (*i.e.,* the minimum 28 day waiting period)? Are there other types of common changes to FCC Form 470 and/or RFP that should not require applicants to restart their competitive bidding process? The Commission seeks comment on these questions and what type of guidance or clarifications would be helpful for the Commission to provide on when changes to FCC Form 470 and/or RFP would not result in an unfair competitive bid process and when the applicant would be required to restart their competitive bid process and wait a minimum of 28 days before selecting the most cost-effective service offering(s) after making the change or modification.

17. *Spam Bids and Bids Received After 28 Day Waiting Period.* Under the E-Rate competitive bidding rules, applicants are required to carefully consider all received bids, with price being the primary factor, and select the most cost-effective service offering. Applicants must also wait at least 28 days before selecting the most cost-effective service offerings. Applicants are permitted to set deadlines to close the competitive bid process (of at least four weeks after FCC Form 470 is filed) or establish other disqualification factors in FCC Form 470. The Joint Commenters explain that applicants are receiving more spam bids and other automated or ''robo'' responses to their FCC Form 470 that do not contain the information on the specific services requested by the applicant and seek guidance on whether these bid responses have to be considered and retained. They also seek guidance on whether and how long bids must be considered after the required four weeks have passed. Specifically, the Joint Commenters explain that service providers have set up automated responses to be sent, often within 24 hours, after an FCC Form 470 has been posted on USAC's website. In addition, multiple automated bid responses may be sent to the applicant for a single FCC Form 470. However, the automated bid responses do not contain the pricing and other information requested in FCC Form 470 and require the applicant to reach out to the service provider for additional information. The Joint Commenters request that the Commission clarify that spam and other automated bid responses do not meet the definition of an authentic bid and that applicants may, but are not required to, consider spam or other automated bid responses or be required to retain copies of the spam and other automated bid responses pursuant to the document retention rule. The Joint Commenters further explain that requiring applicants to acknowledge and retain spam and other automated bid responses is an onerous burden, and that the Commission should impose some minimal responsibility on service providers to submit responsive bids to the applicants and the automated bid responses should not be used as a basis to deny funding because of a non-compliant competitive bid process.

18. For purposes of disqualifying spam or other automated bid responses or consideration of bids received after a deadline set in FCC Form 470, the Joint Commenters request that the Commission clarify the requirements and confirm that spam and other automated bid responses do not need to be treated as bids and that applicants may rely on the 28 day allowable contract date (ACD) as the deadline for submitting bids when FCC Form 470 is silent on the bid submission deadline. In general, the Commission would expect applicants to carefully consider all bids received before the bid selection process has occurred, unless they provided a specific bid submission deadline and noted that bids received after the deadline would be disqualified on FCC Form 470. In light of the concerns raised by the Joint Commenters, the Commission first seeks comment on the types of spam and other automated bid responses that are being generated and sent to the applicant once or soon after their FCC Form 470 is posted. Please include examples of these types of bid automated bid response communications and other data regarding the frequency and number of automated responses that applicants receive after posting their FCC Form 470. The Commission seeks further comment on the Joint Commenters' request that the ACD be used as the bid response deadline when FCC Form 470 is silent on the bid submission deadline. The Commission notes that applicants are already allowed to state that bids that do not include all of the required information and/or are received after a specific deadline will be disqualified on their FCC Form 470 or in the accompanying RFP. The Commission requests further comment on why applicants are not able to add language to their FCC Form 470 that non-responsive bids will be disqualified or that bids received after the 28-day minimum waiting period will be considered late and will also be disqualified. Are changes to FCC Form 470 needed to include specific disqualification criteria that could be checked by the applicant? For example, should the Commission add a field to FCC Form 470 to allow applicants to indicate the deadline for submitting bids and any other requirement that will result in a bid being disqualified from consideration? The Commission also notes that it has an open proceeding related to a competitive bidding portal that could collect all bids that are received by the applicant and reduce confusion about these types of bids and deadlines. Procedurally, should the Commission delay taking action on the treatment of spam and other automated bid responses until after it takes action in that open proceeding, or should the Commission consider these proposals while that proceeding is still pending before the Commission? Would the proposed bidding portal be helpful as a competitive bid document repository to reduce the documentation retention related burdens on applicants? The Commission further seeks comment on how to ensure applicants are complying with program rules to carefully consider all bids received and retain them for the appropriate ten-year document retention period, if spam or other automated bid responses are not treated as ''bids.'' If exceptions are made regarding the consideration and retention of certain types of bid responses, how does the Commission ensure the exception is not misused and responsive bids are not considered or retained as required by the Commission's rules? The Commission seeks comment on all of these questions, as well as any other issues the Commission should consider to ensure the E-Rate competitive bidding process remains fair and open, and compliant with the Commission's rules if changes or clarification is provided about what response is a bid.

19. *Evidence of a Legally Binding Agreement.* The Commission's E-Rate rules also require that the applicant have a signed contract or legally binding agreement before requesting E-Rate funding. When modifying this rule in 2014 to allow for legally binding agreements rather than requiring only signed contracts, the Commission explained that USAC would consider the existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer as evidence of a legally binding agreement. The Joint Commenters now suggest that board minutes approving a contract

offer should be evidence of an applicant's acceptance, demonstrating a legally binding agreement. The Commission seeks comment on this proposal and whether there are additional examples that USAC should consider as evidence of a legally binding agreement. Conversely, ALA suggests removing the legally binding agreement requirement and suggests that E-Rate applicants be allowed to rely on a price quotation before submitting their E-Rate applications. In the Emergency Connectivity Fund program, applicants were allowed to rely on price quotations due to the emergency nature of the program and the lack of significant advance notice before the first application filing window opened. The Commission also seeks comment on this request and how accepting a price quotation would streamline the application process. The Commission also seeks comment on whether modifying this requirement, and allowing a price quotation to be used, may lead to greater potential of waste, fraud, and abuse, and the Commission invites comments on how to minimize that risk.

20. *Ensuring Our Rules Recognize Tribal Law.* The Commission seeks comment on whether the E-Rate program rules should be updated to recognize that competitive bidding regulations are often imposed by Tribal as well as state and local governments. For example, the Commission's competitive bidding rules state that the program-specific rules ''apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.'' Recognizing that Tribal governments may also have procurement rules in place, should the Commission add Tribal to this list? Are there other areas of the Commission's program rules that should be updated to recognize the Tribal government role?

21. Finally, the Commission seeks comment on other competitive bidding-related requirements the Commission should consider updating or otherwise modifying. For example, the Commission seeks comment on how product demonstrations are conducted for applicants in the E-Rate program. Should the Commission modify or provide guidance related to its gift rules to provide additional clarity around product demonstrations? What safeguards should the Commission adopt to ensure applicants are not ultimately receiving free equipment through a product demonstration that would impact conducting a fair and open competitive bidding process? In considering any such changes to the competitive bidding rules, the Commission is mindful of its commitment to protect E-Rate funds. As the Commission continues its efforts to safeguard the program and assess fraud risks to the E-Rate program, should the Commission consider how to sequence any potential modifications to its rules in light of its ongoing work to protect the program's integrity?

22. Streamlining the E-Rate Program Forms. The Commission seeks comment on a number of proposals to modify the E-Rate program forms to streamline the application process. First, the Commission seeks comment on what modifications to FCC Form 470 (Description of Services Requested and Certification Form), which opens the competitive bidding process for E-Rate applicants, would reduce confusion for both applicants and service providers. Second, the Commission seeks comment on reducing the number of E-Rate forms by moving the information currently collected on FCC Form 486 (Receipt of Service Confirmation and Children's internet Protection Act Certification (CIPA) Form), which notifies USAC that services have started and that the applicant is in compliance with CIPA requirements, to other E-Rate forms.

23. *Creating an ''EZ'' Application Form.* In comments to the *Tribal E-Rate NPRM,* E-Rate participants explained that small library entities often require technical assistance to complete the FCC Form 471 application. ALA suggests that the Commission ''create an 'EZ' form with simple to understand language that also includes context-sensitive guidance and best practices to support applicants, such as including checklists and prompts to help users navigate and raise any flags for potentially incorrect entry of information.'' The Commission seeks comment on this proposal and how to implement it effectively. Would such a form be available to all applicants, or would it be preferable to have a form targeted to Tribal entities or libraries? Is there any language on the FCC Form 471 application in particular that should be changed? Is any information collected on the form no longer needed? Is there additional information that should be collected to help streamline the application process? For example, should the Commission add the information currently collected on FCC Form 486 to FCC Form 471 instead? What questions are confusing to small entities, and what type of questions do small applicants require technical assistance with? Would additional system pop-ups and guidance within the online application form make a significant difference in encouraging new, small entities to apply and request funding through the E-Rate program?

24. *Simplifying the FCC Form 470 Drop-Down Menu Options.* In 2014, the Commission required all applicants and service providers to electronically file all E-Rate-related documents with USAC, adopted changes to the competitive bidding requirements for certain category one services, and amended the category two rules to fund additional services, such as managed internal broadband services (MIBS). As a result of those changes, FCC Form 470 currently has drop-down menu options that allow applicants to pick the services for which they are seeking bids in order to make it easier for service providers to search and locate relevant FCC Forms 470 to submit bids for. Despite efforts to improve the drop-down menu options, applicants and service providers continue to request changes to the drop-down menu options, and express concerns that selecting the wrong drop-down menu option(s) can result in a funding denial. Under the E-Rate program rules, applicants must conduct a fair and open competitive bidding process, seeking bids on FCC Form 470 with, at a minimum, a list of specified services for which the entity is requesting bids and sufficient information to enable bidders to reasonably determine the needs of the applicant. Under this rule, the Bureau has denied requests for review from petitioners denied funding for failing to seek competitive bids on their FCC Forms 470 for services requested on the FCC Forms 471. In addition, the Commission has established certain competitive bidding requirements for certain services, like managed internal broadband services and self-provisioned networks, in order to ensure applicants select the most cost-effective service option. The Commission therefore seeks comment on proposals from the Joint Commenters for changes to the drop-down menu options.

25. First, for category two services, the Joint Commenters propose that the three separate Service Types: (1) Internal Connections; (2) Managed Internal Broadband Services; and (3) Basic Maintenance of Internal Connections be combined or revised in order to reduce the likelihood that applicants select the wrong Service Type by accident. The Commission seeks comment on this approach from both applicants and service providers. Are the category two services subcategories useful in determining the needs of the applicant? Or would a category two services narrative section be sufficient to ensure that applicants are providing sufficient information regarding the specified

equipment and services requested? For software-based services and licenses, as explained, the Commission understands that it is sometimes challenging for new applicants to determine which subcategory to use for the software or licenses needed for the category two internal connections equipment. However, if an applicant is seeking bids for specific pieces of equipment or for basic maintenance in the form of physical repair of the equipment, is information included in a narrative box sufficient for service providers to find and understand precisely what service(s) are being requested? Should the Commission consider a method for applicants to tag requests as potentially one particular type of service to assist service providers in finding the relevant requests for bids? How does the Commission weigh the benefits of a drop-down menu to service providers in finding and responding to FCC Forms 470 against the burden on applicants to determine the correct menu option(s) to use for the requested equipment and services?

26. Second, the Joint Commenters propose that the Commission again modify the FCC Form 470 drop-down menu options for category one services. Over the last several funding years, the Bureau and USAC have taken steps to improve the category one drop-down menu options to reduce applicant confusion. In funding year 2022, after seeking comment from E-Rate participants, the drop-down menu options specifically listing ''Leased Lit Fiber'' were modified as a result of continued confusion. The Joint Commenters now seek new drop-down menu options for ''internet service over fiber facilities'' and ''data transmission over fiber facilities.'' For instance, the Joint Commenters state that the USAC guidance on seeking bids for data transmission without internet access over fiber is unclear. The Commission seeks comment on this proposal. Based on the continued confusion from changes to FCC Form 470, the Commission is concerned that further changes to the drop-down menu options could result in greater applicant confusion. Are there ways to capture concerns about the drop-down options language without making additional changes? For example, can USAC add more guidance within the online FCC Form 470 or in trainings? Finally, are there any other ways the Commission could improve existing drop-down menu options for E-Rate applicants or participants?

27. *Modifying or Eliminating FCC Form 486.* The Commission seeks comment on whether to eliminate FCC Form 486 and move the information collected on that form to FCC Form 471 or remove some of the information collected on the form. FCC Form 486 notifies USAC that services have started for the recipients of service included on an approved funding request and the status of compliance with CIPA for the recipients of service for the funding requests. It must be filed after USAC issues a funding commitment decision letter, but no later than 120 days after the service start date or 120 days after the funding commitment decision letter, whichever date is later. Invoicing cannot begin until FCC Form 486 is filed by the applicant.

28. FCC Form 486 has included a number of program certifications over the years, such as whether technology plans are in place, but currently only collects information related to the services' start dates and CIPA compliance. These certifications now occur in the middle of the application cycle and can result in funding reductions due to ministerial or clerical errors. The Commission seeks comment on moving the CIPA certifications to FCC Form 471 and removing the requirement to notify USAC that services have started. The Joint Commenters explain that this would be a ''simple, yet effective way to streamline the program for all applicants and the Administrator, but particularly for small and new applicants.'' For the vast majority of applicants that are already in compliance with CIPA, the location of this CIPA certification should make no difference. While removing the requirement to notify USAC that services have started removes one possible check for USAC, the certifications on the requests for reimbursement forms already require services to have been delivered in order to seek funding, potentially making the additional notification about the start of services duplicative. If FCC Form 486 is removed for future funding years, how should the Commission modify the certifications on FCC Form 472 or FCC Form 474 to ensure services and/or equipment were delivered to and used by eligible entities? If the Commission makes changes to FCC Form 486, should it also make changes to the invoice filing deadline to link the deadline to the date of the funding commitment decision letter? The rules currently reference the date of the FCC Form 486 Notification Letter. Alternatively, the Joint Commenters suggest that the CIPA certifications be moved to FCC Form 471 but allow FCC Form 486 to remain as an option. While the Commission may need to retain FCC Form 486 for prior funding years where the certifications were not included on that funding year's FCC Form 471, the Commission seeks more detailed comment about the benefits of keeping FCC Form 486 as an optional form for future funding years.

29. Are there other E-Rate form changes that could help streamline application and reimbursement processes for the program? The Commission seeks comment on other E-Rate form modifications, particularly those that would help a new entity or a small or Tribal entity to apply for and receive E-Rate support. The Commission encourages commenters to provide sufficient detail for us to adopt changes to the E-Rate forms in upcoming funding years.

30. Validating Discount Rate. The Commission next seeks comment on potential ways to streamline the discount rate validation for E-Rate applicants. Eligible schools and libraries may receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need. Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for E-Rate eligible services and equipment than applicants with lower levels of eligibility for such programs. For example, the most disadvantaged schools, where at least 75% of students are eligible for free or reduced price school lunch, receive E-Rate support for 90% of the cost of their eligible category one purchases (that is referred to as a 90% discount). Libraries receive funding at the discount level of the school district in which they are located. Schools and libraries located in rural areas also may receive an additional 5% to 10% discount compared to entities located in urban areas. During the application review, USAC may seek data to validate an entity's discount rate, which is typically based on student enrollment and NSLP data as of October 1 prior to the filing of the application.

31. The Commission now seeks comment on how to streamline the discount rate validation process for E-Rate applicants. For the majority of applicants, their discounts do not change from funding year to funding year. Absent a request for an increase in an entity's discount rate, should the Commission adopt a presumption that discount rates do not require validation for a certain period of time (*e.g.,* three or five funding years)? Under such a

presumption, the Commission would still need to occasionally check for certain aspects of the calculation, like when new rurality data becomes available from the U.S. Census. How does the Commission factor in such changes? Alternatively are there other changes to the discount rate the Commission should consider? The Commission also seeks comment on any relevant changes to the Community Eligibility Provision (CEP), how it may impact the E-Rate program discounts, and whether any procedures should be changed. Are there any changes the Commission should consider for states and schools in states with statewide CEP or statewide free lunch calculating their discount?

32. Seeking Information on Other College Libraries Acting as Public Libraries. The Commission also seeks comment on whether there are other college or university libraries, similar to the TCU libraries, that act as the public library in their community. While the Commission continues to monitor whether TCU libraries participate successfully in the E-Rate program, it seeks data and examples from stakeholders about whether this is common in other types of college or university libraries and whether it should consider further changes to its eligibility rules for libraries. One commenter suggested expanding eligibility to other college libraries that serve as public libraries in their communities. If the Commission does, what other additional restrictions or limitations should be considered? Are colleges that specifically serve communities that have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, such as Historically Black Colleges and Universities (HBCUs) or Hispanic-Serving institutions (HSIs), also serving as public libraries in any instances?

33. Modifying E-Rate Invoice and Disbursement Standards. *Modifying the Invoice Filing Deadline Rule.* Before 2014, invoice filing deadlines were procedural, and applicants or service providers could request and receive a 120-day invoice filing extension under certain conditions. USAC granted invoice filing extension requests that met the criteria, including requests made up to a year after the original invoice filing deadline. In the *First 2014 E-Rate Order,* 79 FR 49160 (8/19/2014), the Commission codified the invoice filing deadline, and adopted a strict standard for waiving the rule and granting extensions of the applicable invoice filing deadline. Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoice filing deadline, provided that the applicant or service provider submits the request on or before the invoice filing deadline for that request. USAC will automatically grant timely filed invoice filing deadline extension requests. In the interest of efficient program administration, however, the Commission prohibited USAC from granting any additional invoice filing deadline extensions. As a result, if applicants and service providers require more time than the single 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice filing deadline extension rule from the Commission. The Commission concluded, however, that ''it is generally not in the public interest to waive [the] invoicing rules,'' and the Bureau should grant waivers of the invoice filing deadline rules only under ''extraordinary circumstances.''

34. As a result of this standard, applicants and service providers have filed large numbers of waivers related to invoicing errors. Under the extraordinary circumstances standard, the Bureau has denied many of those waiver requests. The Commission now seeks comment on the Joint Commenters' proposal to slightly modify the invoice filing deadline extension rule. Specifically, they propose that applicants be allowed to seek an extension of the original invoice deadline from USAC when the request is made within 15 days of the original invoice filing deadline date. This change would allow applicants or service providers to request a one-time 120 day extension if they realize they just missed an invoice filing deadline, reducing the number of denied requests for reimbursements and waiver requests, while maintaining the codified invoice filing deadline, as the new invoice filing deadline would remain 120 days from the original invoice filing deadline, and not based on the date the extension request was filed with USAC. Because the Commission is revisiting its overall approach to the invoice filing deadline, the Commission also modifies, on an interim basis, the prior guidance provided to the Bureau regarding waivers of the existing deadline. In particular, the Bureau remains free to grant waivers that would have been granted under the prior Commission guidance as meeting the extraordinary circumstances standard. The Commission directs the Bureau to leave pending any waiver requests related to applicants or service providers that were filed within 15 days of the original invoice filing deadline for now, and it will provide further guidance regarding the disposition of those waiver requests at the resolution of this proceeding. While the Commission declines to waive the invoice deadline rule during the pendency of the rulemaking, it seeks comment on the extraordinary circumstances standard.

35. Consistent with this proposal, the Commission also seeks comment on other ways to simplify or streamline the E-Rate invoicing and disbursement process. Should the Commission consider a 30-day grace period for applicants or service providers to resubmit invoices that were timely filed before the invoice filing deadline, but rejected in whole or part after the deadline has passed? Currently, applicants and service providers may appeal a rejected or denied invoice, but cannot resubmit the invoice filing if the deadline has passed. Applicants and service providers are encouraged to provide examples of why filing an appeal after the invoice filing deadline is not the most straightforward approach. Are there processes and requirements in the program that the Commission should consider changing in order to reduce the amount of work required by small applicants regarding the E-Rate reimbursement process? Are there particular situations where one extension is insufficient for requesting reimbursement from the E-Rate program?

36. The Commission also seeks comment on a billing issue that could complicate service provider invoicing for some applicants. E-Rate applicants may select one of two ways to seek reimbursement of the costs of eligible E-Rate equipment and services. If an applicant pays the full cost of the equipment and services upfront, then the applicant must submit an FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, to request reimbursement for the discounted share of the costs from USAC. If an applicant only pays its service provider the non-discounted share of the cost of the eligible equipment and services, then the service provider must file an FCC Form 474, the Service Provider Invoice (SPI) form, to receive reimbursement of the discounted share of the costs directly from USAC. Although the BEAR invoicing rules were modified in the *First 2014 E-Rate Order,* to allow applicants to receive direct reimbursement from USAC, service providers have continued invoicing applicants for the full cost of the E-Rate services and then provide a credit to the applicant after receiving reimbursement of the discounted share of costs for the

equipment and services through SPI invoicing from USAC.

37. This practice by certain service providers of requiring the applicant to pay the full cost of the E-Rate services upfront when the applicant has elected SPI billing and is only required to pay the service the non-discounted share of costs is contrary to the clear intent of allowing SPI billing and the Commission's rules. As the Commission explained in the *Second Report and Order,* ''requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries.'' The Commission explained that ''many applicants cannot afford to make the upfront payments that the BEAR method requires'' and concluded ''the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.'' The Commission therefore seeks comment on amending its rules and certifications to make them consistent with the Commission's intent that applicants who select the SPI invoicing method must only pay their service provider for the non-discounted share of the costs of the eligible equipment and services, and the service provider must seek the remaining discounted portion of costs from USAC and may not require full payment from the applicant as well when the SPI invoicing method is used.

38. Seeking Comment on Program Recoveries. In 2000, the Commission set up a framework for recovering funds committed or disbursed in violation of the Act and the Commission's rules. USAC implemented a process for recovering funds disbursed in violation of statutory and rule violations and, in 2004, as part of the Fifth Report and Order, *69 FR 55097 (09/13/2004),* the Commission largely affirmed and further refined USAC's approach when determining what amounts should be recovered by USAC and the Commission when funds have been disbursed in violation of the Commission's E-Rate program rules. In particular, the Commission amended its rules to apply the red light rule to E-Rate applicants and service providers. Commenters note that the recovery process can be confusing, leading to untimely appeals and applications being dismissed. Specifically, commenters raised challenges with USAC dismissing pending ''requests for funding commitments'' if a delinquent debt is not paid within 30 days of the notice provided for in the commitment adjustment procedures.'' The Commission therefore seeks comment on whether deferring action on pending E-Rate submissions without dismissing them would be appropriate while participants are on red light status. If so, what limits should be imposed to ensure timely action on the delinquent debt?

39. Updating E-Rate Program Definitions. Finally, the Commission seeks comment on changes to some of the program's definitions that may be causing confusion or no longer be as relevant to the current program. The Commission also encourages E-Rate participants to provide other cleanup suggestions for the program rules.

40. *Wiring Between Buildings.* The Commission next seeks comment on amending the definition of ''internal connections'' and ''wide area network'' to allow applicants to seek funding for wiring between different schools in the same contiguous area as an internal connection. In funding year 2017, the Bureau modified the Eligibles Services List to provide guidance on the classifications of connections between buildings of a single school. In that guidance, the Bureau noted that ''[c]onnections between different schools with campuses located at the same property (*e.g.,* an elementary school and middle school located on the same property) are considered to be category one digital transmission services.'' In funding year 2018, the Bureau further clarified that connections between two schools in a single building may be classified as a category two service, but rejected requests to allow the term ''single school campus'' in the definition of ''internal connections'' as allowing for a single campus containing multiple schools. Applicants remain frustrated that cabling between two schools (*e.g.,* a high school and an elementary school) in the same location be considered category one services, which under current rules, has separate competitive bidding requirements.

41. The Joint Commenters suggest that applicants should be permitted to use their category two funding to pay for cabling between two different schools located in the same contiguous area, if desired. The Commission therefore proposes to modify the definitions of ''internal connections'' and ''wide area network'' to allow multiple schools (*e.g.,* a high school and a middle school) to share a campus by removed the word ''single'' from each definition. The Commission seeks comment on this proposal or on alternative ways to modify the rules governing which category of service wiring should be considered. Would this raise new issues for these types of connections? Are there simpler ways to handle this issue? For instance, would it be more straightforward to draw the line between Internal Connections and WANs at the building? The issue identified by the Joint Commenters would remain, but the overall policy determination would be simpler. The Commission also seeks comment on removing references to ''voice'' in the definition of ''wide area network.''

42. *Definition of Consortium.* The Commission also seeks comment on amending the definition of ''consortium'' and whether to align it with the definition of ''consortium'' used in the Emergency Connectivity Fund program. The Commission's E-Rate rules only allow ineligible private sector entities to join consortia if the pre-discount prices for interstate services are at tariffed rates. Given that many services have been de-tariffed over the years, the Commission seeks comment on whether this language should be removed from the E-Rate definition of consortium and the definition be aligned with the ECF definition of consortium. If so, should the Commission continue to allow private entities to be in an E-Rate consortium? If the Commission were to allow ineligible entities to remain in E-Rate consortia should the limitation of ''pre-discount prices for interstate services are at tariffed rates'' be changed to another limitation as many services continue to be de-tariffed? The Commission also seeks comment on the potential advantages and disadvantages of permitting private sector entities to join E-Rate consortia. Is there any data or other information showing the impact on connectivity or pricing by allowing private sector entities to be in E-Rate consortia? What safeguards would the Commission have to put in place to ensure that the E-Rate program does not support services used by ineligible entities and to ensure ineligible entities are paying for their share of the consortium's costs? The Commission seeks comment on its proposal to remove this language and align the E-Rate definition of consortium with the ECF definition of consortium. If the Commission is to continue to include ineligible entities as member of E-Rate consortia, what limitations and restrictions should be adopted to ensure E-Rate funding is not being used to pay for the services of the ineligible consortia members? The Commission seeks comment on these questions.

43. The Commission, as part of its continuing effort to advance digital equity for all, including people of color,

persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

III. Procedural Matters

A. Paperwork Reductions Act Analysis

44. The Further Noticed of Proposed Rulemaking seeks comment on possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

45. *Ex Parte Rules—Permit but Disclose.* Pursuant to § 1.1200(a) of the Commission's rules, the Further Notice of Proposed Rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b) of the Commission's rules. In proceedings governed by the Commission's rules § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

46. In light of the Commission's trust relationship with Tribal Nations and its commitment to engage in government-to-government consultation with them, the Commission finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act. However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for the proceeding.

B. Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *FNPRM.* The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

48. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In the *Tribal E-Rate NPRM,* the Commission's primary objectives were to address the underrepresentation of Tribal applicants and increase participation of Tribal libraries. To achieve these objectives, the *Tribal E-Rate NPRM* explored ways to further simplify the E-Rate program rules, reduce program barriers and burdens, and encourage greater Tribal participation and community representation.

49. In response to the *Tribal E-Rate NPRM,* the Commission received several comments suggesting ways to streamline or simplify aspects of the E-Rate program overall for all schools and libraries. In order to develop the record further on those comments, the Commission is now seeking further comment on a series of proposed ways to improve the program for schools and libraries. First, the Commission seeks comment on updating the eligible services list by modifying the distinction between two types of eligible software, Internal Connections, such as the license to access software, and Basic Maintenance of Internal Connections (BMIC), which includes bug fixes, security patches, and technical assistance. The modification would allow applicants to receive full funding for BMIC services in the first year of the contract, instead of splitting it across multiple years. The Commission also seeks comment on the best method to aid applicants that are transitioning between two service providers during the same funding year. The Commission requests comment on ways applicants may seek services from multiple suppliers without being deemed duplicative services. The Commission also seeks information on other changes to help simplify the program, particularly for new and smaller applicants, such as revising the list of

eligible services to the same terms used on FCC Forms 470 or 471. The Commission also seeks comment on changing or clarifying the competitive bidding requirements in order to streamline aspects of the application process.

50. In addition, the Commission requests comment on creating a competitive bidding exemption for E-Rate funding requests under $10,000. In an effort to allow applicants flexibility in anticipating changes in bandwidth needs, the Commission seeks comment on how to increase bandwidth during the school year without requiring competitive bidding for the service. The Commission also seeks comment on when an applicant's change to FCC Form 470 or a related request for proposals (RFP) will require it to restart the competitive bidding process. The Commission requests information on automated bid and spam bid responses, and bid deadlines, and whether to expand evidence of a legally binding agreement to include board minutes approving a contract.

51. To streamline the E-Rate program forms, the Commission requests comment on modifications such as creating an ''EZ'' application form in plain language, adding navigation prompts that alert for potential entry errors, and updating drop down menu options on FCC Form 470, which is used to seek competitive bids, to reduce applicant confusion. The Commission also seeks comment on modifying FCC Form 470, or eliminating FCC Form 486, which is used to notify the Universal Service Administrative Company (USAC) that services have started and collect a certification of compliance with the Children's internet Protection Act Certification (CIPA).

52. The Commission seeks comment on streamlining how often it calculates and validates discount rates for applicants, and on modifying the deadline for requesting an invoice deadline extension, in order to reduce the number of applicants that are unable to get a program disbursement due to small errors near the invoice deadline. The Commission also requests information on amending its rules to address billing issues that would change requiring applicants to make full, up-front payments under certain billing methods. Finally, the Commission seeks comment on updating E-Rate program definitions to make it easier to build local networks in areas where two schools share a location, and reflect Tribal procurement rules.

53. The proposed action is authorized pursuant to sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403.

54. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

55. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

56. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

57. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

58. Small entities potentially affected by the rules herein include Schools, Libraries, Wired Telecommunications Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Telephony, Wired Broadband internet Access Service Providers (Wired ISPs), Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs), internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.

59. The potential rule changes discussed in the *FNPRM* if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since the purpose of the *FNPRM* is to streamline and simplify procedures, and improve the E-Rate program processes, the Commission anticipates that the rule modifications that may result from the matters upon which the Commission is seeking comment should reduce the economic impact of current compliance obligations on small entities. For example, modifications to funding for BMIC services would allow applicants that are small entities to receive full funding for these services during the first year of the contract, instead of splitting funding across multiple years, reducing operational costs. Revising the list of eligible services to the same terms used on FCC Forms 470 or 471 could simplify the application process for new and small applicants. Exempting small libraries from the competitive bidding process when requested funding is less than $10,000 would ease compliance burdens for these small entities. The Commission also seeks comment on eliminating the need to file a form before beginning to invoice the program.

60. In the *FNPRM* the Commission inquires whether there are other rule changes to the application, invoicing, or other administrative processes in the E-Rate program that could be made to specifically help new and smaller

schools and libraries. For example, creating an ''EZ'' application form in plain language and navigation prompts that alert for potential entry errors, as well as updating drop down menu options on FCC Form 470, may reduce operational and implementation costs for small applicants. Moving CIPA certifications to FCC Form 471 and removing USAC notification through FCC Form 486 would reduce reporting obligations for small entities. In response to comments to the *FNPRM* or this IRFA, the Commission may simplify and change the forms that applicants use to apply for the E-Rate program as well as modify filing and other administrative requirements, which should ease reporting, recordkeeping, and other compliance requirements for small entities.

61. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Additionally, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the Commission seeks comment in the *FNPRM* will require small entities to hire professionals to comply. However, consistent with the Commission's objectives to streamline and simplify the E-Rate program processes and procedures, the Commission does not anticipate that small entities will be required to hire professionals to comply with any rule modifications it adopts. The Commission expects the information it receives in comments including where requested, cost information, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *FNPRM.*

62. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

63. In the *FNPRM,* the Commission takes steps to minimize the economic impact on small entities from the changes to the E-Rate program on which it seeks comment. Specifically, each of the subjects on which the Commission seeks comment was identified by an E-Rate participant as a potential way to simplify the program in large or small ways and should lessen the economic impact on small entities. The Commission expects the comments received in response will allow us to consider ways to minimize the economic impact and explore alternatives to improve and simplify how small entities participate in the E-Rate program.

64. For example, in the *FNPRM,* the Commission explores ways to improve the process for applicants that have struggled with distinguishing how to apply for two different types of eligible software in the program, Internal Connections and BMIC, which is administratively more burdensome to request. If the applicant fails to file the competitive bidding forms for the right type of software, it can be denied funding even if the applicant otherwise applies correctly. If adopted some of the competitive bidding changes, such as exempting certain funding requests below $10,000, could result in less paperwork for small entities making low-cost purchases, and some of the form changes, such as creating the ''EZ'' application and adding plain-language to FCC Forms 470 and 471, while eliminating filing FCC Form 486, could reduce the number of forms that must be filed for all applicants, as well as reduce the number of applicants penalized for filing such forms past their deadline.

65. The Commission considered and seeks comment to the invoice deadline extension rule, beyond the single 120-day extension, in order to reduce the number of applicants and service providers that have invoices denied because they missed the deadline by a short period of time. All of these, and the other proposals on which the Commission seeks comment, would reduce costs for small entities.

66. None.

IV. Ordering Clauses

67. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, this Further Notice of Proposed Rulemaking IS ADOPTED effective September 8, 2023.

68. *It is further ordered* that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed above, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation 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. Section 54.500 is amended by revising the definitions of ''Consortium,'' ''Internal Connections,'' and ''Wide Area Network'' to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Consortium. A ''consortium'' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

* * * * *

Internal Connections. A service is eligible for support as a component of an institution's ''internal connections'' if such service is necessary to transport or distribute broadband within one or more instructional buildings of a school campus or within one or more non-administrative buildings that comprise a single library branch.

* * * * *

Wide Area Network. For purposes of this subpart, a ''wide area network'' is a data network that provides connections from one or more computers within an eligible school or library to one or more computers or

networks that are external to such eligible school or library. Excluded from this definition is a data network that provides connections between or among instructional buildings of a school campus or between or among non-administrative buildings of a single library branch.

■ 3. Section 54.503 is amended by revising paragraph (b) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(b) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state, local, and Tribal competitive bid requirements and are not intended to preempt such state, local, or Tribal requirements.

* * * * *

■ 4. Section 54.504 is amended by revising paragraphs (d)(1)(iv) and (d)(2) to read as follows:

§ 54.504 Requests for services.

* * * * *

(d) * * *

(1) * * *

(iv) The applicant certifies that the requested change is either within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services, or is the result of an unanticipated need for additional bandwidth and the applicant will seek competitive bids prior to the next funding year.

(2) Except for documented cases of transitioning from one service provider to another service provider, in the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

* * * * *

■ 5. Section 54.514 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 54.514 Payment for discounted services.

(a) * * *

(2) 120 days after the date of the Funding Commitment Decision Letter; or

* * * * *

(b) *Invoice deadline extension.* Service providers or billed entities may request a one-time extension of the invoicing filing deadline if such request is filed within 15 days after the deadline calculated pursuant to paragraph (a) of this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.

(c) *Choice of payment method.* Service providers providing discounted services under this subpart in any funding year shall, prior to the submission of the FCC Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the Administrator or by making a discounted payment and the service provider receiving subsequent reimbursement of the remaining amount from the Administrator.

[FR Doc. 2023–16985 Filed 8–8–23; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket Nos. 12–375, 23–62; DA 23–656; FR ID 161579]

Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau Seek Comment on Revisions to Providers' Annual Reporting and Certification Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) (collectively, the Bureaus) of the Federal Communications Commission (FCC or the Commission) seek comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications submitted by certain providers of incarcerated people's communications services (IPCS).

DATES: Comments are due September 8, 2023; and reply comments are due September 25, 2023.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 23–62, 12–375, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the Electronic Comment Filing System (ECFS): *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission adopted a new Protective Order in this proceeding which incorporates all materials previously designated by the parties as confidential. Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov,* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Amy Goodman, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1549 or via email at *Amy.Goodman@fcc.gov* or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418–1264 or via email at *Michael.Scott@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Public Notice, DA 23–656, released August 3, 2023. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/2023-incarcerated-peoples-communications-services-annual-reports-pn.* The full text of the draft instructions, templates, and certification form discussed in the document are available at the following internet address: *https://www.fcc.gov/proposed-2023-ipcs-annual-reports.*

Synopsis

1. By this document, the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (collectively, the Bureaus) seek comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications that the Commission requires certain providers of

incarcerated people's communications services (IPCS) to submit pursuant to the Commission's regulations in 47 CFR part 64. IPCS providers that are classified as inmate calling services (ICS) providers under the Commission's rules are required to make these filings to enable the Commission to monitor and track trends in the IPCS marketplace, increase provider transparency, and ensure compliance with the Commission's rules. In issuing this document, the Bureaus propose changes to reflect expanded reporting requirements regarding access to IPCS by persons with communication disabilities, including Telecommunications Relay Service (TRS) access, and the addition of video IPCS data necessary to help implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat. 6156 (Martha Wright-Reed Act or Act).

2. In 2015, pursuant to delegated authority, WCB created standardized reporting templates (FCC Form 2301(a)) for the Annual Report and a related certification of accuracy (FCC Form 2301(b)), as well as instructions to guide providers through the reporting process. WCB amended the instructions, reporting templates, and certification form in 2020 in order to improve the type and quality of the information collected. In 2022, WCB again amended the instructions, reporting templates, and certification form to reflect significant reforms to the ICS rules adopted in the *2021 ICS Order, Rates for Interstate Inmate Calling Services,* final rule, 86 FR 40682, July 28, 2021 (*2021 ICS Order*) including lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions.

3. Subsequent developments now require additional changes to the instructions, reporting templates, and certification form. In the *2022 ICS Order, Rates for Interstate Inmate Calling Services,* final rule, 87 FR 75496, December 9, 2022 (*2022 ICS Order*), the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect those new requirements. Specifically, the Commission required ICS providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point video calls, and each type of TRS for which access is provided. The Commission also eliminated the safe harbor, adopted in 2015, that had exempted providers from any TRS-related reporting requirements if they either (1) operated in a facility that allowed the offering of additional forms of TRS beyond those mandated by the Commission or (2) had not received any complaints related to TRS calls. The Commission found that the safe harbor was no longer appropriate given the expanded reporting requirement for additional forms of TRS, and the importance of transparency regarding the state of accessible communications in incarceration settings. The Commission delegated authority to the Bureaus to implement the expanded reporting obligations and to develop a reporting form that will most efficiently and effectively elicit the required information.

4. On January 5, 2023, the President signed into law the Martha Wright-Reed Act, which expanded the Commission's statutory authority over communications between incarcerated people and the non-incarcerated, including ''any audio or video communications service used by inmates . . . regardless of technology used.'' The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.

5. The Act directs the Commission to ''promulgate any regulations necessary to implement'' the Act, including its mandate that the Commission establish a ''compensation plan'' ensuring that all rates and charges for IPCS ''are just and reasonable,'' not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment date. The Act also requires the Commission to consider, as part of its implementation, the costs of ''necessary'' safety and security measures, as well as ''differences in costs'' based on facility size, or ''other characteristics.'' It also allows the Commission to ''use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider'' in determining just and reasonable rates.

6. Pursuant to the directive that the Commission implement the new Act and establish just and reasonable rates for IPCS services, the Commission released the *2023 IPCS Notice, Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Notice of Proposed Rulemaking, 88 FR 20804, April 7, 2023 (*2023 IPCS Notice*), seeking comment on how to interpret the Act's language to ensure that the Commission implements the statute in a manner that fulfills Congress's intent. Because the Commission is now required or allowed to consider certain types of costs, the Act contemplates that it would undertake an additional data collection. To ensure that it has the data necessary to meet its substantive and procedural responsibilities under the Act, the Commission adopted the *2023 IPCS Order, Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Delegations of Authority; Reaffirmation and Modification, 88 FR 19001, March 30, 2023 (*2023 IPCS Order*), delegating authority to WCB and the Office of Economics and Analytics (OEA) to modify the template and instructions for the most recent data collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject to the Commission's authority. On July 26, 2023, WCB and OEA released an Order adopting instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection. *2023 Mandatory Data Collection for Incarcerated People's Communications Services,* final order, 88 FR 51240, August 3, 2023.

7. In the *2023 IPCS Order,* the Commission also reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting templates for the Annual Reports. Specifically, the Commission delegated to the Bureaus authority to modify, supplement, and update the instructions and templates for the Annual Reports, as appropriate to supplement the information the Commission will receive in response to the 2023 Mandatory Data Collection.

8. In the next sections, the Bureaus seek comment on their proposed revisions to the Annual Report instructions, templates, and certification form, which are necessary to reflect the revised disability access rules adopted in the *2022 ICS Order* and to help implement the Martha Wright-Reed Act to ensure just and reasonable rates for consumers and fair compensation for providers.

I. Overall Structure of the Annual Reporting and Certification Requirements

9. Pursuant to their delegated authority, the Bureaus propose to revise the Annual Report instructions, templates, and certification form to be consistent with the Commission's 2022 amendments to the annual reports rule and to include the additional services now subject to the Commission's authority under the Martha Wright-Reed Act. The Bureaus also propose minor improvements based on their experience reviewing prior Annual Reports, which has persuaded us that revised instructions would help providers better understand the requirements, making the submitted reports more useful to the Commission and consumers. As a general matter, the Bureaus propose to maintain the existing Excel-format template and Word-format template for the Annual Reports to better separate individual data items from narrative responses and seek comment on this proposal. The Bureaus also seek comment on these proposed revisions, generally, and on the specific structure, content, and format of the proposed templates and instructions attached hereto. The Bureaus likewise propose minor revisions to the certification form. Are there other general changes or additions the Bureaus should make to gather better or more accurate data or to make the instructions clearer? Is there additional information that the Bureaus should require providers to submit to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Conversely, are there any proposed instructions, inquiries, or data fields that should be removed because they are unnecessary to ensure that providers report uniform and accurate data and other information?

10. As has been the case with prior Annual Reports, the reporting period is the calendar year immediately preceding the year during which the Annual Report is due. Thus, the reporting period for the next Annual Reports due on April 1, 2024 will be January 1, 2023 through December 31, 2023.

A. General Proposals

11. The Bureaus seek comment on whether the proposed instructions provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. Are there any additional changes that would help clarify the instructions, including the definitions, and increase uniformity across providers' responses? The Bureaus seek comment on all aspects of the proposed instructions, including any proposed revisions not explicitly addressed in this document.

12. *General Categories of Information Requested.* The proposed instructions, like those for prior reports, require providers to submit certain types of information related to their operations, IPCS rates, ancillary service charges, site commissions, and disability access. As a result of the Martha Wright-Reed Act, the proposed instructions would require providers to submit intrastate, interstate, and international information for both audio IPCS and video IPCS. Do the proposed instructions describe these categories of data in sufficient detail? Is there additional information that the Bureaus should require providers to submit in any of these categories to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Are there any additional changes the Bureaus should make to the proposed instructions and templates to make them easier for providers to understand? The Bureaus seek comment generally on the benefits and burdens of their proposals, and whether additional changes to proposed or existing reporting categories are warranted.

B. Specific Instructions

13. *Definitions.* The proposed instructions contain new and revised definitions reflecting the Commission's expanded authority over IPCS. The Bureaus seek comment on these definitions. Are they sufficiently clear? If not, how should they be modified? Are there any undefined terms the Bureaus should define? Are there any terms that should be added to the proposed instructions that would help ensure that the Commission receives all relevant data? If so, what are they and how should they be defined? Should any proposed definitions be removed?

14. *Facility and Contract Information.* The proposed instructions include a reference to a new Excel template that moves detailed contract and facility information already collected on multiple worksheets throughout the Excel template to a single worksheet. Collecting this granular information on a single worksheet is intended to help ensure consistent facility and contract-level reporting, and eliminate the need to repeatedly enter such detailed information on other worksheets throughout the Excel template. This change is intended to reduce the amount of duplicative information required throughout the report and consequently reduce the burden on providers. The Bureaus seek comment on this proposal.

15. *Audio and Video IPCS Rates.* The proposed instructions and templates continue to require providers to submit intrastate, interstate, and international IPCS rates for audio services across a number of categories, including: (i) highest 15-minute rate; (ii) highest year-end 15-minute rate; and (iii) average per minute rate. For interstate and international rates, the Bureaus require providers to identify all rates charged in excess of the applicable rate caps. For international rates, the Bureaus clarify that reported termination charges should reflect the amount billed by the provider to the consumer for termination to each international destination. The Bureaus seek comment on whether these instructions are sufficiently clear.

16. To assist the Commission in determining just and reasonable rates for video IPCS, consistent with the Martha Wright-Reed Act, the Bureaus propose adopting a similar reporting approach for video IPCS. The Bureaus propose adding new worksheets that collect the same rate information for video IPCS as that collected for audio IPCS. The Bureaus do not request information on video IPCS rates that exceed a cap, since there is no rate cap for these services at this time. Is this proposed approach the best way to collect information on video IPCS rates? Are there additional rate categories for video IPCS that the Bureaus should consider? Conversely, are there categories for audio IPCS that should not be included for video IPCS? For example, the proposed worksheets for international video IPCS exclude charges to terminate communications to foreign countries because while these charges apply to audio services, they may not apply to video services. Do parties agree with this adjustment?

17. Because providers are already familiar with these reporting categories for audio IPCS, the Bureaus expect that using the same rate reporting approach for video IPCS will help minimize the burdens associated with reporting this additional information regarding their video services. The Bureaus seek comment on this assessment. Are there other changes the Bureaus should make to the proposed rate reporting structure that would minimize the burden on providers, without sacrificing any necessary information or transparency? The Bureaus also propose new questions seeking certain narrative information about the reported rates for video IPCS and seek comment on these proposed revisions.

18. The proposed worksheets for video IPCS rate information ask providers to submit information for 15-minute intervals. The Bureaus propose using a 15-minute interval because this is the rate interval used for collecting data on audio IPCS and using the same interval should allow for more meaningful rate comparisons. In addition, audio call lengths are often limited to around 15 minutes. Do parties agree with use of this session interval to evaluate video IPCS rates? If not, what interval should the Bureaus use instead? The proposed Excel template also seeks rate information for both domestic and international video calls. The Bureaus seek comment on the extent to which domestic video IPCS rates differ from international video IPCS rates. Do the Bureaus need separate worksheets for domestic video IPCS rates and international video IPCS rates? If the Bureaus decide to use separate worksheets and some providers have the same rates for domestic and international video IPCS, the Bureaus propose allowing providers that charge the same rates to opt out of filing a separate worksheet for international video IPCS. The Bureaus seek comment on this proposed approach.

19. Finally, the Word template contains questions seeking narrative information about provider operations, facilities, and services, including new questions regarding video IPCS. The Bureaus seek comment on these new questions. Is there additional information the Commission should seek that would help increase transparency and compliance without imposing unwarranted burdens on providers?

20. *Ancillary Service Charges.* The current instructions require providers to report a variety of information about any ancillary service charges they have assessed, and require a narrative explanation concerning any methodologies used to allocate these charges among facilities that are covered by a single contract, where applicable. The Bureaus propose adding a new worksheet that collects the same ancillary service charge information for video IPCS as that collected for audio IPCS. Do the Bureaus need separate worksheets for audio and video ancillary service charges or are these charges typically the same? If the Bureaus decide to use separate worksheets, the Bureaus propose allowing providers that charge identical ancillary service charges for audio and video IPCS to opt out of filing a separate worksheet for video services. The Bureaus seek comment on this approach. Is there any additional information the Bureaus should seek regarding ancillary service charges for audio or video IPCS?

21. *Site Commissions.* The current instructions require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules. The existing instructions also require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable. The Bureaus propose adding a new worksheet that collects the same site commission payment information for video IPCS as that collected for audio IPCS. The Bureaus seek comment on this approach or whether a different approach should be considered. Is there any additional information the Bureaus should seek related to site commission payments made in connection with audio IPCS or video IPCS?

22. To the extent providers pay site commissions for both audio IPCS and video IPCS on a per-provider, per-facility, or per-contract basis, and those site commissions are fixed, the Bureaus propose requiring providers to allocate such site commission payments between audio IPCS and video IPCS based on their best estimate of the percentage of the total amount of their fixed site commissions attributable to each type of IPCS. The Bureaus also propose to direct providers to explain, document, and justify, in the Word template, any alternative methodology used to allocate fixed site commission payments between audio IPCS and video IPCS. Do commenters agree with this approach? Why or why not? Should the Bureaus require a different allocation methodology to help ensure more consistent reporting of fixed site commission payments that apply to multiple services? If so, what methodology should the Bureaus require and why?

23. *Disability Access and Related Considerations.* The proposed instructions modify providers' reporting obligations regarding the provision of TTY-based TRS and TTY-to-TTY calling for incarcerated people with hearing and speech disabilities, including any ancillary service charges that providers have assessed for or in connection with TTY-based calls. Providers would no longer be required to report the number of dropped calls for TTY-based TRS or TTY-to-TTY calls, but would still be required to report the number of calls and number of complaints related to TTY-based TRS and TTY-to-TTY calls. The Bureaus also propose updates to the instructions and the Excel template to reflect the 2022 reforms to the Commission's rules. Under the proposed changes to the ''Disability Access'' worksheet of the Excel template, providers would report, on a facility-by-facility basis, for each of the six kinds of TRS authorized by the Commission, (1) whether the service was available for use at the facility during the reporting period, (2) the number of calls made using the service, and (3) the number of complaints regarding the service. The same information would be collected for point-to-point video service and for TTY-to-TTY calling. The Bureaus seek comment on whether these proposed changes capture all of the information now required by the revised rules. If not, what additional changes should the Bureaus make?

24. *Miscellaneous.* The proposed Excel template includes minor changes designed to help reduce burdens and minimize provider error when completing the worksheets. For instance, the proposed template includes ''drop-down'' menus for data entry when there are only a few answer options. It also includes new cell formatting that restricts the data that can be entered (*e.g.,* numbers vs. text). For the worksheets that include rates paid for IPCS calls to international destinations, the Bureaus propose to require providers to enter their international destinations only once for each worksheet, instead of repeating this information multiple times on each worksheet. The Bureaus seek comment on these minor modifications. The Bureaus also seek comment on their proposed minor updates to the certification form (*e.g.,* inserting the word ''Authorized'' before ''Officer''). Finally, the Bureaus ask for suggestions on additional modifications to the instructions, Excel and Word templates, and certification form that would make them clearer and easier to use.

II. Procedural Matters

25. *Ex Parte Presentations.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that

memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

26. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act, the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the document. The Supplemental IRFA supplements the Commission's Regulatory Flexibility Analyses included in both the *2022 ICS Order,* and in the *2023 IPCS Order* and serves to further the process of implementing the revised disability access rules requirements adopted in the *2022 ICS Order* and in the Martha Wright-Reed Act. The Supplemental IRFA is set forth in Appendix B. The Commission requests written public comments on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in this document. The Commission will send a copy of this document, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, summaries of this document and the Supplemental IRFA will be published in the **Federal Register**.

27. *Initial Paperwork Reduction Act Analysis.* The document, and the attached instructions and templates, contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Bureaus note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198; see 44 U.S.C. 3506(4), the Bureaus seek comment on how the Commission will further reduce the information collection burden for small business concerns with fewer than 25 employees.

Supplemental Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) (collectively, the Bureaus) have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the document to supplement the Commission's Regulatory Flexibility Analyses contained in the *Rates for Interstate Inmate Calling Services,* Order and Notice of Proposed Rulemaking, and in the *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services,* Notice of Proposed Rulemaking and Order. The Bureaus request written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided on the first page of the document.

A. Need for, and Objectives of, the Proposed Rules

2. In the document, the Bureaus seek comment regarding proposed revisions to the instructions, templates, and certification form for the Annual Reports submitted by providers of incarcerated people's communications services (IPCS). In issuing the document, the Bureaus act pursuant to the Commission's delegation of authority to the Bureaus to modify, supplement, and update the Annual Report instructions, templates, and certification form, as appropriate, to reflect revised rules adopted in the *2022 ICS Order* and to provide additional information the Commission will need to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).

3. In the *2022 ICS Order,* the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect these changes. Under the proposed, expanded reporting requirements, IPCS providers would be required to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point video calls, and each type of TRS for which access is provided. The Commission also eliminated the safe harbor adopted in 2015 concerning the reporting requirement for TTY-based TRS calls. Additionally, the Commission delegated authority to the Bureaus to implement the expanded reporting obligations contained in the *2022 ICS Order* and to develop a reporting form that will most efficiently and effectively elicit the required information.

4. On January 5, 2023, the President signed the Martha Wright-Reed Act into law, thereby expanding the Commission's statutory authority over communications between incarcerated people and the non-incarcerated to include ''any audio or video communications service used by inmates . . . regardless of technology used.'' The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people. Further, the Martha Wright-Reed Act also directs the Commission to ''promulgate any regulations necessary to implement'' the Act, including its mandate that the Commission establish a ''compensation plan'' ensuring that all rates and charges for IPCS ''are just and reasonable,'' not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment.

5. In accordance with the Martha Wright-Reed Act's directive, the Commission released the *2023 IPCS Notice,* which sought comment on how to best interpret the Act's language in order to ensure the Commission implemented the statute in a manner that fulfills Congress's intent. In the *2023 IPCS Order,* the Commission reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting template for the Annual Reports. Specifically, the Commission delegated

authority to the Bureaus to modify, supplement, and update those instructions and templates as appropriate to supplement information WCB will be receiving in response to the 2023 Mandatory Data Collection.

6. Pursuant to their delegated authority, the Bureaus have proposed revisions to the instructions, templates, and certification form for the Annual Reports and are issuing the document to seek comment on all aspects of these proposed changes.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1, 2, 4(i)–(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Act, Public Law 117–338, 136 Stat. 6156 (2022).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed Annual Reports data collection. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. noted above,

9. As noted above, Regulatory Flexibility Analyses were incorporated in the *2022 ICS Order* and the *2023 IPCS Notice.* In those analyses, the Commission described in detail the small entities that might be affected. In this Supplemental IRFA, the Bureaus hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2022 ICS Order* and *2023 IPCS Notice.*

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The document seeks comment on the specifics of the proposed revisions to the instructions, templates, and certification form to ensure the Commission receives the data it needs for the Annual Reports. The proposed data collection would require certain providers that are classified as inmate calling services providers under the Commission's rules to submit, among other things, data and other information on providers' operations, IPCS rates, ancillary services, site commissions, and disability access. The proposed data collection may subject small and other providers to modified or new reporting or other compliance obligations. In addition, the Bureaus recognize that their actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. At this time, the Bureaus do not have sufficient information to determine whether the proposed revisions to the Annual Reports data collection will require small entities to hire attorneys, engineers, or other professionals to comply with the new rules. The Bureaus, however, anticipate the information they receive in the comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries the Bureaus make in the document.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' The Bureaus will consider these factors after reviewing any substantive comment the Bureaus have received from the public and potentially affected small entities.

12. In the document, the Bureaus have taken steps to minimize the economic impact on small entities and consider alternatives through its proposals that include considering different ways to revise the Annual Reports instructions, templates, and certification form without causing significant economic impact to small entities. For example, the Bureaus propose reporting and certification requirements that are similar to those used in prior Annual Reports data collections. In addition, the standardized templates and instructions simplify compliance with, and reduce the burden of, the information requirements related to submission of the Annual Reports. Further, the Bureaus have taken steps to ensure the instructions, annual reporting templates, and certification form are competitively neutral and are not unduly burdensome for all providers. Finally, the document proposes to allow providers that charge the same rates for domestic and international video IPCS to opt out of filing a separate spreadsheet for international video IPCS, thus reducing the regulatory burden to providers. The Bureaus will also consider any significant economic impact to small entities that may be raised in comments filed in response to the document and Supplemental IRFA.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

13. None.

Federal Communications Commission.

Lynne Engledow

Deputy Chief, Pricing and Policy Division, Wireline Competition Bureau.

[FR Doc. 2023–17076 Filed 8–8–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAR Case 2020–005; Docket No. FAR–2020–0005; Sequence No. 1]

RIN 9000–AO08

Federal Acquisition Regulation: Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires explanations to unsuccessful awardees on certain orders under task order and delivery order contracts.

DATES: Interested parties should submit written comments to the Regulatory

Secretariat Division at the address shown below on or before October 10, 2023 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020–005 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2020–005''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2020–005''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2020–005'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2020–005'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, at 202–208–4949 or by email at *michaelo.jackson@gsa.gov,* for clarification of content. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2020–005.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92) which, for task orders or delivery orders exceeding the simplified acquisition threshold (SAT) but not greater than $6 million, requires contracting officers to provide, upon written request from an unsuccessful offeror, a brief explanation as to why the offeror was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer.

Section 874 of the NDAA uses the term ''unsuccessful offeror.'' FAR 16.505 uses the term ''unsuccessful awardee''. Both terms are synonymous; referring to an entity who has been awarded a basic contract but has been unsuccessful for the award of an order competed under the basic contract. Since the term ''unsuccessful awardee'' is already used and understood by the acquisition community, the term will be used to implement the requirement.

FAR 16.505(b)(6) requires contracting officers to notify unsuccessful awardees when the total price of a task order or delivery order exceeds $6 million. If the $6 million threshold is met, contracting officers are directed to the procedures at FAR 15.503(b)(1) and FAR 15.506 when providing a postaward notification or postaward debriefing, respectively.

The FAR threshold at 16.505 is currently $6 million as a result of two inflation adjustments in accordance with FAR 1.109. FAR Case 2014–022 published on July 2, 2015, at 80 FR 38293 and 2019–013 published on October 2, 2020, at 85 FR 62485 each raised the threshold by $500,000 from the $5 million reflected at 41 U.S.C. 4106(d).

II. Discussion and Analysis

The proposed rule implements the requirement for contracting officers to, upon written request from an unsuccessful awardee, provide a brief explanation as to why the awardee was unsuccessful for a task order or delivery order exceeding the SAT but not exceeding $6 million. While the statutory threshold is $5.5 million, this rule is imposing these debriefing requirements at the higher $6 million threshold to align with the current threshold at FAR 16.505(b)(6). This avoids a gap between $5.5 million and $6 million. This new debriefing requirement for orders above the SAT and below $6 million does not provide a debriefing at the level of detail currently afforded to unsuccessful awardees over $6 million, however, this information is expected to benefit entities by improving future offers. While not expressly required by the statute, the proposed rule adds a postaward notification requirement for the applicable task orders and delivery orders to ensure unsuccessful awardees are provided an opportunity to obtain the debriefing information in a timely manner.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, for commercial products, including COTS items, or for commercial services.

IV. Expected Impact of the Rule

This proposed rule is expected to increase the availability of debriefing information to significantly more small and large entities participating in fair opportunity competitions than is currently required by the FAR. When requested by an unsuccessful awardee, the information provided is expected to enable these entities to improve future offers.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because the rule provides postaward information to unsuccessful awardees, if requested. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 874 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). For task orders or delivery orders exceeding the simplified acquisition threshold (SAT) but not greater than $5.5 million, section 874

requires contracting officers to provide, upon written request from an unsuccessful offeror, a brief explanation as to why the offeror's offer was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the unsuccessful offeror's offer. While the statutory threshold is $5.5 million, this rule is implementing this requirement at the higher $6 million threshold for debriefings currently in the FAR to avoid a gap between $5.5 million and $6 million.

The objective of this proposed rule is to increase the availability of debriefing information to significantly more small and large entities participating in fair opportunity competitions than is currently required by the FAR. When requested by an unsuccessful awardee, the information provided is expected to enable these entities to improve future offers. The legal basis for the rule is section 874 of the NDAA for FY 2020. Promulgation of FAR regulations is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

This proposed rule will apply to all entities participating in fair opportunity competitions that exceed the SAT but do not exceed $6 million. Based upon FY 2018 through FY 2020 data obtained from the Federal Procurement Data System, the Government awarded an average of 53,068 task orders and delivery orders against multiple-award contracts exceeding the SAT but not exceeding $6 million annually. Of those orders, an estimated 22,863 were awarded to approximately 5,984 unique small entities each year. While DoD, GSA, and NASA are unable to estimate how many unique small entities are unsuccessful awardees and would request information afforded by this rule, it is assumed that at least one small entity may make such a request per opportunity, 22,863 annually.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020–005), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Part 16

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by revising paragraph (b)(6) to read as follows:

16.505 Ordering.

* * * * *

(b) * * *

(6) *Postaward notices and debriefings (41 U.S.C. 4106 and 41 U.S.C. 4106 note).*

(i) For task orders or delivery orders exceeding the simplified acquisition threshold but not exceeding $6 million, the contracting officer shall—

(A) Provide timely notification to unsuccessful awardees. At a minimum, the notification shall provide the name of the awardee of the order and the total price of the order;

(B) Upon written request, received by the agency within 3 days after the date that the unsuccessful awardee has received notification of award, provide a brief explanation as to why the awardee was unsuccessful that includes—

(*1*) A summary of the rationale for the award; and

(*2*) An evaluation of the significant weak or deficient factors in the unsuccessful awardee's offer.

(C) Include the brief explanation in the task order or delivery order file.

(ii) For task orders or delivery orders exceeding $6 million, the contracting officer shall—

(A) Provide postaward notification to unsuccessful awardees in accordance with the procedures at 15.503(b)(1);

(B) Follow the procedures at 15.506 when providing postaward debriefings to unsuccessful awardees; and

(C) Include a summary of the debriefing in the task order or delivery order file.

* * * * *

[FR Doc. 2023–16395 Filed 8–8–23; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 88, No. 152
Wednesday, August 9, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on General Principles

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on September 14, 2023, from 2:00–4:00 p.m. EDT. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 33rd Session of the Codex Committee on General Principles (CCGP) of the Codex Alimentarius Commission (CAC), which will meet in Bordeaux, France from October 2–6, 2023. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 33rd Session of the CCGP and to address items on the agenda.

DATES: The public meeting is scheduled for September 14, 2023, from 2:00–4:00 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 33rd Session of the CCGP will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCGP&session=33.*

Mary Frances Lowe, U.S. Delegate to the 33rd Session of CCGP, invites interested U.S. parties to submit their comments electronically to the following email address: *maryfrances.lowe@usda.gov.*

Registration: Attendees may register to attend the public meeting at the following link: *https://www.zoomgov.com/meeting/register/vJItceCtqToiHQmKptH0CtUn35LTAXhR7Hc.* After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 33rd session of CCGP, contact U.S. Delegate, Mary Frances Lowe, U.S. Manager for Codex Alimentarius, Office of the Under Secretary for Trade and Foreign Agricultural Affairs, U.S. Department of Agriculture, (202) 205–7760, *maryfrances.lowe@usda.gov.* You may also contact the U.S. Codex Office by email at: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference for the Codex Committee on General Principles are:

To deal with such procedural and general matters as are referred to it by the Codex Alimentarius Commission, including:

(a) the review or endorsement of procedural provisions/texts forwarded by other subsidiary bodies for inclusion in the Procedural Manual of the Codex Alimentarius Commission; and

(b) the consideration and recommendation of other amendments to the Procedural Manual The CCGP is hosted by France. The United States attends the CCGP as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 33rd Session of CCGP will be discussed during the public meeting:

- Matters referred by CAC and other subsidiary bodies
- Information on activities of FAO and WHO relevant to the work of CCGP
- Codex *Procedural Manual:* presentation of new format and observations on consistency and superseded content
- *Procedural Manual:* Proposed update to the Guide to the Procedure for the Amendment and Revision of Codex Standards and Related text
- Review and possible amendments to the rules of procedure on Sessions of the Commission
- Review and possible amendment of the Principles concerning the participation of international non-governmental organizations in the work of the CAC
- Other business and future work

Public Meeting

At the public meeting on September 14, 2023, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Mary Frances Lowe, U.S. Delegate to the 33rd Session of CCGP, at *maryfrances.lowe@usda.gov.* Written comments should state that they relate to activities of the 33rd Session of CCGP.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which

may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on August 4, 2023.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2023–17079 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service (Forest Service or Agency), U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next three months and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between July 1, 2023, and September 30, 2023; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since April 1, 2023.

ADDRESSES: Questions or comments may be submitted by email to the contact listed below.

FOR FURTHER INFORMATION CONTACT: JoLynn Anderson, 971–313–1718 or *jolynn.anderson@usda.gov.* Individuals who use telecommunications devices for the deaf and hard of hearing may call the Federal Relay Service at 800–877–8339 24 hours a day, every day of the year, including holidays. You may register to receive email alerts regarding Forest Service directives at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The following proposed directives are planned for publication for public comment from July 1, 2023, to September 30, 2023:

1. Forest Service Manual (FSM) 2000, National Forest Resource Management, chapter 40, National Forest System Monitoring (previously published April 19, 2023 (88 FR 24147) as planned for publication for public comment).

2. FSM 2300, Recreation, Wilderness, and Related Resource Management, chapter 50, section 55, Climbing Management (previously published April 19, 2023 (88 FR 24147) as planned for publication for public comment).

The following proposed and interim directives have been published for public comment but have not yet been finalized:

1. FSM 2200, Rangeland Management, chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, chapters 10, Term Grazing Permits; 20, Grazing Agreements; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; and 90, Rangeland Management Decision Making; and FSH 2209.16, Allotment Management Handbook, chapter 10, Allotment Management and Administration.

2. FSM 3800, Landscape Scale Restoration Program.

3. FSH 2409.12, Timber Cruising Handbook, chapters 30, Cruising Systems; 40, Cruise Planning, Data Recording, and Cruise Reporting; 60, Quality Control; and 70, Designating Timber for Cutting; FSH 2409.15, Timber Sale Administration Handbook, chapters 20, Measuring and Accounting for Included Timber; 40, Rates and Payments; and 60, Operations and Other Provisions.

4. FSH 5509.11, Title Claims, Sales, and Grants Handbook, chapter 10, Title Claims and Encroachments.

Final Directives That Have Been Issued Since April 1, 2023

Final FSH 2209.13, Grazing Permit Administration Handbook, chapters 30, Temporary Grazing and Livestock Use Permits; 60, Records; and 70, Compensation for Permittee Interests in Rangeland Improvements, have been issued since April 1, 2023.

FSH 2209.13, chapters 30, 60, and 70, are the second batch of Grazing Permit Administration Handbook chapters being updated from a total of 17 chapters. Final FSH 2209.13, chapter 80, was issued March 6, 2023. The rangeland management directives in the FSM and FSH are being updated in batches to provide greater management flexibility and improve the clarity of policies and procedures guiding responsible and consistent management of grazing on National Forest System lands. The remaining chapters in FSM 2200, Rangeland Management, FSH 2209.13, and FSH 2209.16, Allotment Management Handbook, are being reviewed and will be published for public comment later.

The 60-day comment period for the proposed directives began December 18, 2020, closed February 16, 2021, and was extended for 60 days to April 17, 2021. The response to comments on all 17 proposed directives can be viewed at *https://cara.fs2c.usda.gov/Public/ReadingRoom?project=ORMS-2514.* Final chapters 30, 60, and 70 were issued June 30, 2023, and can be viewed at *https://www.fs.usda.gov/im/directives/fsh/2209.13/wo_2209.13_30-Amend%202023-2.docx; https://www.fs.usda.gov/im/directives/fsh/2209.13/wo_2209.13_60-Amend%202023-3.docx;* and *https://www.fs.usda.gov/im/directives/fsh/2209.13/wo_2209.13_70-Amend%202023-4.docx.*

Dated: August 4, 2023.

JoLynn Anderson,

Branch Chief, Directives, Information Collections and Government Clearance, Forest Service Policy Office.

[FR Doc. 2023–17071 Filed 8–8–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Peninsula Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Olympic Peninsula Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The Committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Olympic National Forest within Mason, Jefferson, Clallam, and Grays Harbor County, consistent with the Federal Lands Recreation Enhancement Act.

DATES: An in-person and virtual meeting will be held on September 18, 2023, 8:00 a.m.–5:00 p.m. Pacific Daylight Time (PDT) and if needed on September 29, 2023, 8:30 a.m.–5:00 p.m. PDT.

Written and Oral Comments: Anyone wishing to provide in-person or virtual oral comments must pre-register by 11:59 p.m. PDT on September 11, 2023. Written public comments will be accepted by 11:59 p.m. PDT on September 11, 2023. Comments submitted after this date will be provided to the Forest Service, but the Committee may not have adequate time to consider those comments prior to the meeting.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting will be held in-person and virtually at the Field Arts & Events Hall located at 210 West Front Street, Port Angeles, WA 98362. The public may also join virtually via webcast, teleconference, videoconference, and/or Homeland Security Information Network (HSIN) virtual meeting at: *https://us02web.zoom.us/meeting/register/tZ0sdeivpzIsE9ejcGrZJ3AsSfcKWNm8QVP_*. RAC information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/olympic/workingtogether/advisorycommittees* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments: Written comments must be sent by email to *Jennifer.garciasantiago@usda.gov* or via mail (*i.e.,* postmarked) to Jennifer Garcia Santiago, 1835 Black Lake Blvd. SW, Olympia, Washington 98512. The Forest Service strongly prefers comments be submitted electronically.

Oral Comments: Persons or organizations wishing to make oral comments must pre- register by 11:59 p.m. PDT on September 11, 2023, and speakers can only register for one speaking slot. Oral comments must be sent by email to *Jennifer.garciasantiago@usda.gov* or via mail (*i.e.,* postmarked) to Jennifer Garcia Santiago, 1835 Black Lake Blvd. SW, Olympia, Washington 98512.

FOR FURTHER INFORMATION CONTACT: Alfred Watson, Designated Federal Officer (DFO), by phone at 760–371–2889 or email at *alfred.watson@usda.gov* or Jennifer Garcia Santiago, RAC Coordinator, at 564–669–9623 or email at *Jennifer.garciasantiago@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review meeting agenda and FACA requirements;
2. Elect a Chairperson;
3. Hear from Title II project proponents and discuss Title II project proposals;
4. Provide opportunity for public comment;
5. Discussion, prioritization, and recommendations on Title II projects by the RAC;
6. Approve meeting minutes; and
7. Schedule the next meeting.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda.

Written comments may be submitted to the Forest Service up to 10 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: August 3, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–17020 Filed 8–8–23; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Extend and Revise a Previously Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Approval of notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, this notice announces the National Institute of

Food and Agriculture's (NIFA) intention to extend and revise a previously approved information collection entitled, ''Research, Education, and Extension project online reporting tool (REEport).'' NIFA is proposing to modify the collection in response to the August 25, 2022, Office of Science and Technology Policy Memorandum and audit findings of the USDA Office of Inspector General.

DATES: Written comments on this notice must be received by October 10, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Laura Givens, 816–527–5379, *Laura.Givens@usda.gov.*

SUPPLEMENTARY INFORMATION: *Title of Collection:* Research, Education, and Extension project online reporting tool (REEport).

OMB Control Number: 0524–0048.

Expiration Date of Current Approval: 8/31/2024.

Type of Request: Request to revise and extend a currently approved information collection. The burden estimate for this collection has been decreased because the number of respondents has decreased.

Abstract: The United States Department of Agriculture (USDA), NIFA administers several competitive, peer-reviewed research, education, and extension programs, under which high-priority awards are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); the Smith-Lever Act (7 U.S.C. 341 *et seq.*); and other legislative authorities. NIFA utilizes the REEport system to collect both technical and financial data related to NIFA-funded competitive (non-capacity) projects and allows grantees to report significant accomplishments and impacts of their research, extension, and educational work.

NIFA is proposing to add additional reporting fields to REEport for two digital identifiers associated with publications that result from NIFA-funded projects. This information is currently collected in free text fields. This update will allow NIFA to clarify information requirements, meet public access requirements, and increase data validity. The first digital identifier is the Digital Object Identifier (DOI) registered to journal articles by publishers or content owners. The DOI will allow NIFA to eliminate the manual entry of publication data by grantees. The second digital identifier is a persistent identifier for data assets supporting NIFA-funded publications. Persistent identifiers for data assets may include DOI or other appropriate persistent identifiers as defined by an approved data management plan. NIFA proposes to collect the Open Researcher and Contributor ID (ORCID) for all NIFA-funded researchers and authors of NIFA-funded research products. The ORCID is a persistent digital identifier, available to individuals at no cost. Collecting persistent digital identifiers will help NIFA improve the robustness of its publication and other funding products data and be better positioned to demonstrate the value of its investments. The specific persistent identifier fields required will be updated in compliance with field and federal standards and best practices. The digital persistent identifier fields will be added to the Progress Report and Final Report in REEport.

Total Estimate of the Burden: The estimated annual reporting burden for the REEport collection is as follows:

I. Project Initiation

The total annual estimated burden for this information collection is 7,360 hours. This includes the time needed for participant education; data entry, aggregation, and reporting; and preparation, review, and submission of program plans and budgetary information. The number of respondents and responses for this report has decreased from 3,700 to 1,600 because NIFA now collects information about capacity grants in a different reporting system (the NIFA Reporting System (NRS)).

Estimated Number of Respondents: 1,600 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 4.6 hours.

Estimated Total Annual Burden on Respondents: 7,360 hours.

Frequency of Responses: Annually.

II. Financial Report

The total annual estimated burden for this information collection is 9,380 hours. This includes the time needed for participant education; data entry, aggregation, and reporting; and preparation, review, and submission of program plans and budgetary information. The number of respondents and responses for this report has decreased from 8,700 to 6,700 because NIFA now collects information about capacity grants in NRS.

Estimated Number of Respondents: 6,700 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 1.4 hours.

Estimated Total Annual Burden on Respondents: 9,380 hours.

Frequency of Responses: Annually.

III. Progress Report

The total annual estimated burden for this information collection is 25,460 hours. This includes the time needed for participant education; data entry, aggregation, and reporting; and preparation, review, and submission of program plans and budgetary information. NIFA proposes to collect persistent digital identifiers in this report but anticipates that this will not increase the amount of time needed to complete each response. The number of respondents and responses for this report has decreased from 8,700 to 6,700 because NIFA now collects information about capacity grants in NRS.

Estimated Number of Respondents: 6,700 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 3.8 hours.

Estimated Total Annual Burden on Respondents: 25,460 hours.

Frequency of Responses: Annually.

IV. Final Report

The total annual estimated burden for this information collection is 6,080 hours. This includes the time needed for participant education; data entry, aggregation, and reporting; and preparation, review, and submission of program plans and budgetary information. NIFA proposes to collect persistent digital identifiers in this report but anticipates that this will not increase the amount of time needed to complete each response. The number of respondents and responses for this report has decreased from 8,700 to 6,700 because NIFA now collects information about capacity grants in NRS.

Estimated Number of Respondents: 1,600 per year.

Estimated Number of Responses per Respondent: 1.

Estimated Burden per Response: 3.8 hours.

Estimated Total Annual Burden on Respondents: 6,080 hours.

Frequency of Responses: Once after end of project.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request to OMB for approval. All comments will become a matter of public record.

Obtaining a Copy of the Information Collection: A copy of the information collection and related instructions may be obtained free of charge by contacting Laura Givens as directed above.

Done at Washington, DC, this day of July 27, 2023.

Dionne Toombs,

Associate Director for Programs, National Institute of Food and Agriculture, U.S. Department of Agriculture.

[FR Doc. 2023–17004 Filed 8–8–23; 8:45 am]

BILLING CODE 3410–22–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meetings; Correction

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice; correction.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) published a document in the **Federal Register** of July 28, 2023, concerning dates for CSB's public meetings for FY2024. The document contained an incorrect date.

STATUS: Open to the public.

FOR FURTHER INFORMATION CONTACT: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about these public meetings can be found on the CSB website at: *www.csb.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 28, 2023, in FR Doc. 2023–16148, on page 48788, in the second column, correct the ''Matters to be Considered'' Caption to read:

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene public meetings on October 26, 2023; January 25, 2024; April 25, 2024; and, July 25, 2024, at 2 p.m. ET. These meetings serve to fulfill the CSB's requirement to hold a minimum of four public meetings for Fiscal Year 2024 pursuant to 40 CFR 1600.5(c). The Board will review the CSB's progress in meeting its mission and as appropriate highlight safety products newly released through investigations and safety recommendations.

Dated: August 7, 2023.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2023–17171 Filed 8–7–23; 4:15 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: Written comments must be submitted on or before October 10, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Kirsten Brew, Chief, Multinational Operations Branch (BE–69), Bureau of Economic Analysis, U.S. Department of Commerce, by email to *Kirsten.Brew@bea.gov* and *PRAcomments@doc.gov.* Please reference OMB Control Number 0608–0034 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kirsten Brew, Chief, Multinational Operations Branch (BE–69), Bureau of Economic Analysis, U.S. Department of Commerce; via phone at (301) 278–9152; or via email at *Kirsten.Brew@bea.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Foreign Direct Investment in the United States (BE–15) obtains sample data on the financial structure and operations of foreign-owned U.S. business enterprises. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States to assess its impact on the U.S. economy. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–12 benchmark survey, which is conducted every five years. The data collected include balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity for the U.S. operations. In addition to these national data, several data items are collected by state, including employment and property, plant, and equipment.

The survey, as proposed, incorporates the following change that was made to the 2022 BE–12, Benchmark Survey of Foreign Direct Investment in the United States:

(a) The expensed petroleum and mining expenditures item will be removed from the BE–15A form. The item is not a good fit conceptually as a component of property, plant, and equipment (capital) expenditures.

II. Method of Collection

BEA contacts potential respondents by mail in March of each year; responses covering a reporting company's fiscal year ending during the previous calendar year are due by May 31 (or by June 30 for respondents that file using BEA's eFile system). Reports are required from each U.S. business enterprise in which a foreign person has at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in the BE–15 forms and instructions. Entities required to report will be contacted individually by BEA.

Entities not contacted by BEA have no reporting responsibilities.

BEA offers electronic filing through its eFile system for use in reporting on the BE–15 annual survey forms. In addition, BEA posts its survey forms and reporting instructions on its website (*www.bea.gov/fdi*). These may be downloaded, completed, printed, and submitted via fax or mail.

Potential respondents of the BE–15 are selected from those U.S. business enterprises that were required to report on the 2022 BE–12, Benchmark Survey of Foreign Direct Investment in the United States, along with those U.S. business enterprises that subsequently entered the direct investment universe. The BE–15 is a sample survey; universe estimates are developed from the reported sample data.

III. Data

OMB Control Number: 0608–0034.

Form Number: BE–15.

Type of Review: Revision.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6,550 annually, of which approximately 3,350 file A forms, 1,700 file B forms, 1,000 file C forms, and 500 file Claim for Exemption forms.

Estimated Total Annual Burden Hours: 159,038 hours. Total annual burden is calculated by multiplying the estimated number of submissions of each form by the average hourly burden per form, which is 44.75 hours for the A form, 3.75 hours for the B form, 2.25 hours for the C form, and 1 hour for the Claim for Exemption form.

Estimated Time per Respondent: 24.3 hours per respondent (159,038 hours/6,550 respondents) is the average but may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

IV. Request for Comments

We are soliciting public comments to permit the Department of Commerce/Bureau of Economic Analysis to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.

[FR Doc. 2023–17022 Filed 8–8–23; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–841]

Forged Steel Fluid End Blocks From Italy: Final Results of Countervailing Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to Lucchini Mame Forge S.p.A (LMA), a producer and exporter of forged steel fluid end blocks (fluid end blocks) from Italy during the period of review (POR), May 26, 2020, through December 31, 2021.

DATES: Applicable August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395.

Background

On February 7, 2023, Commerce published the preliminary results of this administrative review in the **Federal Register**.[1] This review covers one mandatory respondent, LMA. From May 8 through May 16, 2023, we conducted verification of LMA and the Government of Italy's (GOI) questionnaire responses. On June 9, 2023, we released the verification reports,[2] and, on June 12, 2023, we invited parties to comment on the *Preliminary Results*.[3] On June 21, 2023, LMA and the GOI submitted timely-filed case briefs.[4] On June 29, 2023, LMA and the petitioners [5] submitted timely-filed rebuttal briefs.[6] On June 5, 2023, Commerce extended the deadline for issuing the final results until August 3, 2023.[7] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[8]

Scope of the Order [9]

The products covered by the *Order* are fluid end blocks. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by the interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of these issues is provided in the appendix to this notice. The Issues and Decision Memorandum

[1] *See Forged Steel Fluid End Blocks from Italy: Preliminary Results of Countervailing Duty Administrative Review, and Intent To Rescind Administrative Review in Part; 2020–2021,* 88 FR 7944 (February 7, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memoranda, ''Verification of the Questionnaire Responses of Lucchini Mame Forge S.p.A.,'' dated June 9, 2023, and ''Verification of the Questionnaire Responses of the Government of Italy,'' dated June 9, 2023.

[3] *See* Commerce's Letter, ''Briefing Schedule,'' dated June 12, 2023.

[4] *See* LMA's Letter, ''Lucchini's Case Brief,'' dated June 21, 2023; *see also* GOI's Letter, ''Case Brief for Government of Italy,'' dated June 21, 2023.

[5] The petitioners are Ellwood City Forge Company, Ellwood Quality Steels Company, Ellwood National Steel Company, and A. Finkl & Sons.

[6] *See* Petitioners' Letter, ''FEB Fair Trade Coalition's Administrative Rebuttal Brief,'' dated June 28, 2023.

[7] *See* Memorandum, ''Extension of Deadline for Final Results of the Countervailing Duty Administrative Review 2020,'' dated June 5, 2023.

[8] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Forged Steel Fluid End Blocks from Italy; 2020–2021,'' concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[9] *See Forged Steel Fluid End Blocks from the People's Republic of China, the Federal Republic of Germany, India, and Italy: Countervailing Duty Orders, and Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China,* 86 FR 7535 (January 29, 2021) (*Order*).

is a public document and is on file electronically via Enforcement and Compliance's Antidumping and CVD Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on comments received from interested parties and issues originating from verification, we revised the calculation of the net countervailable subsidy rates for LMA. For a discussion of the issues, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[10] For a full description of the methodology underlying all of Commerce's conclusions, including our reliance, in part, on facts otherwise available, including adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Final Results of the Administrative Review

We determine the net countervailable subsidy rates for the period May 26, 2020, through December 31, 2021, to be as follows:

Producer/Exporter	Subsidy rate (percent *ad valorem*) 2020	Subsidy rate percent *ad valorem*) 2021
Lucchini Mame Forge S.p.A[11]	11.40 percent	11.49 percent.

[11] Commerce has found the following companies to be cross-owned with LMA: Lucchini RS S.p.A., Lucchini Industries S.r.l., Bicomet S.p.A., and Setrans S.r.l.

Disclosure

We intend to disclose calculations and analysis performed for these final results of review within five days after the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties at the applicable *ad valorem* rates on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after 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

In accordance with section 751(a)(1) of the Act, we also intend to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above for the above-listed companies with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final 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)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

The final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 3, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–17087 Filed 8–8–23; 8:45 am]

BILLING CODE 3510–DS–P

[10] *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.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008, A–583–814]

Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan and Circular Welded Non-Alloy Steel Pipe From Taiwan: Negative Final Determinations of Circumvention of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain circular welded carbon steel pipes and tubes (pipe and tube) and circular welded non-alloy steel pipe (CWP) imported into the United States during the period of inquiry, January 1, 2017, through December 31, 2021, were not completed in the Socialist Republic of Vietnam (Vietnam) using hot-rolled steel (HRS) manufactured in Taiwan, and, therefore, no such imports are circumventing the antidumping duty (AD) orders on pipe and tube and CWP from Taiwan.

DATES: Applicable August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Nicolas Mayora (pipe and tube) or Preston Cox and Scarlet Jaldin (CWP), AD/CVD Operations, Offices V and VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3053, (202) 482–5041, and (202) 482–4275, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2023, Commerce published in the **Federal Register** its preliminary determinations [1] that imports of pipe and tube and CWP were not completed in Vietnam using HRS manufactured in Taiwan, and, therefore, are not circumventing the AD orders on pipe and tube and CWP from Taiwan.[2] Pursuant to section 781(e) of the Tariff Act of 1930, as amended (the Act), on April 7, 2023, we notified the U.S. International Trade Commission (ITC) of our negative preliminary determinations of circumvention of the *Orders.*[3] The ITC did not request consultations with Commerce.

Between May 3 and 10, 2023, we conducted verification in Vietnam of the information reported by SeAH Steel Vina Corporation (SeAH VINA) and Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd. (Vietnam Haiphong).[4] In May and June 2023, we received comments in response to the *Preliminary Determinations.*[5] On May 15, 2023, Commerce extended the deadline for the final determinations of these circumvention inquiries to August 4, 2023.[6]

Scope of the Orders

The products covered by these *Orders* are pipe and tube from Taiwan and CWP from Taiwan. For a complete description of the scope of the *Orders, see* the appendices to this notice.

Merchandise Subject to the Circumvention Inquiries

These circumvention inquiries cover pipe and tube and CWP completed in Vietnam using Taiwan-origin HRS and subsequently exported from Vietnam to the United States.

Analysis of Comments Received

Commerce received no comments objecting to our findings in the *Preliminary Determinations* with regard to its analysis under the circumvention factors of section 781(b) of the Act. Accordingly, Commerce made no changes to its *Preliminary Determinations* and no decision memorandum accompanies this **Federal Register** notice. For a complete description of our analysis, *see* the *Preliminary Determinations.*

However, SeAH VINA commented that we inappropriately initiated these inquiries, despite negative determinations concerning SeAH VINA in earlier, separate proceedings.[7] Because we are making negative findings of circumvention, and we are not establishing a certification program as a result of our findings, we find it unnecessary to address SeAH VINA's argument.

Final Negative Determinations of No Shipments

As detailed in the *Preliminary Determinations,* Commerce determines that SeAH VINA and Vietnam Haiphong did not complete pipe and tube and CWP using Taiwanese HRS in Vietnam, nor did they export pipe and tube or CWP incorporating Taiwan HRS to the United States during the period of inquiry. Accordingly, Commerce is making negative findings of circumvention of the *Orders* on a country-wide basis.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(4), Commerce will order U.S. Customs and Border Protection to terminate the suspension of liquidation and refund cash deposits for any imports of inquiry merchandise that are suspended under the case number applicable to these proceedings (*i.e.,* A–583–008 and A–583–814).

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/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

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

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[1] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan and Circular Welded Non-Alloy Steel Pipe from Taiwan: Negative Preliminary Determinations of Circumvention of the Antidumping Duty Orders,* 88 FR 22007 (April 12, 2023) (*Preliminary Determinations*), and accompanying Preliminary Decision Memorandum.

[2] *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984); *see also Notice of Antidumping Duty Order: Circular Welded Non-Alloy Steel Pipe from Taiwan,* 57 FR 49454 (November 2, 1992) (collectively, *Orders*).

[3] *See* Commerce's Letter, ''Notification of Affirmative and Negative Preliminary Determinations of Circumvention of the Antidumping and Countervailing Duty Orders,'' dated April 7, 2023.

[4] *See* Memoranda, ''Verification of Vietnam Haiphong Hongyuan Machinery Manufactory Co., Ltd.,'' dated June 2, 2023; and ''Verification of SeAH Steel VINA Corporation,'' dated June 5, 2023.

[5] *See* Vina One Steel Manufacturing Corporation (Vina One) and Hoa Sen Group (HSG)'s Letter, ''Letter in Lieu of Set 1 Case Brief,'' dated May 4, 2023; *see also* Vietnam Haiphong's Letter, ''Vietnam Haiphong Hongyuan Machinery Co., Ltd.'s Case Brief (First Tranche),'' dated May 4, 2023; Domestic Interested Parties' Letter, ''Letter in lieu of First Case Brief,'' dated May 4, 2023; SeAH VINA's Letter, ''Letter in Lieu of First Case Brief,'' dated May 11, 2023; Vietnam Haiphong's Letter, ''Vietnam Haiphong Hongyuan Machinery Co., Ltd.'s Rebuttal Brief (First Tranche),'' dated May 11, 2023; Domestic Interested Parties' Letter, ''Domestic Interested Parties' Rebuttal Brief,'' dated May 11, 2023; Vina One, HSG, and Hoa Phat Steel Pipe Co Ltd.'s (Hoa Phat) Letter, ''Letter in Lieu of Set Two Case Brief,'' dated June 1, 2023; Vina One, HSG, and Hoa Phat's Letter, ''Letter in Lieu of Case Brief,'' dated June 14, 2023; SeAH VINA's Letter, ''Letter in Lieu of Second Case Brief of SeAH VINA,'' dated June 14, 2023 (SeAH VINA's Comments); and Domestic Interested Parties' Letter, ''Rebuttal Comments to Second Case Brief of SeAH VINA,'' dated June 21, 2023. The domestic interested parties are Bull Moose Tube Company, Maruichi American Corporation, Nucor Tubular Products Inc., Wheatland Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (collectively, Domestic Interested Parties).

[6] *See* Memorandum, ''Extension of Deadline for Issuing Final Determinations in Circumvention Inquiries,'' dated May 15, 2023.

[7] *See* SeAH VINA's Comments at 2. SeAH VINA submitted similar comments in the initiation phase of these inquiries, which we considered at the time of initiation of these inquiries. We determined at that time that the concerns raised by SeAH VINA did not preclude Commerce from initiating these circumvention inquiries. In light of these final negative circumvention determinations, SeAH VINA's comments are without effect. *See also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China; Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Certain Welded Carbon Steel Standard Pipes and Tubes from India; Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; Certain Circular Welded Non-Alloy Steel Pipe from Taiwan; Light-Walled Rectangular Pipe and Tube from the People's Republic of China; Light-Walled Rectangular Pipe and Tube from the Republic of Korea; Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan: Initiation of Circumvention Inquiries on the Antidumping and Countervailing Duty Orders,* 87 FR 47711 (August 4, 2022), and accompanying Initiation Decision Memorandum at 12; and SeAH VINA's Letter, ''Comments in Opposition to Initiation of Anticircumvention Inquiries,'' dated June 2, 2022.

Dated: August 3, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Antidumping Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan (A–583–008)

The merchandise subject to the order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Appendix II

Scope of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe From Taiwan (A–583–814)

The products covered by this order are (1) circular welded non-alloy steel pipes and tubes, of circular cross section over 114.3 millimeters (4.5 inches), but not over 406.4 millimeters (16 inches) in outside diameter, with a wall thickness of 1.65 millimeters (0.065 inches) or more, regardless of surface finish (black, galvanized, or painted), or end-finish (plain end, beveled end, threaded, or threaded and coupled); and (2) circular welded non-alloy steel pipes and tubes, of circular cross-section less than 406.4 millimeters (16 inches), with a wall thickness of less than 1.65 millimeters (0.065 inches), regardless of surface finish (black, galvanized, or painted) or end-finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkling systems, and other related uses, and generally meet ASTM A–53 specifications. Standard pipe may also be used for light-loadbearing applications, such as for fence-tubing and as structural pipe tubing used for framing and support members for construction, or load-bearing purposes in the construction, shipbuilding, trucking, farm-equipment, and related industries. Unfinished conduit pipe is also included in this order.

All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind or used for oil and gas pipelines is also not included in this investigation.

Imports of the products covered by this order are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings, 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

[FR Doc. 2023–17088 Filed 8–8–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request for a changed circumstances review (CCR), the U.S. Department of Commerce (Commerce) is initiating a CCR of the antidumping duty (AD) order on large power transformers (LPTs) from the Republic of Korea (Korea). Additionally, Commerce preliminarily determines that HD Hyundai Electric Co., Ltd. (HDHE) is the successor-in-interest to Hyundai Electric & Energy Systems Co., Ltd. (HEES). Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 9, 2023.

FOR FURTHER INFORMATION CONTACT: John K. Drury, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2012, Commerce published the AD order on LPTs from Korea in the **Federal Register**.[1] In the most recently completed administrative review, covering the period August 1, 2020, through July 31, 2021, HEES was assigned the cash deposit rate of 4.32 percent as a company not selected for individual review.[2]

On May 15, 2023, HDHE informed Commerce that HEES had officially changed its Korean name from Hyundai Electric & Energy Systems Co., Ltd. to HD Hyundai Electric Co., Ltd.[3] HDHE requested the initiation of a CCR to find that HDHE is the successor-in-interest to HEES.[4] On June 16, 2023, Commerce extended the time period by 35 days, until August 3, 2023, for determining whether to initiate and whether to issue a simultaneous preliminary determination.[5] On July 28, 2023, HDHE filed a copy of its first quarter 2023 financial statements in Korean, with a partial translation into English.[6] On August 2, 2023, HDHE filed a copy of its first quarter 2023 financial statements which were fully translated into English.[7] We did not receive comments from other interested parties concerning this request.

Scope of the Order

The merchandise covered by the *Order* is LPTs from Korea. For a full description of the merchandise covered by the scope of the *Order, see* the Preliminary Decision Memorandum.[8]

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, Commerce will conduct a CCR of an order upon receipt of information or a review request from an interested party for a review of an order which shows changed circumstances sufficient to warrant a review of the order.[9] In the past, Commerce has used CCRs to address the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (''successor-in-interest,'' or ''successorship,'' determinations).[10] The information

[1] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012) (*Order*).

[2] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 16236 (March 16, 2023).

[3] *See* HDHE's Letter, ''Request for Changed Circumstances Review and Successor-in Interest Determination,'' dated May 15, 2023 (CCR Request).

[4] *Id.* at 1–2.

[5] *See* Commerce's Letter, ''Extension of Initiation Deadline,'' dated June 16, 2023.

[6] *See* HDHE's Letter, ''Submission of Q1 2023 Financial Statement and Unofficial Translation,'' dated July 28, 2023.

[7] *See* HDHE's Letter, ''Submission of Q1 2023 Financial Statement Translation,'' dated August 2, 2023.

[8] *See* Memorandum, ''Decision Memorandum for the Initiation and Preliminary Results of Changed Circumstances Review: Large Power Transformers from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *See* 19 CFR 351.216(c).

[10] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 82 FR 51605, 51606 (November 7, 2017), unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping*

submitted by HDHE supporting its claim that it is the successor-in-interest to HEES demonstrates changed circumstances sufficient to warrant such a review.[11]

The information submitted by HDHE demonstrates that its request is based solely on a change in the Korean name of the company from ''Hyundai Electric & Energy Systems Co., Ltd.'' to ''HD Hyundai Electric Co., Ltd.,'' effective March 27, 2023.[12] Moreover, the evidence submitted in support of HDHE's request demonstrates that HDHE is otherwise the same business entity as HEES. Therefore, in accordance with the regulation referenced above, Commerce is initiating a CCR to determine whether HDHE is the successor-in-interest to HEES.

Preliminary Results

Commerce is permitted by 19 CFR 351.221(c)(3)(ii) to combine the notice of initiation of a CCR and the preliminary results if Commerce concludes that expedited action is warranted. In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and we have combined the notice of initiation and the preliminary results.

Accordingly, pursuant to section 751(b) of the Act, we have conducted a successor-in-interest analysis in response to HDHE's request. In making a successor-in-interest determination in an AD CCR, Commerce examines several factors, including, but not limited to, changes in the following: (1) management and ownership; (2) production facilities; (3) supplier relationships; and (4) customer base.[13] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, generally, Commerce will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor.[14] Thus, if the evidence demonstrates that, with respect to the production and sales of the subject merchandise, the new company operates as essentially the same business entity as the former company, Commerce will assign to the new company the cash deposit rate of its predecessor.[15]

In its CCR request, HDHE provided evidence demonstrating that HDHE's operations are not materially dissimilar from those of HEES. Based on the record, we preliminarily determine that HDHE is the successor-in-interest to HEES, as the change in the business' Korean name was not accompanied by significant changes to its management and ownership, production, facilities, supplier relationships, or customer base. There is also no evidence of significant changes between HEES and the successor-in-interest company HDHE's operations, ownership, or corporate or legal structure during the relevant period that could have impacted the successor-in-interest company's subsidy levels.[16] Thus, we preliminarily determine that HDHE operates as essentially the same business entity as HEES, that HDHE is the successor-in-interest to HEES, and that HDHE should receive the same AD cash deposit rate with respect to subject merchandise as its predecessor, HEES.

For a complete discussion of the information that HDHE provided, and the complete successor-in-interest analysis, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included as an appendix 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.*

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than seven days after the date of publication of this notice.[17] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the case briefs, in accordance with 19 CFR 351.309(d).[18] Parties who submit case or rebuttal briefs are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the arguments; and (3) a table of authorities.[19]

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 7 days of publication of this notice.[20] Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) 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, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

All submissions are to be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day it is due.[21] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[22]

Final Results of Review

Should our final results remain unchanged from these preliminary results, we will instruct U.S. Customs and Border Protection to assign entries of subject merchandise exported by HDHE the AD cash deposit rate applicable to HEES. Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

Duty Changed Circumstances Review, 82 FR 60177 (December 19, 2017) (*Diamond Sawblades Final*).

[11] *See* 19 CFR 351.216(d).

[12] *See* CCR Request at 3.

[13] *See, e.g., Diamond Sawblades Final; see also Certain Frozen Warmwater Shrimp from India: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 83 FR 37784 (August 2, 2018), unchanged in *Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 83 FR 49909 (October 3, 2018) (*Shrimp from India*).

[14] *See, e.g., Diamond Sawblades Final* and *Shrimp from India.*

[15] *See, e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India,* 77 FR 73619 (December 11, 2012); *see also Notice of Initiation and Preliminary Results of Changed Circumstances Reviews: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China,* 85 FR 5193 (January 29, 2020), unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Changed Circumstances Reviews,* 85 FR 14638 (March 13, 2020).

[16] *See* CCR Request.

[17] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[18] Commerce is exercising its discretion under 19 CFR 351.309(d)(1) to alter the time limit for the filing of rebuttal briefs.

[19] *See* 19 CFR 351.309(c)(2).

[20] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[21] *See* 19 CFR 351.303(b).

[22] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

Notification to Interested Parties

This initiation and preliminary results notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216(b), 351.221(b) and 351.221(c)(3).

Dated: August 3, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in Preliminary Decision Memorandum

[FR Doc. 2023–17070 Filed 8–8–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844]

Steel Concrete Reinforcing Bar From Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** of July 28, 2023, in which it issued the amended final results of the administrative review of the antidumping duty (AD) order on steel concrete reinforcing bar (rebar) from Mexico. This notice inadvertently omitted a company, Sidertul S.A. de C.V., that was subject to the AD review.

DATES: Applicable August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane, 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) 482–5449.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 28, 2023, in FR Doc 2023–16033, on pages 48792–48973, in the weighted-average dumping margin table, Commerce did not list a company named ''Sidertul S.A. de C.V.''

Background

On December 28, 2021, Commerce initiated this administrative review on multiple companies, including Sidertul S.A. de C.V. (Sidertul), covering the period November 1, 2020, through October 31, 2021.[1] Subsequently, on June 9, 2023, Commerce published in the **Federal Register** the final results of the administrative review; this notice listed Sidertul as one of the companies not selected for individual examination that was assigned the weighted average of the dumping margins calculated for the two mandatory respondents, Deacero S.A.P.I. de C.V./Ingeteknos Estructurales, S.A. de C.V. and Grupo Acerero S.A. de C.V.[2] Finally, Commerce published the *Amended Final Results* on July 28, 2023, to correct a ministerial error that resulted in amended weighted-average dumping margins assigned to certain companies, including the companies not selected for individual examination.[3] In the *Amended Final Results,* Commerce inadvertently omitted Sidertul, and the amended final rate that it was assigned, from the weighted-average dumping margin table.[4] With the issuance of this notice of correction, we confirm that Sidertul is included among the group of firms that was assigned the rate for companies not selected for individual examination in this administrative review covering the period November 1, 2020, through October 31, 2021.

The corrected weighted-average dumping margin table, including Sidertul, is as follows:

Producer or exporter	Weighted-average dumping margin (percent)
Deacero S.A.P.I. de C.V./Ingeteknos Estructurales, S.A. de C.V	2.49
Grupo Acerero S.A. de C.V	16.28
ArcelorMittal Mexico SA de CV	5.93
Grupo Simec/Aceros Especiales Simec Tlaxcala, S.A. de C.V./Compania Siderurgica del Pacifico S.A. de C.V./Fundiciones de Acero Estructurales, S.A. de C.V./Grupo Chant S.A.P.I. de C.V./Operadora de Perfiles Sigosa, S.A. de C.V./Orge S.A. de C.V./Perfiles Comerciales Sigosa, S.A. de C.V./RRLC S.A.P.I. de C.V./Siderúrgicos Noroeste, S.A. de C.V./Siderurgica del Occidente y Pacifico S.A. de C.V./Simec International, S.A. de C.V./Simec International 6 S.A. de C.V./Simec International 7 S.A. de C.V./Simec International 9 S.A. de C.V	5.93
Sidertul S.A. de C.V	5.93

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021).

[2] *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 37849 (June 9, 2023).

[3] *See Steel Concrete Reinforcing Bar from Mexico: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021,* 88 FR 48792 (July 28, 2023) (*Amended Final Results*).

[4] *Id.*

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: August 2, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–17048 Filed 8–8–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD206]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Pacific Fishery Management Council (Pacific Council) staff and Office of National Marine Sanctuaries (ONMS) staff will present a briefing on two September Pacific Council meeting agenda items, the Chumash Sanctuary Designation and the Coral Restoration and Research Plan, to interested Pacific Council members, advisory body members, and the public.

DATES: The online briefing will be held Thursday, August 24, 2023, from 2 p.m. to 4 p.m., Pacific Daylight Time, or until discussion is finished.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting 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: Jessi Doerpinghaus, Staff Officer, Pacific Council; telephone: (503) 820–2415 or Mr. Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The Pacific Council will be considering two administrative items related to the ONMS at its September meeting. The first item, Chumash Sanctuary Designation, will focus on the proposed designation documents and regulations for the new Sanctuary, with particular focus on any proposed regulations that may affect fishing activities under the Council's jurisdiction. The second item is the consideration of new areas for coral research and restoration in the Gulf of Farallones and Monterey Bay National Marine Sanctuaries. The Council will begin scoping this item in September and will consider the areas that may be closed to fishing and to what fisheries the closures would apply. This presentation is aimed at a broad audience of Council members, advisory body members, and the public. Pacific Council and ONMS staff may follow up with more targeted discussions with advisory bodies during their September meetings will also brief the Council directly.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this 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 days prior to the meeting date.

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

Dated: August 3, 2023.

Diane M. DeJames-Daly,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–17032 Filed 8–8–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD235]

Advisory Committee Open Session on Management Strategy Evaluation for North Atlantic Swordfish

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

ACTION: Notice of meeting.

SUMMARY: NMFS is holding a public meeting via webinar session for the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and all interested stakeholders to receive an update and provide input on the development of the management strategy evaluation (MSE) for North Atlantic swordfish.

DATES: A virtual meeting that is open to the public will be held by webinar session on August 24, 2023, from 3 p.m. to 5 p.m. EDT.

ADDRESSES: Please register to attend the meeting at: *https://forms.gle/QbymT8n4mYm7SP3S9.* Registration will close on August 22, 2023, at 5 p.m. EDT. Instructions for accessing the webinar session will be emailed to registered participants.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce at (301) 427–7725 or *Bryan.Keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: MSE is a process that allows fishery managers and stakeholders (*e.g.,* industry, scientists, and non-governmental organizations) to assess how well different strategies achieve specified management objectives for a fishery. ICCAT expects to finalize its North Atlantic swordfish MSE in 2023 and anticipates adopting a management procedure in November 2023 to set the total allowable catch for 2024 and future years for the stock. NMFS, and the U.S. Government more broadly, engages in this MSE development, an important part of which involves considering stakeholder input throughout the process through various means, including consultation with the Advisory Committee to the U.S. Section to ICCAT. The United States is also participating in the development of the North Atlantic swordfish MSE through the active involvement of U.S. scientists in the scientific work carried out by ICCAT's Standing Committee on Research and Statistics (SCRS).

The August 24 meeting is intended to update U.S. stakeholders and solicit their input on the MSE approach being developed by ICCAT for North Atlantic swordfish. NMFS will provide information on the progress of the SCRS in developing initial candidate management procedures (CMPs) and testing them based on the initial input on management objectives and other relevant matters provided by ICCAT's Panel 4. CMPs illustrate tradeoffs associated with achieving identified management objectives related to stock status, stock safety, yield, and catch stability over time. CMP testing assists

ICCAT in refining management objectives and narrowing the number of viable CMPs for possible adoption by the Commission. This open session Advisory Committee meeting is primarily informational in nature and is intended to increase the opportunity for stakeholder awareness and input on the North Atlantic swordfish MSE process. Discussions at the meeting will help inform U.S. scientists who are participating in the work of the SCRS as well as U.S. managers participating in relevant Commission-related meetings later in 2023 addressing the North Atlantic swordfish MSE.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: August 4, 2023.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2023–17075 Filed 8–8–23; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before September 8, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR–Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0117, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Eileen Chotiner, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5467; email: *echotiner@cftc.gov,* and refer to OMB Control No. 3038–0117.

SUPPLEMENTARY INFORMATION:

Title: Exemption from Derivatives Clearing Organization Registration (OMB Control No. 3038–0117). This is a request for approval for an existing collection in use without a currently approved OMB control number.

Abstract: This information collection is associated with CFTC regulations codifying the policies and procedures that the Commission follows with respect to granting exemptions from registration as a DCO for the clearing of proprietary swaps for U.S. persons and futures commission merchants (''FCMs''). The rules include reporting requirements that are collections of information requiring approval under the PRA. Specifically, Commission regulation 39.6 specifies the conditions and procedures under which a clearing organization may apply for exemption from registration as a DCO, the information that must be provided to the Commission to obtain and maintain such exemption, and procedures for termination of an exemption. *See* 17 CFR 39.6. The information that is collected under these regulations is necessary for the Commission to determine whether a clearing organization qualifies for exemption from DCO registration, to evaluate the continued eligibility of the exempt DCO for exemption from registration, to review compliance by the exempt DCO with any conditions of such exemption, or to conduct its oversight of U.S. persons and the swaps that are cleared by U.S. persons through the exempt DCO.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On May 30, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 34489. The Commission received no relevant comments that addressed its PRA burden estimates.

Burden Statement: The provisions of part 39 of the CFTC's Regulations include reporting requirements that constitute information collections within the meaning of the PRA. With respect to the ongoing reporting obligations associated with exemption from DCO registration, the CFTC believes that exempt DCOs incur an aggregate annual time-burden of 257 hours.

Respondents/Affected Entities: Derivatives Clearing Organizations.

Estimated number of respondents: 9.

Estimated average burden hours per respondent: 29 hours.[2]

Estimated total annual burden hours on respondents: 257 hours.

Frequency of collection: On occasion.

[1] 17 CFR 145.9.

[2] Average burden hours per respondent rounded to the nearest full hour.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 3, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–17012 Filed 8–8–23; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0059: Part 41, Relating to Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the extension of a proposed collection of certain information by the agency. In compliance with the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on collection requirements relating to security futures products.

DATES: Comments must be submitted on or before October 10, 2023.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0059, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Stein, Assistant Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–6054; email: *astein@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below. 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.[1]

Title: Part 41, Relating to Security Futures Products (OMB Control No. 3038–0059). This is a request for extension of a currently approved information collection.

Abstract: Section 4d(c) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 6d(c), requires the CFTC to consult with the Securities and Exchange Commission (''SEC'') and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to firms that are fully registered with the SEC as brokers or dealers and the CFTC as futures commission merchants involving provisions of the CEA that pertain to the treatment of customer funds. The CFTC, jointly with the SEC, issued regulations requiring such dually-registered firms to make choices as to how its customers' transactions in security futures products will be treated, either as securities transactions held in a securities account or as futures transactions held in a futures account. How an account is treated is important in the unlikely event of the insolvency of the firm. Securities accounts receive insurance protection under provisions of the Securities Investor Protection Act. By contrast, futures accounts are subject to the protections provided by the segregation requirements of the CEA.

With respect to the collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The respondent burden for this collection is estimated to average .9 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Affected Entities: Entities potentially affected by this action are businesses and other for-profit institutions.

[1] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[2] 17 CFR 145.9.

Respondents/Affected Entities: 9.

Estimated average burden hours per respondent: 52 hours (rounded).

Estimated total annual burden on respondents: 467 hours.

Frequency of collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 4, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–17040 Filed 8–8–23; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 7, 2023; 6 p.m.–8 p.m. EDT.

ADDRESSES: The Ohio State University, Endeavor Center, 1862 Shyville Road, Room 165, Piketon, OH 45661.

FOR FURTHER INFORMATION CONTACT: Eric Roberts, Board Support Manager, by Phone: (270) 554–3004 or Email: *eric@pgdpcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda:

- Comments from Deputy Designated Federal Officer, Federal Coordinator, and Liaison
- Administrative Activities
  - Adoption of Fiscal Year 2024 Work Plan
  - Election of Chair and Vice-Chair
- Public Comments

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Eric Roberts as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Comments received by no later than 5:00 p.m. EDT on Friday, September 1, 2023, will be read aloud during the meeting. Comments will also be accepted after the meeting, by no later than 5:00 p.m. EDT on Friday, September 15, 2023. Please submit comments to Eric Roberts at the aforementioned email address. Please put ''Public Comment'' in the subject line. Individuals who wish to make oral statements pertaining to agenda items should contact Eric Roberts at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Portsmouth, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Eric Roberts, Board Support Manager, Emerging Technology Center, Room 221, 4810 Alben Barkley Drive, Paducah, KY 42001; Phone: (270) 554–3004. Minutes will also be available at the following website: *https://www.energy.gov/pppo/ports-ssab/listings/meeting-materials.*

Signed in Washington, DC, on August 4, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–17039 Filed 8–8–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–244–000.

Applicants: Bright Arrow Solar, LLC.

Description: Bright Arrow Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 8/3/23.

Accession Number: 20230803–5120.

Comment Date: 5 p.m. ET 8/24/23.

Docket Numbers: EG23–245–000.

Applicants: Montgomery Ranch Wind Farm, LLC.

Description: Montgomery Ranch Wind Farm, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 8/3/23.

Accession Number: 20230803–5123.

Comment Date: 5 p.m. ET 8/24/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2042–047; ER10–1862–041; ER10–1865–018; ER10–1893–041; ER10–1934–041; ER10–1938–042; ER10–1942–039; ER10–2985–045; ER10–3049–046; ER10–3051–046; ER11–4369–026; ER16–2218–027; ER17–696–027.

Applicants: Calpine Energy Solutions, LLC, North American Power Business, LLC, North American Power and Gas, LLC, Champion Energy, LLC, Champion Energy Services, LLC, Champion Energy Marketing LLC, Calpine Construction Finance Co., L.P., Calpine Power America—CA, LLC, CES Marketing IX, LLC, CES Marketing X, LLC, South Point Energy Center, LLC, Power Contract Financing, L.L.C., Calpine Energy Services, L.P.

Description: Notice of Change in Status of Calpine Energy Services, L.P., *et al.*

Filed Date: 7/31/23.

Accession Number: 20230731–5288.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER10–2042–048.

Applicants: San Diego Gas & Electric Company.

Description: Notice of Change in Status of San Diego Gas & Electric Company.

Filed Date: 7/31/23.

Accession Number: 20230731–5289.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER10–2437–019; ER22–2246–001.

Applicants: BCE Los Alamitos, LLC, Arizona Public Service Company.

Description: Notice of Change in Status of Arizona Public Service Company, *et al.*

Filed Date: 7/31/23.

Accession Number: 20230731–5290.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER10–2502–011; ER10–2473–010; ER11–4436–009.

Applicants: Black Hills Power, Inc., Cheyenne Light, Fuel and Power Company, Black Hills Colorado Electric, LLC.

Description: Notice of Non-Material Change in Status of Black Hills Colorado Electric, LLC, *et al.*

Filed Date: 8/1/23.

Accession Number: 20230801–5223.

Comment Date: 5 p.m. ET 8/22/23.

Docket Numbers: ER10–2721–015.

Applicants: El Paso Electric Company.

Description: Notice of Non-Material Change in Status of El Paso Electric Company.

Filed Date: 7/31/23.

Accession Number: 20230731–5286.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER12–164–024; ER10–1882–010; ER10–1894–011; ER10–2563–008; ER18–2203–004; ER19–1402–003; ER20–2288–004; ER22–2046–003.

Applicants: Sapphire Sky Wind Energy LLC, Tatanka Ridge Wind, LLC, Coyote Ridge Wind, LLC, Upper Michigan Energy Resources Corporation, Wisconsin Electric Power Company, Wisconsin Public Service Corporation, Wisconsin River Power Company, Bishop Hill Energy III LLC.

Description: Notice of Non-Material Change in Status of Bishop Hill Energy III LLC, *et al.*

Filed Date: 7/31/23.

Accession Number: 20230731–5281.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER19–1217–004.

Applicants: Montana-Dakota Utilities Co.

Description: Notice of Non-Material Change in Status of Montana-Dakota Utilities Co.

Filed Date: 7/31/23.

Accession Number: 20230731–5285.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER19–2901–011; ER10–1852–081; ER10–1951–057; ER10–1966–021; ER11–4462–080; ER12–2225–020; ER12–2226–020; ER14–2138–017; ER17–838–054; ER18–2091–013; ER19–11–011; ER19–2389–011; ER20–1219–008; ER20–1417–009; ER20–1985–008; ER20–1988–009; ER23–489–004; ER23–493–004; ER23–2404–001.

Applicants: Bronco Plains Wind II, LLC, Thunder Wolf Energy Center, LLC, Neptune Energy Center, LLC, Northern Colorado Wind Energy Center II, LLC, Northern Colorado Wind Energy Center, LLC, Roundhouse Renewable Energy, LLC, Peetz Table Wind, LLC, Grazing Yak Solar, LLC, Peetz Logan Interconnect, LLC, Titan Solar, LLC, NextEra Energy Marketing, LLC, Limon Wind III, LLC, Limon Wind, LLC, Limon Wind II, LLC, NEPM II, LLC, Logan Wind Energy LLC, NextEra Energy Services Massachusetts, LLC, Florida Power & Light Company, Bronco Plains Wind, LLC.

Description: Notice of Change in Status of Bronco Plains Wind, LLC, *et al.*

Filed Date: 7/31/23.

Accession Number: 20230731–5283.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER21–1755–005; ER23–1642–002.

Applicants: NE Renewable Power, LLC, Hartree Partners, LP.

Description: Notice of Non-Material Change in Status of Hartree Partners, LP.

Filed Date: 7/31/23.

Accession Number: 20230731–5282.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER22–381–008; ER10–1781–004; ER19–2626–006; ER21–714–007; ER22–399–002.

Applicants: Meadow Lake Solar Park LLC, Indiana Crossroads Wind Farm LLC, Rosewater Wind Farm LLC, Northern Indiana Public Service Company, Dunns Bridge Solar Center, LLC.

Description: Notice of Non-Material Change in Status of Dunns Bridge Solar Center, LLC.

Filed Date: 7/31/23.

Accession Number: 20230731–5284.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER22–2925–001; ER22–2926–001.

Applicants: Jicarilla Storage 1 LLC, Jicarilla Solar 1 LLC.

Description: Notice of Change in Status of Jicarilla Solar 1 LLC, *et al.*

Filed Date: 7/31/23.

Accession Number: 20230731–5292.

Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: ER23–2556–000.

Applicants: EFS Parlin Holdings, LLC

Description: Request for Waiver, Expedited Consideration, and Informational Filing Regarding Potential Upstream Change in Control or Deactivation of EFS Parlin Holdings, LLC.

Filed Date: 8/2/23.

Accession Number: 20230802–5174.

Comment Date: 5 p.m. ET 8/23/23.

Docket Numbers: ER23–2557–000

Applicants: California Independent System Operator Corporation.

Description: § 205(d) *Rate Filing:* 2023–08–03 Tariff Clarification Filing—2023 to be effective 11/1/2023.

Filed Date: 8/3/23.

Accession Number: 20230803–5063.

Comment Date: 5 p.m. ET 8/24/23.

Docket Numbers: ER23–2558–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) *Rate Filing:* ANPP Amendments to be effective 10/3/2023.

Filed Date: 8/3/23.

Accession Number: 20230803–5065.

Comment Date: 5 p.m. ET 8/24/23.

Docket Numbers: ER23–2559–000.

Applicants: Oxbow Hill Solar, LLC.

Description: Request of Oxbow Hill Solar, LLC For Limited, Prospective Tariff Waiver and Expedited Commission Action.

Filed Date: 8/3/23.

Accession Number: 20230803–5118.

Comment Date: 5 p.m. ET 8/24/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17068 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Energy Regulatory Commission (FERC) is publishing notice of a new FERC system of records, titled ''*FERC–65—Agencywide Notification System.*'' This system of records covers emergency contact information collection of current FERC employees, contractors and interns to be used in the event of an emergency. This notice has 12 routine uses, including two prescribed by the Office of Management and Budget (OMB) Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information,* January 3, 2017, that will permit FERC to disclose information as necessary in response to an actual or suspected breach of its own records or to assist another agency in its efforts to respond to a breach.

DATES: Comments on this new system of records must be received no later than 30 days after the date of publication in the **Federal Register**. If no public comment is received during this period or unless otherwise published in the **Federal Register** by FERC, the new system of records will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 or electronically to *privacy@ferc.gov*. Comments should indicate that they are submitted in response to include reference to ''FERC–65—Agencywide Notification System.''

FOR FURTHER INFORMATION CONTACT: Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, 888 First Street, NE, Washington, DC 20426, (202) 502–6432.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (FERC) is publishing notice of a new FERC system of records. The new system of records covers records collected to provide emergency notification messages to all FERC personnel, including current employees, contractors, and interns. The notifications may be sent to work/home emails, work/home phones, work/personnel cell phones as well as via other voluntarily provided personal contact information.

SYSTEM NAME AND NUMBER:

Agencywide Notification System (FERC—65)

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of the Chief Security Officer, Continuity of Operations, Mission Integrity Division, 888 First Street NE, Washington, DC 20426.

SYSTEM MANAGER(S):

Federal Energy Regulatory Commission, Manager, Office of the Chief Security Officer, Continuity of Operations, Mission Integrity Division, 888 First Street NE, Washington, DC 20426.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 717o; 16 U.S.C. 825h; 42 U.S.C. 7172(a)(2); 44 U.S.C. 3101; 5 U.S.C. 301; and 18 CFR 376.209; Federal Continuity Directive 1 (FCD 1), Federal Executive Branch National Continuity Program and Requirements. January 17, 2017; Federal Continuity Directive 2 (FCD 2), *Federal Executive Branch Mission Essential Functions and Candidate Mission Essential Functions Identification and Submission Process,* June 13, 2017; National Security and Homeland Security Presidential Directive (National Security Presidential Directive NSPD 51/Homeland Security Presidential Directive) HSPD–20, May 4, 2007.

PURPOSE(S) OF THE SYSTEM:

Records in this system of records are maintained for the following purpose(s): to maintain contact information for FERC personnel, including employees, contractors, and interns to notify them of emergencies, system outages, IT problems, or to send any mass communication that needs to reach all FERC personnel. The system provides for high-speed messages to FERC personnel in response to alerts issued by FERC, the Department of Homeland Security, local officials, and other emergency officials regarding emergencies that may disrupt the operations and/or accessibility of a worksite. The system also enables the FERC emergency responders and others to account for FERC personnel during an emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records maintained in this system include, but are not limited to, current FERC employees and individuals authorized to perform or use services provided in FERC facilities including contractors and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained in this system include, but are not limited to, contact information such as full name, email address, home address, telephone number, and personal mobile number. Individuals may voluntarily provide additional contact information through a user portal relating to their nongovernment contact information, such as home telephone number, personal mobile number, and personal email address.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual to whom the records pertain.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or

entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, Tribal or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic format, on a FedRAMP-authorized cloud service provider. Data access is restricted to agency personnel or contractors whose responsibilities require access. In addition, all FERC employees and contractors with authorized access have undergone a thorough background security investigation. Access to electronic records is controlled by User ID and password combination and/or the organizations Single Sign-On and Multi-Factor Authentication solution. Role based access is used to restrict electronic data access and the organization employs the principle of least privilege, allowing only authorized users with access (or processes acting on behalf of users) necessary to accomplish assigned tasks in accordance with organizational missions and business functions. The system is secured with the safeguards required by FedRAMP and NIST SP 800–53.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by individual's name or username.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the schedule approved under the National Archives and Records Administration (NARA)'s General Records Schedule 5.3: Continuity and Emergency Planning Records; Disposition Authority: DAA–GRS–2016–0004- 0002. Destroy when superseded or obsolete, or upon separation or transfer of employee, contractor, or intern.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

All FERC employees and contractors with authorized access have undergone a thorough background security investigation. Data access is restricted to agency personnel or contractors whose responsibilities require access. Access to electronic records is controlled by multi-factor authentication combination and network access or security controls. The system is secured with the safeguards required by FedRAMP and NIST SP 800–53. *See also* Policies and Practices for Storage of Records.

RECORD ACCESS PROCEDURES:

Individuals requesting access to the contents of records must submit a request through the Freedom of Information Act (FOIA) office. The FOIA website is located at *https://ferc.gov/freedom-information-act-foia-and-privacy-act.* Requests may be submitted by email to *foia-ceii@ferc.gov.* Written request for access to records should be directed to: Federal Energy Regulatory Commission, Office of External Affair, Director, 888 First Street NE, Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

See Records Access Procedures.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Records Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM: NONE.

HISTORY: NOT APPLICABLE. THIS IS A NEW SORN.

Dated: August 2, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16973 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, all agencies are required to publish in the **Federal Register** a notice of their systems of records. Notice is hereby given that the

Federal Energy Regulatory Commission (FERC) is publishing notice of modifications to an existing FERC System of records titled ''*Commission Freedom of Information Act and Privacy Act Request Files*'' (FERC 46).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street NE, Washington, DC 20426, or electronically to *privacy@ferc.gov*. Comments should indicate that they are submitted in response to Commission Freedom of Information Act and Privacy Act Request Files (FERC–46).

FOR FURTHER INFORMATION CONTACT: Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6432.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act (FOIA), enacted on July 4, 1966, is a statutory law requiring Federal agencies to provide, to the fullest extent possible, release of agency information to the public, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The law provides individuals with a statutory right of access to certain Federal agency records.

As required by the Privacy Act of 1974, notice is hereby given that the Commission is adding additional routine uses and expanding on the categories of records that FERC collects on individuals to an existing system of records entitled ''Freedom of Information Act and Privacy Act Request Files (FERC 46).'' This modification adds five (5) routine uses and expands on the categories of records collected to include email address, fax number, legal representation, guardian relationships. The current SORN has seven categories of Personally Identifiable Information (PII) that FERC's OEA collects as part of the Freedom of Information Act (FOIA) and Privacy Act (PA).

SYSTEM NAME AND NUMBER:

Commission Freedom of Information Act and Privacy Act Request Files: FERC–46

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street NE, Washington, DC. 20426

SYSTEM MANAGER(S):

FOIA Liaison, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Privacy Act of 1974 (5 U.S.C. 552a); the Freedom of Information Act as amended (5 U.S.C. 552)

PURPOSE(S) OF THE SYSTEM:

Records in this system of records are maintained for the purpose of processing an individual's record request made under FOIA and the Privacy Act. The proposed system of records will assist the Commission in carrying out its responsibilities under FOIA and the Privacy Act. The records maintained in the proposed system can originate in both paper and electronic format.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: all individuals, including legal representatives/guardians, who have requested records from FERC under the provisions of FOIA and the Privacy Act; all individuals about whom information has been requested under FOIA or the Privacy Act; and all individuals whose information may otherwise be responsive to request for records under FOIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Commission records include all documents or records created or obtained by an agency of the government that are in FERC's possession and control at the time a FOIA request is received; and information maintained by FERC pursuant to a government contract for the purposes of records management. This system of records contains correspondence and other documents related to requests made by individuals to FERC for information under the provisions of FOIA, including request for review of initial denials of such requests; information covered under provisions of the Privacy Act; requests for review of initial denials of FOIA or Privacy Act requests; a requester's name telephone number, physical address, email address, fax number, request number, description of request, billing information, FOIA/PA tracking number; FOIA requests and appeals, responses to requests (including unredacted and redacted responsive records), determination of appeals, correspondence with requesters and with other persons who have contacted FERC in connection with requests or appeals.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from the following: requests and administrative appeals submitted by individuals and organizations pursuant to the FOIA and Privacy Act; FERC personnel and officials that process such requests and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the

Federal Government, or national security, resulting from a suspected or confirmed breach.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets. In addition, all FERC employees and contractors with authorized access have undergone a thorough background investigation. Data access is restricted to agency personnel or contractors whose responsibilities require access. Access to electronic records is controlled by Personal Identity Verification (PIV) cards or multi-factor authentication and/or other network access or security controls. Role based access is used to restrict electronic data access and the organization employs the principle of least privilege, allowing only authorized users with access (or processes acting on behalf of users) necessary to accomplish assigned tasks in accordance with organizational missions and business functions.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the names of the individual requester, FOIA/PA tracking number, affiliation (where applicable), and subject.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the applicable National Archives and Records Administration schedules, General Records Schedule (GRS) 4.2: Information Access and Protection Records Item 020. Temporary. Destroy six (6) years after final agency action or three (3) years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

See Policies and Practices.

RECORD ACCESS PROCEDURES:

Individuals requesting access to the contents of records must submit a request through the Freedom of Information Act (FOIA) office. The FOIA website is located at: *https://www.ferc.gov/foia.* Requests may be submitted through the following portal: *https://www.ferc.gov/enforcement-legal/foia/electronic-foia-privacy-act-request-form.* Written requests for access to records should be directed to: Director, Office of External Affair, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Records Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

During the course of reviewing a FOIA request, exempt materials from other systems of records may in turn become part of the case records. To the extent that copies of exempt records from those other systems of records are entered into this system of records, FERC hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records of which they are a part. In addition, FOIA lists the following exemptions, which are provided in 5 U.S.C 552(b).

HISTORY:

81 FR 61681

Dated: August 2, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16974 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–12–000]

Commission Information Collection Activities (Ferc–521); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on FERC–521 (Payments for Benefits from Headwater Improvements).

DATES: Comments on the collection of information are due September 8, 2023.

ADDRESSES: Send written comments on FERC–521 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number 1902–0087 (Payments for Benefits from Headwater Improvements) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC23–12–000 and the form) to the Commission as noted below. Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Mail via any other service (including courier delivery):* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please reference the specific collection number(s) and/or title(s) in your comments.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at: *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection. FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–521, Payments for Benefits from Headwater Improvements.

OMB Control No.: 1902–0087.

Type of Request: Three-year extension of the FERC–521 information collection requirements with no changes to the reporting requirements.

Abstract: The purpose of FERC–521 is to implement the information collection regarding ''headwater benefits'' pursuant to section 10(f) of the Federal Power Act (FPA).[1] As defined at 18 CFR 11.10(a)(2), headwater benefits consist of the additional electric generation of a downstream project that results from regulation of the flow of a river by a headwater (*i.e.,* upstream) project, usually by increasing or decreasing the release of water from a storage reservoir. The respondents of this information collection are owners of headwater projects constructed by the United States, by licensees, and pre-1920 permittees. 18 CFR 11.16(b). The Commission requires basic project information including owner information, location, and storage capacity to be filed by the respondents.

Type of Respondents: There are two types of entities that respond, Federal and Non-Federal storage and hydropower project owners. The Federal entities that typically respond include the U.S. Army Corps of Engineers and the U.S. Department of Interior Bureau of Reclamation. The Non-Federal entities may consist of any Municipal or Non-Municipal hydropower project owner.

Estimate of Annual Burden[2] *and cost*[3]: The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–521: PAYMENTS FOR BENEFITS FROM HEADWATER IMPROVEMENTS

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Federal and Non-Federal project owners.	3	1	3	40 hrs.; $3,640	120 hrs.; $10,920	$3,640

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17063 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 803(f).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

[3] The estimates for cost per response are derived using the 2022 FERC average salary plus benefits of $188,922/year (or $91.00/hour). Commission staff finds that the work done for this information collection is typically done by wage categories similar to those at FERC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–13–000]

Commission Information Collection Activities (Ferc–583); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–583, Annual Kilowatt Generating Report (Annual Charges).

DATES: Comments on the collection of information are due October 10, 2023.

ADDRESSES: You may submit comments (identified by Docket No. IC23–13–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, at Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–583, Annual Kilowatt Generating Report (Annual Charges).

OMB Control No.: 1902–0136.

Type of Request: Three-year extension of the FERC–583 information collection requirements with no changes to the existing collection.

Abstract: Section 10(e) of the Federal Power Act (FPA) [1] requires the Federal Energy Commission (FERC or Commission) to collect annual charges from entities that generate electricity with hydropower in accordance with Commission authorization. Such charges reimburse the federal government for the cost of administering Part I of the FPA,[2] the use of tribal lands, the use of federal lands, and the use of federal dams.

The regulations at 18 CFR 11.1(c)(5) and 11.1(d)(4) require annual kilowatt generating reports from licensees and exemptees. The Commission's Financial Services Division uses the reports to determine the amount of annual charges to be assessed each licensee and exemptee.

Types of Respondent: (1) Hydropower licensees of projects more than 1.5 megawatts of installed capacity; (2) Holders of exemptions under section 30 of the FPA; [3] and (3) exemptees under sections 405 and 408 of the Public Utility Regulatory Policy Act.[4]

Estimate of Annual Burden: [5] The following table shows the estimated annual burden and cost:

FERC–583 Estimated Annual Burdens

A	B	C	D	E	F	G
Type of response	Number of respondents	Annual number of responses per respondent	Total number of responses (Col. B × Col. C)	Average Hours & cost [6] per response	Total annual burden hours & total annual cost (Col. D × Col. E)	Cost per respondent (Col. F ÷ Col. B)
Annual kilowatt generating report 18 CFR 11.1(c)(5) and 11.1(d)(4).	550	1	550	2 hrs.; $192	1,100 hrs.; $105,600	$192
Application of a State or municipal licensee or exemptee for total or partial exemption from the assessment of annual charges 18 CFR 11.6.	50	1	50	2 hrs.; $192	100 hrs.; $9,600	192
Appeals and requests for rehearing of billing for annual charges 18 CFR 11.20.	2	1	2	40hrs.; $3,840 ...	80hrs.; $7,680	3,840
Totals	602	.....	602	.....	1,280hrs,; $122,880 ..	.....

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17062 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 803(e).

[2] 16 U.S.C. 791 through 823d.

[3] 16 U.S.C. 823a.

[4] 16 U.S.C. 2705.

[5] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[6] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's 2023 annual average full-time equivalent of $199,867 per year (for salary plus benefits), the average hourly cost is $96.00 per hour.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD23–9–000]

Reliability Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene its annual Reliability

Technical Conference in the above-referenced proceeding on Thursday, November 9, 2023, from approximately 8:30 a.m. to 5:00 p.m. Eastern time. The conference will include Commissioner-led and staff-led panels. The conference will be held in-person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this conference is to discuss policy issues related to the reliability and security of the Bulk-Power System. The conference will also discuss the impact of the Environmental Protection Agency's proposed rule under section 111 of the Clean Air Act on electric reliability.[1]

The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda, how to register to participate, and the format. Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Michael Gildea at *Michael.Gildea@ferc.gov* or (202) 502–8420. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17069 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

[1] New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 88 FR 33,240 (proposed May 23, 2023) (to be codified at 40 CFR 60).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–955–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Direct Energy to NRG Name Change—Capacity Release Amendment to be effective 8/1/2023.

Filed Date: 8/2/23.

Accession Number: 20230802–5147.

Comment Date: 5 p.m. ET 8/14/23.

Docket Numbers: RP23–956–000.

Applicants: Rockies Express Pipeline LLC.

Description: § 4(d) Rate Filing: REX 2023–08–03 Negotiated Rate Agreement to be effective 8/4/2023.

Filed Date: 8/3/23.

Accession Number: 20230803–5001.

Comment Date: 5 p.m. ET 8/15/23.

Docket Numbers: RP23–957–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 8.3.23 Negotiated Rates—Mercuria Energy America, LLC R–7540–02 to be effective 8/15/2023.

Filed Date: 8/3/23.

Accession Number: 20230803–5004.

Comment Date: 5 p.m. ET 8/15/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR23–48–002.

Applicants: Spire Storage Salt Plains LLC.

Description: Amendment Filing: Salt Plains revised SOC August 2023 to be effective 4/1/2023.

Filed Date: 8/3/23.

Accession Number: 20230803–5005.

Comment Date: 5 p.m. ET 8/21/23.

Protest Date: 5 p.m. ET 8/21/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17067 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project/Docket No. CP23–214–000]

Columbia Gas Transmission, L.L.C.; Notice of Waiver Period for Water Quality Certification Application

On June 15, 2023, Columbia Gas Transmission, L.L.C. submitted to the Federal Energy Regulatory Commission (Commission) a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with New York Department of Environmental Conservation (NYSDEC), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 157.22 of the Commission's regulations,[1] we hereby notify the New York Department of Environmental Conservation of the following:

—Date of Receipt of the Certification Request: June 15, 2023

[1] 18 CFR 157.22.

—Reasonable Period of Time to Act on the Certification Request: June 15, 2024

If the New York Department of Environmental Conservation fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17066 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–520–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 24, 2023, Texas Eastern Transmission, LP (Texas Eastern), 915 N. Eldridge Parkway, Suite 1100, Houston, Texas 77079, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, for authorization to re-route and replace a segment of 30-inch diameter pipeline near a crossing of the Ohio River in Monroe County, Ohio. All the above facilities are located in Monroe County, Ohio. The project will allow Texas Eastern to replace a segment of Line 10 that was revealed to have an anomaly consisting of a shorted condition between the carrier pipe and the casing and discontinue use of approximately 425 feet of the existing Line 10 pipeline facilities. The estimated cost for the project is $14.1 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Jennifer R. Rinker, Associate General Counsel, Texas Eastern Transmission, LP, 915 N. Eldridge Parkway, Suite 1100, Houston, Texas 77079, Ph: (713)-627–1642, *Jennifer.Rinker@enbridge.com*.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 2, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is October 2, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is October 2, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp*.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

and properly recorded, please submit your comments on or before October 2, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–520–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–520–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Jennifer R. Rinker, Associate General Counsel, Texas Eastern Transmission, LP, 915 N. Eldridge Parkway, Suite 1100, Houston, Texas 77079, or by *Jennifer.Rinker@enbridge.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17065 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD23–2–000]

North American Electric Reliability Corporation; Final Notice of Joint Technical Conference

As announced in the Notice of Joint Technical Conference issued in this proceeding on May 30, 2023, the Federal Energy Regulatory Commission (Commission) and North American Electric Reliability Corporation (NERC) staff will convene a technical conference on August 10, 2023, from 9:00 a.m. to 4:30 p.m. Eastern Time.

The purpose of this conference is to discuss physical security of the Bulk-Power System, including the adequacy of existing physical security controls, challenges, and solutions. The conference will include two parts and four panel discussions. Part 1 will address the effectiveness of Reliability Standard CIP–014–3 (Physical Security) and include two panels on the applicability of CIP–014–3 and minimum levels of physical protection. Part 2 will address solutions beyond Reliability Standard CIP–014–3 and include two panels on physical security best practices and operational preparedness and planning a more resilient grid.

We note that discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

Petition for Rulemaking, Docket No. EL23–69–000

Attached to this Final Notice is an agenda for the technical conference, which includes more detail for each panel. Only invited panelists and staff from the Commission and NERC will participate in the panel discussions. Interested parties may listen and observe, and written comments may be submitted after the conference in Docket No. RD23–2–000.

The conference will be held in-person at NERC's headquarters at 3353 Peachtree Road, NE Suite 600 North Tower, Atlanta, GA 30326. Information on travelling to NERC's Atlanta office is available here. The conference will be open for the public to attend, and there is no fee for attendance. It will be transcribed and webcast. Those observing via webcast may register here. Information on this conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations. The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

For more information about this technical conference, please contact Terrance Clingan at *Terrance.Clingan@ferc.gov* or (202) 502–8823. For information related to logistics, please contact Lonnie Ratliff at *Lonnie.Ratliff@nerc.net* or Sarah McKinley at *Sarah.McKinley@ferc.gov* or (202) 502–8004.

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Joint Physical Security Technical Conference

Agenda

Docket No. RD23–2–000

August 10, 2023

August 10, 2023

9:00–4:30 p.m. Eastern

NERC Atlanta Office, 3353 Peachtree Road NE, Suite 600—North Tower, Atlanta, GA 30326.

Welcome and Opening Remarks (9:00–9:12 a.m.)

NERC Antitrust Compliance Guidelines and Commission Staff Disclaimer (9:12–9:15 a.m.)

Agenda

Introduction and Background (9:15–9:30 a.m.)

Commission and NERC staff will provide background information relevant to discussion during the technical conference, including on Reliability Standard CIP–014–3, the current physical security landscape, recent Commission activities on physical security, and the NERC report filed with the Commission in April.

Part 1: Effectiveness of Reliability Standard CIP–014–3

Part 1 of the technical conference will focus on Reliability Standard CIP–014–3, as it is enforced today as well as any potential revisions to the standard resulting in subsequent versions.

Panel 1—Applicability (9:30–10:50 a.m.)

This panel will explore the facilities subject to Reliability Standard CIP–014–3. While the NERC report filed with the Commission did not recommend revising the applicability section of the Standard at this time, the report determined that this could change based on additional information. Panelists will discuss whether the applicability section of Reliability Standard CIP–014–3 identifies the appropriate facilities to mitigate physical security risks to better assure reliable operation of the Bulk-Power System. Panelists will also discuss whether additional type(s) of substation configurations should be studied to determine risks and the possible need for required protections.

This panel may include a discussion of the following topics and questions:

1. Is the applicability section of CIP–014–3 properly determining transmission station/substations to be assessed for instability, uncontrolled separation or cascading within the Interconnection? Specifically, are the correct facilities being assessed and what topology or characteristics should the applicable facilities have to be subject to CIP–014? For example, are there criteria other than those in Section 4.1.1 of CIP–014–3, such as connected to two vs. three other station/substations and exceeding the aggregated weighted value of 3000, changing the weighting value of the table in the applicability section, or including lower transmission voltages?

2. Given the changing threat landscape, are there specific transmission station/substation configurations that should be included in the applicability section of CIP–014–3, including combinations of stations/substations to represent coordinated attacks on multiple facilities? What would they be and why?

3. What other assessments (*e.g.,* a TPL–001 planning assessment) may be used to identify an at-risk facility or group of facilities that should be considered for applicability under CIP–014–3? How stringent are those assessments? Describe any procedural differences between those other assessments and the CIP–014–3 R1 Risk Assessment. Should CIP–014–3 apply to entities other than those transmission owners to which 4.1.1 applies or transmission operators to which 4.1.2 applies?

4. Should potential load loss or generation loss be considered? If so, why, and how would potential impact be determined (*e.g.,* how would potential load loss be determined in advance of running an assessment?)?

5. Should facilities that perform physical security monitoring functions that are not currently subject to CIP–014–3 (*e.g.,* security operation centers) be covered by CIP–014–3 as well? If so, what criteria should be used?

Moderators:

- Olutayo Oyelade, Supervisory Electrical Engineer, FERC
- Kiel Lyons, Senior Manager, Compliance Assurance, NERC

Panelists:

- Mark Rice, Senior Power Engineer, Pacific Northwest National Lab
- Eric Rollison, Assistant Director, Office of Cybersecurity, Energy Security, and Emergency Response (Department of Energy)
- Adam Gerstnecker, Managing Principal Consultant, Mitsubishi Electric Power Products, Inc.
- Jamie Calderon, Manager, NERC
- Lawrence Fitzgerald, Director, TRC Companies

Break (10:50–11:00 a.m.)

Panel 2—Minimum Level of Physical Protection (11:00 a.m.–12:30 p.m.)

This panel will discuss the reliability goal to be achieved and based on that goal, what, if any, mandatory minimum resiliency or security protections should be required against facility attacks, *e.g.,* site hardening, ballistic protection, etc. This panel will discuss the scope of reliability, resilience, and security measures that are inclusive of a robust, effective, and risk-informed approach to reducing physical security risks. The panel will also consider whether any minimum protections should be tiered and discuss the appropriate criteria for a tiered approach.

This panel may include a discussion of the following topics and questions:

1. What is our reliability goal? What are we protecting against to ensure grid reliability beyond what is required in the current standards?

a. What are the specific physical security threats (both current and emerging) to all stations/substations on the bulk electric system?

b. As threats are continually evolving, how can we identify those specific threats?

c. How do threats vary across all stations/substations on the bulk electric

system? How would defenses against those threats vary?

To what extent should simultaneous attacks at multiple sites be considered?

2. Do we need mandatory minimum protections? If so, what should they be?

a. Should there be flexible criteria or a bright line?

b. Should minimum protections be tiered (*i.e.,* stations/substations receive varying levels of protection according to their importance to the grid)? How should importance be quantified for these protections?

c. Should minimum protections be based on preventing instability, uncontrolled separation, or cascading or preventing loss of service to customers (*e.g.,* as in Moore County, NC) ? If minimum protections were to be based on something other than the instability, uncontrolled separation, or cascading, what burden would that have on various registered entities? If the focus is on loss of service, is it necessary to have state and local jurisdictions involved to implement a minimum set of protections?

d. In what areas should any minimum protections be focused?

i. Detection?

ii. Assessment?

iii. Response?

3. To what extent would minimum protections help mitigate the likelihood and/or reliability impact of simultaneous, multi-site attacks?

Moderators:

- Coboyo Bodjona, Electrical Engineer, FERC
- Lonnie Ratliff, Director, Compliance Assurance and Certification, NERC

Panelists:

- Travis Moran, Senior Reliability and Security Advisor, SERC
- Mike Melvin, Director, Exelon representing Edison Electric Institute
- Kathy Judge, Director, National Grid representing Edison Electric Institute
- Jackie Flowers, Director, Tacoma Public Utilities

Lunch (12:30–1:00 p.m.)

Part 2: Solutions Beyond CIP–014–3

Part 2 of the technical conference will focus on solutions for physical security beyond the requirements in Reliability Standard CIP–014–3.

Panel 3—Best Practices and Operational Preparedness (1:00–2:30 p.m.)

This panel will discuss physical security best practices for prevention, protection, response, and recovery. The discussion will include asset management strategies to prepare, incident training preparedness and response, and research and development needs.

This panel may include a discussion of the following topics and questions:

1. What is the physical security threat landscape for each of your companies? What best practices have been implemented to mitigate the risks and vulnerabilities of physical attacks on energy infrastructure?

2. What asset management and preparedness best practices have your member companies implemented to prevent, protect against, respond to, and recover from physical attacks on their energy infrastructure?

3. What research and development efforts are underway or needed for understanding and mitigating physical security risks to critical energy electrical infrastructure?

4. What research and development efforts, including the development of tools, would you like to see the National Labs undertake to assist your companies in addressing physical threats to your critical electrical infrastructure?

5. What do you need or would like to see from the energy industry to improve your ability and accuracy in addressing physical security risks to critical energy electrical infrastructure?

6. What best practices are in place to accelerate electric utility situational awareness of an incident and to involve local jurisdiction responders?

7. What can the federal and state regulators do to assist the energy industry in improving their physical security posture?

8. What training improvements can NERC and the Regional Entities implement to system operators to aid in real-time identification and recovery procedures from physical attacks?

9. What changes could be made to improve information sharing between the federal government and industry?

Moderators:

- Joseph McClelland, Director, Office of Energy Infrastructure Security, FERC
- Bill Peterson, Director, Entity Development & Communication, SERC

Panelists:

- Vinit Gupta, Vice President, ITC Holdings Corp.
- Randy Horton, Director, Electric Power Research Institute
- Craig Lawton, Mission Campaign Manager, Sandia National Lab
- Michael Ball, National Security and Resiliency Advisor, Berkshire Hathaway Energy
- Thomas J. Galloway, Sr., President and CEO, North American Transmission Forum
- Scott Aaronson, Senior Vice President, Edison Electric Institute

Break (2:30–2:40 p.m.)

Panel 4—Grid Planning to Respond to and Recover from Physical and Cyber Security Threats and Potential Obstacles (2:40–4:10 p.m.)

This panel will explore planning to respond to and recovery from physical and cyber security threats and potential obstacles to developing and implementing such plans. This discussion will focus on how best to integrate cyber and physical security with engineering, particularly in the planning phase. The panel will discuss whether critical stations could be reduced through best practices and how to determine whether to mitigate the risk of a critical station or protect it. Finally, the panel will consider the implications of the changing resource mix on vulnerability of the grid and its resilience to disruptions.

This panel may include a discussion of the following topics and questions:

1. How can cyber and physical security be integrated with engineering, particularly planning? What aspects of cyber and physical security need to be incorporated into the transmission planning process?

2. What modifications could be made to TPL–001 to bring in broader attack focus (*e.g.,* coordinated attack)? What sensitivities or examined contingencies might help identify vulnerabilities to grid attacks?

3. Currently, if a CIP–014–3 R1 assessment deems a transmission station/substation as ''critical'' that station/substation must be physically protected. Are there best practices for reconfiguring facilities so as to reduce the criticality of stations/substations?

4. When prioritizing resources, how should entities determine which ''critical'' stations/substations to remove from the list and which to protect? If the project is extensive and may have a long lead time to construct, to what degree does the station/substation need to be protected during the interim period?

5. How will the development of the grid to accommodate the interconnection of future renewable generation affect the resilience of the grid to attack? Will the presence of future additional renewable generation itself add to or detract from the resilience of the grid to physical attack?

6. What are the obstacles to developing a more resilient grid? What strategies can be used to address these obstacles?

a. Cost?

b. Siting?

c. Regulatory Barriers?

d. Staffing/training?

Moderators:

- Terry Clingan, Electrical Engineer, FERC
- Ryan Quint, Director, Engineering and Security Integration, NERC

Panelists:

- Ken Seiler, Vice President, PJM Interconnection

• Tracy McCrory, Vice President, Tennessee Valley Authority
• Daniel Sierra, Manager, Burns and McDonnell
• Daron Frederick, Chief Information Officer, Arkansas Electric Cooperative
• Kent Chandler, Chairman, Kentucky Public Service Commission

Closing Remarks (4:10–4:30 p.m.)

[FR Doc. 2023–17061 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–2554–000]

Midland Wind, 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 Midland Wind, 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 August 23, 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 TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: August 3, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–17064 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–507–000]

Equitrans, L.P.; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Swarts and Hunters Cave Well Replacement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Swarts and Hunters Cave Well Replacement Project involving abandonment, construction, and operation of facilities by Equitrans, L.P. (Equitrans) in Greene County, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on September 1, 2023. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on June 30, 2023, you will need to file those comments in Docket No. CP23–507–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Equitrans provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23–507–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov.*

Summary of the Proposed Project

Equitrans proposes to abandon, construct and operate certain facilities within the Swarts Complex and Hunters Cave Storage Fields in Greene County, Pennsylvania. According to Equitrans, the Swarts and Hunters Cave Well Replacement Project is necessary because of planned mining activity from CONSOL Pennsylvania Coal Company LLC (CONSOL). According to Pennsylvania state law, any active storage well within 2,000 feet of active mining activities would need to be plugged or upgraded to current mining standards.

The Swarts and Hunters Cave Well Replacement Project would consist of the following facilities:

- abandonment by-sale of a series of 19 injection/withdrawal wells at Equitrans' Hunters Cave Storage Field abandonment in-place of the associated well pipelines and any associated facilities;
- construction and operation of a new horizontal well, associated pipelines, and ancillary facilities at the Hunters Cave Storage Field;
- construction and operation of a new horizontal well, associated pipelines, and ancillary facilities at the Swarts Complex;
- expansions of the existing Morris Interconnect and Pierce Gates Valve Yards at the Hunters Cave Storage Field;
- acquisition of non-jurisdictional gathering assets from EQM Gathering Opco, LLC (pipelines and related equipment) for operation of the new Swarts Horizontal Storage Well; and
- the sale of 580 million cubic feet of base gas from the Swarts Complex.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the Swarts and Hunters Cave Well Replacement Project would disturb about 77.86 acres of land in Greene County, Pennsylvania. Following construction, Equitrans would maintain about 12.4 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- socioeconomics;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP23–507–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: August 3, 2023.

Kimberly D. Bose,

Secretary.

Appendix 1

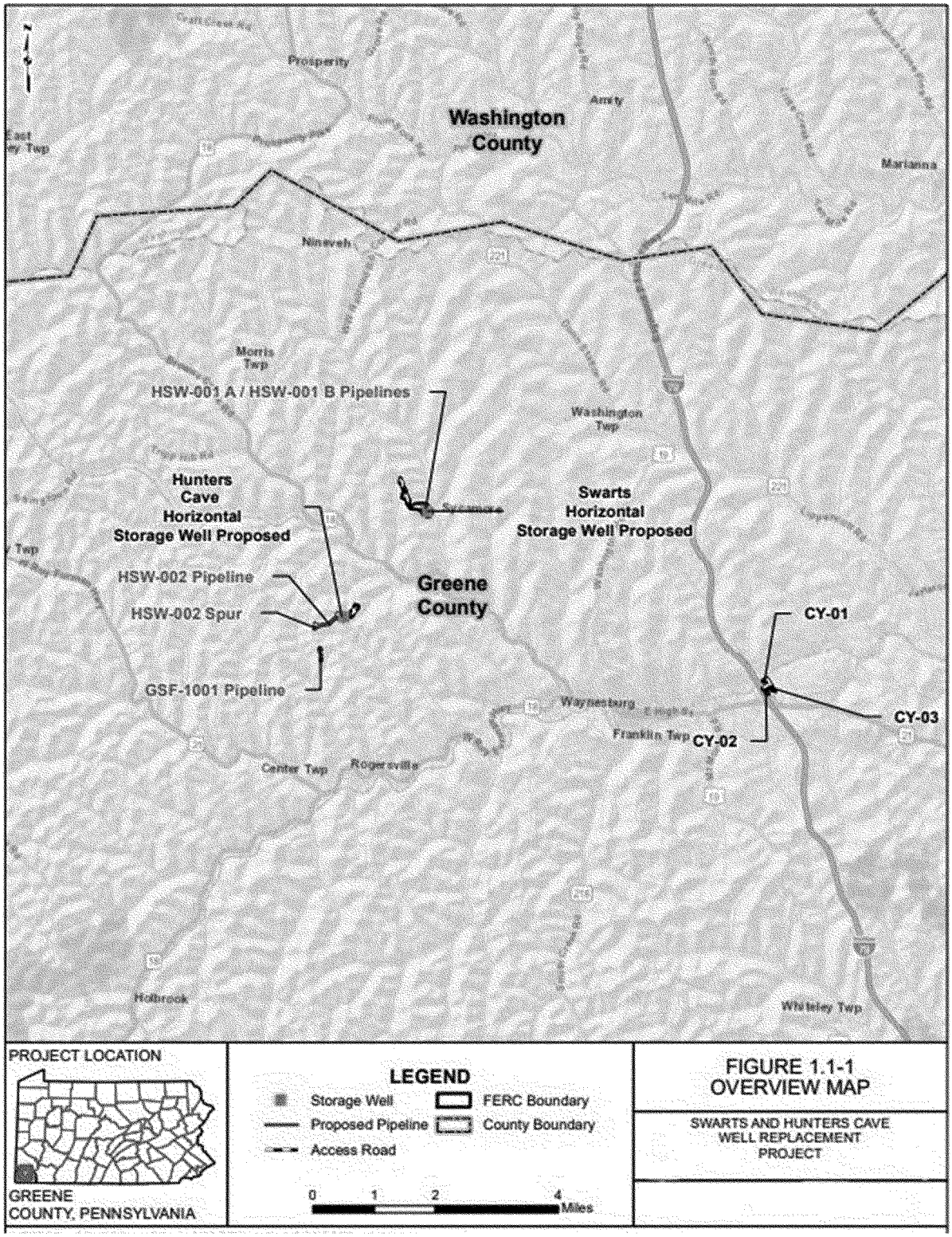
Project Location Map

BILLING CODE 6717–01–P

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.


Washington County
Greene County
Prosperity
Amity
Nineveh
Marianna
Morris Twp
Washington Twp
Franklin Twp
Waynesburg
Center Twp
Rogersville
Holbrook
Whiteley Twp
HSW-001 A / HSW-001 B Pipelines
Hunters Cave Horizontal Storage Well Proposed
Swarts Horizontal Storage Well Proposed
HSW-002 Pipeline
HSW-002 Spur
GSF-1001 Pipeline
CY-01
CY-02
CY-03
PROJECT LOCATION
GREENE COUNTY, PENNSYLVANIA
LEGEND
Storage Well
Proposed Pipeline
Access Road
FERC Boundary
County Boundary
0 1 2 4 Miles
FIGURE 1.1-1
OVERVIEW MAP
SWARTS AND HUNTERS CAVE WELL REPLACEMENT PROJECT

MAILING LIST UPDATE FORM

Swarts and Hunters Cave Well Replacement Project

Name_____

Agency_____

Address_____

City_____**State**_____ **Zip Code**_____

☐ **Please update the mailing list**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 5, PJ - 11.5
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Docket No. CP23-507 Swarts and Hunters Cave Well Replacement Project

Staple or Tape Here

[FR Doc. 2023–16971 Filed 8–8–23; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), Department of Energy.

ACTION: Rescindment of system of records notices.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, the Federal Energy Regulatory Commission (Commission or FERC) proposes to rescind 2 existing systems of records notices. Specifically, the following SORNS are being proposed for rescindment: (1) FERC–44: Request for Commission Publications and Information; and (2) FERC–45: Commission's Requested Records Tracking System (RRTS). The basis for rescindment is explained below.

DATES: Comments on this rescindment notice must be received no later than 30 days after the date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the rescindment will become effective a minimum of 30 days after the date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, or electronically to *privacy@ferc.gov.* Comments should indicate that they are submitted in response to *Request for Commission Publications and Information (FERC–44)* and *Commission's Requested Records Tracking System (RRTS) (FERC–45).*

FOR FURTHER INFORMATION CONTACT: Supervisory Records and Information Management Specialist, Office of the Secretary, Records Management Team, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8400.

SUPPLEMENTARY INFORMATION: Two systems were identified for rescindment from the FERC's Privacy Act systems of records inventory. SORNs were identified for rescindment because the SORNs are duplicative and covered by another FERC system of records. OMB requires that each agency provide assurance that systems of records do not duplicate any existing agency or government-wide systems of records. Accordingly, two SORNs were identified for rescindment.

First, FERC–44: Request for Commission Publications and Information is duplicative of and shares the same purpose as the records in SORN FERC–61: Requests for Commission Publications and Information, 75 FR 17978 (March 28, 2014). Second, FERC–45: Commission's Requested Records Tracking System (RRTS) is duplicative of and shares the same purpose as the records in SORN FERC–61: Requests for Commission Publications and Information, 75 FR 17978 (March 28, 2014).

SYSTEM NAME AND NUMBER: REQUEST FOR COMMISSION PUBLICATIONS AND INFORMATION—FERC–44 & COMMISSION'S REQUESTED RECORDS TRACKING SYSTEM (RRTS)—FERC–45

HISTORY:

System of records number	**Federal Register** citation and publication date
FERC–44	65 FR 21757 (April 24, 2000).
FERC–45	65 FR 21757 (April 24, 2000).

Dated: August 2, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–16972 Filed 8–8–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–9801–02–OCSPP]

Environmental Modeling Public Meeting; Notice of Public Meeting (Virtual and In-Person)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold an Environmental Modeling Public Meeting (EMPM) on Tuesday, October 10, 2023, with participation by in-person, phone, and webcast. This Notice announces the meeting and provides information on its theme. The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, exposure, and ecotoxicity for pesticide risk assessments in a regulatory context.

DATES: This meeting will be held on Tuesday, October 10, 2023, from 9:00 a.m. to approximately 4:30 p.m. EDT.

Requests to participate: Requests to attend the meeting must be submitted on or before October 3, 2023. Requests to present with an accompanying abstract must be submitted on or before September 1, 2023.

ADDRESSES: The meeting will be held in the Oceans Auditorium of the William Jefferson Clinton (WJC) East Building at the Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

FOR FURTHER INFORMATION CONTACT: The 2023 EMPM Co-chairs, Jessica Joyce and William Gardner; telephone number: (202) 566–1690; email address: *OPP_EMPM@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide registrant, a potential pesticide registrant, or a user of a pesticide under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting NAICS code 11.
- Utilities NAICS code 22.
- Professional, Scientific and Technical NAICS code 54.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the OPP Docket and Public Reading Room is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Background

The purpose of the EMPM is for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for ecological risk assessment in a regulatory context.

III. How do I register to participate in this meeting?

To register to attend and/or to present, please send an email to *OPP_EMPM@epa.gov* by the dates specified under the **DATES** heading in this notice. You must register *via* email to receive the webcast meeting link and audio teleconference information for participation. Meeting updates and participation information will be distributed through ''empmlist.'' Do not submit any information in your request that is considered Confidential Business Information (CBI).

IV. What is the topic for this meeting?

The 2023 EMPM will provide a forum for presentations and discussions on surface water and groundwater modeling and endangered species assessment modeling. EPA will present information on updated Pesticide in Water Calculator (PWC) surface water and groundwater scenarios, including the recent development of spatially diverse groundwater scenarios.

In addition, EPA will provide updates on modeling approaches to support endangered species assessments and evaluation of mitigation measures including EPA's Plant Assessment Tool (PAT) and Vegetative Filter Strip Modeling System (VFSMod).

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 3, 2023.

Jan Matuszko,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2023–17056 Filed 8–8–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1089; FR ID 160423]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 10, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control No.: 3060–1089.

Title: Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10–51 & 03–123.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 187,019 respondents; 1,836,456 responses.

Estimated Time per Response: 0.05 hours (3 minutes) to 300 hours.

Frequency of Response: Annual, monthly, on occasion, on-going, one-time, and quarterly reporting requirements; Recordkeeping requirement; and Third-Party Disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the collection is contained in section 225 of the Communications Act, 47 U.S.C. 225. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, and amended by the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 103(a), 124 Stat. 2751, 2755 (2010) (CVAA); Public Law 111–265 (technical amendments to CVAA).

Total Annual Burden: 320,484 hours.

Annual Cost Burden: $280,200.

Needs and Uses: The telecommunications relay service (TRS) program enables access to the nation's telephone network by persons with hearing and speech disabilities. In 1991, as required by the Americans with Disabilities Act and codified at 47 U.S.C. 225, the Commission adopted rules governing the telecommunications relay services (TRS) program and procedures for each state TRS program to apply for initial Commission certification and renewal of Commission certification of each state program. *Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990,* Report and Order and Request for Comments, document FCC 91–213, published at 56 FR 36729, August 1, 1991 (*1991 TRS Implementation Order*).

Between 2008 and 2011, to integrate internet-based TRS into the North American Numbering plan and facilitate interoperability, universal calling, and 911 emergency services, the Commission adopted rules in three separate orders related to the telephone numbering system and enhanced 911 (E911) services for users of two forms of internet-based TRS: Video Relay Service (VRS) and internet Protocol Relay service (IP Relay). *See* document FCC 08–151, *Report and Order and Further Notice of Proposed Rulemaking,* published at 73 FR 41286, July 18, 2008 (*First Numbering Order*); document FCC 08–275, *Second Report and Order and Order on Reconsideration,* published at 73 FR 79683, December 30, 2008 (*Second Numbering Order*); and document FCC 11–123, *Report and Order,* published at 76 FR 59551, September 27, 2011 (*internet-based TRS Toll Free Order*).

The rules adopted in these three orders have information collection

requirements that include requiring VRS and IP Relay providers to: register each user who selects the provider as his or her default provider, including obtaining a self-certification from each user; verify the accuracy of each user's registration information; provision and maintain their registered users' routing information to the TRS Numbering Directory; place their users' Registered Location and certain callback information in Automatic Location Information (ALI) databases across the country and provide a means for their users to update their Registered Locations; include advisories on their websites and in any promotional materials addressing numbering and E911 services for VRS or IP Relay; verify in the TRS Numbering Directory whether each dial-around user is registered with another provider; and if they provide equipment to a consumer, make available to other VRS providers enough information about that equipment to enable another VRS provider selected as the consumer's default provider to perform all of the functions of a default provider.

On July 28, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* document FCC 11–118, published at 76 FR 47469, August 5, 2011, and at 76 FR 47476, August 5, 2011 (*VRS Certification Order*), adopting final and interim rules—designed to help prevent waste, fraud, and abuse, and ensure quality service, in the provision of internet-based forms of TRS. On October 17, 2011, the Commission released *Structure and Practices of the Video Relay Service Program,* Memorandum Opinion and Order, Order, and Further Notice of Proposed Rulemaking, document FCC 11–155, published at 76 FR 67070, October 31, 2011 (*VRS Certification Reconsideration Order*), modifying two aspects of information collection requirements contained in the *VRS Certification Order.*

On June 10, 2013, the Commission made permanent the interim rules adopted in the *VRS Certification Order. Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Further Notice of Proposed Rulemaking, document FCC 13–82, published at 78 FR 40582, July 5, 2013 (*2013 VRS Reform Order*).

The *VRS Certification Order* as modified by the *VRS Certification Reconsideration Order* and, as applicable, made permanent by the *2013 VRS Reform Order,* amended the Commission's process for certifying internet-based TRS providers as eligible for payment from the Interstate TRS Fund (Fund) for their provision of internet-based TRS to ensure that internet-based TRS providers receiving certification are qualified to provide internet-based TRS in compliance with the Commission's rules and to eliminate waste, fraud and abuse through improved oversight of such providers. They contain information collection requirements including: submission of detailed information in an application for certification that shows the applicant's ability to comply with the Commission's rules; submission of annual reports that include updates to the provider's information on file with the Commission or a certification that there are no changes to the information; requirements for a senior executive of an applicant for internet-based TRS certification or an internet-based TRS provider, when submitting an annual compliance report, to certify under penalty of perjury to its accuracy and completeness; requirements for VRS providers to obtain prior authorization from the Commission for planned interruptions of service, to report to the Commission unforeseen interruptions of service, and to provide notification of temporary service outages, including updates, to consumers on their websites; and requirements for internet-based TRS providers that will no longer be providing service to give their customers at least 30-days notice.

In the *2013 VRS Reform Order,* the Commission adopted further measures to improve the structure, efficiency, and quality of the VRS program, reducing the noted inefficiencies in the program, as well as reducing the risk of waste, fraud, and abuse, and ensuring that the program makes full use of advances in commercially-available technology. The Commission required reporting of unauthorized and unnecessary us of VRS; established a central TRS user registration database (TRS–URD) for VRS, which incorporates a centralized eligibility verification requirement to ensure accurate registration and verification of users, as well as per-call validation, to achieve more effective prevention of waste, fraud, and abuse; established procedures to prevent unauthorized changes of a user's default TRS provider; and established procedures to protect TRS users' customer proprietary network information (CPNI) from disclosure.

On March 23, 2017, the Commission released *Structure and Practices of the Video Relay Services Program et al.,* FCC 17–26, published at 82 FR 17754, April 13, 2017, (*2017 VRS Improvements Order*), which among other things, allows VRS providers to assign TRS Numbering Directory 10-digit telephone numbers to hearing individuals for the limited purpose of making point-to-pint video calls, and gives VRS providers the option to participate in an at-home call handling pilot program, subject to certain limitations, as well as recordkeeping and reporting requirements.

On May 15, 2019, the Commission released *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* FCC 19–39, published at 84 FR 26364, June 6, 2019 (*2019 VRS Program Management Order*). The Commission further improved the structure, efficiency, and quality of the VRS program, reduced the risk of waste, fraud, and abuse, and ensured that the program makes full use of advances in commercially-available technology. These improvements include information collection requirements, including: the establishment of procedures to register enterprise and public videophones to the TRS–URD; and permitting Qualified Direct Video Calling (DVC) Entities to access the TRS Numbering Directory and establishing an application procedure to authorize such access, including rules governing DVC entities and entry of information in the TRS Numbering Directory and the TRS–URD.

On August 2, 2019, the Commission released *Implementing Kari's Law and Section 506 of RAY BAUM's Act; Inquiry Concerning 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules,* FCC 19–76, published at 84 FR 66716, December 5, 2019 (*MLTS 911 and Dispatchable Location Order*). The Commission amended its rules to ensure that the dispatchable location is conveyed to a Public Safety Answering Point (PSAP) with a 911 call, regardless of the technological platform used. Based on the directive in section 506 of RAY BAUM'S Act, the Commission adopted dispatchable location requirements that in effect modified the existing information collection requirements applicable to VRS, IP Relay and covered internet Protocol captioned telephone service (IP CTS) by improving the options for providing accurate location information to PSAPs as part of 911 calls.

Fixed internet-based TRS devices must provide automated dispatchable

location. For non-fixed devices, when dispatchable location is not technically feasible, internet-based TRS providers may fall back to Registered Location or provide alternative location information. As a last resort, internet-based providers may route calls to Emergency Relay Calling Centers after making a good faith effort to obtain location data from all available alternative location sources. Dispatchable location means a location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment or similar information necessary to adequately identify the location of the calling party. Automated dispatchable location means automatic generation of dispatchable location. Alternative location information is location information (which may be coordinate-based) sufficient to identify the caller's civic address and approximate in-building location, including floor level, in large buildings.

On January 31, 2020, the Commission released *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* FCC 20–7, 85 FR 27309, May 8, 2020 (*VRS At-Home Call Handling Order*). The Commission amended its rules to convert the VRS at-home call handling pilot program into a permanent one, thereby allowing CAs to work from home. To ensure user privacy and call confidentiality and to help prevent waste, fraud, and abuse, the modified information collections include requirements for VRS providers to apply for certification to allow their communications assistants to handle calls while working at home; monitoring and oversight requirements; and reporting requirements.

On June 30, 2022, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program; Misuse of internet Protocol Captioned Telephone Service,* FCC 22–51, published at 87 FR 57645, September 21, 2022 (*Registration Grace Period Order*). To offer more efficient service to VRS and IP CTS users without risk of waste, fraud, and abuse to the TRS Fund, the Commission amended its rules to allow VRS and IP CTS providers to provide compensable service to a new user for up to two weeks after submitting the user's information to the TRS URD if the user's identity is verified within that period.

On September 30, 2022, the Commission released *Rates for Interstate Inmate Calling Services,* FCC 22–76, published at 87 FR 75496, December 9, 2022 (*Accessible Carceral Communications Order*). To improve access to communications services for incarcerated people with communications disabilities, the Commission adopted modifications to the user registration and verification requirements for use of internet-based TRS in correctional facilities.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–17008 Filed 8–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0110, OMB 3060–0214 and 3060–0386; FR ID 159722]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before October 10, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents: 23,819 respondents; 66,392 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307, 308, and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,065,841 hours.

Total Annual Cost: No cost.

Needs and Uses: On July 20, 2023, the Commission adopted *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations,* Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (*FM6 Report and Order*). The Commission adopted a new requirement that FM6 LPTV stations maintain a public inspection file similar to the requirement in the rule for FM radio stations. This submission is being made to the Office of Management and Budget (OMB) for approval of the local public inspection file requirement for FM6 LPTV stations as adopted in the *FM6 Report and Order.* This requirement is contained in 47 CFR 73.3526.

OMB Control Number: 3060–0110.

Title: FCC Form 2100, Application for Renewal of Broadcast Station License, LMS Schedule 303–S.

Form Number: FCC 2100, LMS Schedule 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Governments.

Number of Respondents and Responses: 5,140 respondents, 5,140 responses.

Estimated Time per Response: 0.5 hours–12 hours.

Frequency of Response: On occasion reporting requirement; Every eight-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 14,868 hours.

Total Annual Costs: $3,994,164.

Obligation of Response: Required to obtain or retain benefits. The statutory authority for the collection is contained Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Needs and Uses: On July 20, 2023, the Commission adopted *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations,* Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (*FM6 Report and Order*). The Commission adopted a new requirement that FM6 LPTV stations certify in their license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. The Commission delegated authority to the Media Bureau to determine the most appropriate means for these stations to make such certification, be it by an attachment to the renewal application or some other reasonable means. This requirement is contained in 47 CFR 74.790(o)(10).

This submission is being made to the Office of Management and Budget (OMB) for approval of the renewal certification requirement for FM6 LPTV stations as adopted in the *FM6 Report and Order*. Since the certification will be included as an additional exhibit to the existing form, it did not necessitate changes to LMS Form 2100 Schedule 303–S.

OMB Control No.: 3060–0386.

Title: Special Temporary Authorization (STA) Requests; Notifications; and Informal Filings; Sections 1.5, 73.1615, 73.1635, 73.1740 and 73.3598; CDBS Informal Forms; Section 74.788; Low Power Television, TV Translator and Class A Television Digital Transition Notifications; Section 73.3700(b)(5), Post Auction Licensing; Section 73.3700(f).

Form No.: None.

Type of Review: Revision of a currently information collection.

Respondents: Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 5,537 respondents and 5,537 responses.

Estimated Time per Response: 0.50–4.0 hours.

Frequency of Response: One-time reporting requirement and on occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act); and Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,353 hours.

Annual Cost Burden: $1,834,210.

Needs and Uses: On July 20, 2023, the Commission adopted *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations,* Fifth Report and Order, FCC 23–58 (rel. July 20, 2023) (*FM6 Report and Order*). The Commission adopted a one-time requirement that FM6 LPTV stations notify the Media Bureau via letter filing as to whether they will continue FM6 operations and confirm their precise FM6 operational parameters. In addition, in the *FM6 Report and Order,* the Commission adopted a rule, 47 CFR 74.790(o)(9) that requires FM6 LPTV stations that are permanently discontinuing their FM6 operations to notify the Commission pursuant to section 73.1750 of the rules. This submission is being made to the Office of Management and Budget (OMB) for approval of the one-time letter notification and discontinuation of operations notification requirements for FM6 LPTV stations as adopted in the *FM6 Report and Order.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–17007 Filed 8–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 160740]

Deletion of Item From August 3, 2023 Open Meeting

August 1, 2023.

The following item was adopted by the Commission on July 31, 2023 and deleted from the list of items scheduled for consideration at the Thursday, August 3, 2023, Open Meeting. The item was previously listed in the Commission's Sunshine Notice on Thursday, July 27, 2023.

2	MEDIA	*Title:* Updating Digital FM Radio Service (MB Docket No. 22–405). *Summary:* The Commission will consider an Order and Notice of Proposed Rulemaking seeking comment on proposed changes to the methodology used to determine maximum power levels for digital FM broadcast stations and to the process for authorizing digital transmissions at different power levels on the upper and lower digital sidebands.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–17009 Filed 8–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 161545]

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before October 10, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: MOBILE RADIO PARTNERS, INC., WTOX(AM), Fac. ID No. 129524, FROM: GLEN ALLEN, VA, TO: BENSLEY, VA, File No. BP–20230622AAA; ESTRELLA BROADCASTING, LLC, KZXO(FM), Fac. ID No. 762493, FROM: SALOME, AZ, TO: BLUEWATER, AZ, File No. 0000217599; BLUEBERRY BROADCASTING, LLC, WBKA(FM), Fac. ID No. 40925, FROM: BAR HARBOR, ME, TO: TRENTON, ME, File No. 0000216359; NEWBERRY BROADCASTING INC., WKYY(FM), Fac. ID No. 170956, FROM: MORGANTOWN, KY, TO: BEAVER DAM, KY, File No. 0000218482; and GALLUP PUBLIC RADIO, NEW(FM), Fac. ID No. 767163, FROM: ZUNI PUEBLO, NM, TO: BLACK ROCK, NM, File No. 0000218047. The full text of these applications is available electronically via the Consolidated Data Base System (CDBS) *https://licensing.fcc.gov/prod/cdbs/pubacc/prod/app_sear.htm* or Licensing and Management System (LMS), *https://apps2int.fcc.gov/dataentry/public/tv/publicAppSearch.html.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2023–17072 Filed 8–8–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 23–06]

Coast Citrus Distributors d/b/a Olympic Fruit & Vegetable, Amazon Produce Network, LLC, Refin Tropicals, S.A., JW Fresh, S.A., Sembri´os de Exportacio´n Sembriexport, S.A., and Bresson S.A., Complainants v. Network Shipping Ltd., Inc., Respondent;

Served: August 3, 2023

Notice of Filing of Complaint and Assignment; Served: August 3, 2023

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by Coast Citrus Distributors d/b/a Olympic Fruit & Vegetable, Amazon Produce Network, LLC, Refin Tropicals, S.A., JW Fresh, S.A., Sembríos de Exportación Sembriexport, S.A., and Bresson S.A. (collectively, the ''Complainants'') against Network Shipping Ltd., Inc. (''Respondent''). Complainants state that the Federal Maritime Commission has jurisdiction over the allegations asserted under the Shipping Act of 1984, as amended, 46 U.S.C. chs. 411–413 (the ''Shipping Act''), and that this complaint is being filed pursuant to 46 U.S.C. 41301 seeking reparations for injuries resulting from violations of 46 U.S.C. 41102(c) and 41104(a).

Complainant, Coast Citrus Distributors d/b/a Olympic Fruit & Vegetable states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23)(C) and a corporation organized under the laws of the State of California with a principal place of business in San Diego, California. Complainant, Amazon Produce Network, LLC states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23)(C) and a limited liability company organized under the laws of the State of Delaware with a principal place of business in Evanston, Illinois. Complainant, Refin Tropicals, S.A. states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23)(C) and is a limited liability company organized under the laws of the Republic of Ecuador with a principal place of business in Samboróndon, Ecuador. Complainant, JW Fresh, S.A. states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23) and is a limited liability company organized under the laws of the Republic of Ecuador with a principal place of business in Guayaquil, Ecuador. Complainant, Sembríos de Exportación Sembriexport, S.A. states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23) and is a limited liability company organized under the laws of the Republic of Ecuador with a principal place of business in Guayaquil, Ecuador. Complainant, Bresson S.A. states that it is a ''shipper'' within the meaning of 46 U.S.C. 40102(23) and is a limited liability company organized under the laws of the Republic of Ecuador with a principal place of business in Guayaquil, Guayas Ecuador.

Complainant identifies Respondent as a ''common carrier'' within the meaning of 46 U.S.C. 40102(7) and a company organized under the laws of Bermuda with a principal place of business in Miami, Florida.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c) and 41104(a) regarding a failure to establish, observe, and enforce just and reasonable practices relating to receiving, handling, storing, and delivering property, directly or indirectly engaging in unfair or unjustly discriminatory practices with respect to cargo space accommodation or other facilities, and giving undue or unreasonable preference or advantage or imposing undue or unreasonable prejudice or disadvantage. Complainant alleges these violations arose from a failure to timely provide chassis due to limited availability resulting from the preferential treatment of certain containers that led to transportation delays and the spoilation of fresh produce.

An answer to the complaint must be filed with the Commission within twenty-five (25) days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/23-06/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by August 5, 2024, and the final decision of the Commission shall be issued by February 17, 2025.

William Cody,

Secretary.

[FR Doc. 2023–17015 Filed 8–8–23; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime

Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011539–022.

Agreement Name: HLAG/ONE/MSC Vessel Sharing Agreement.

Parties: Hapag-Lloyd AG; MSC Mediterranean Shipping Company SA; Ocean Network Express Pte. Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Amendment increases the number of vessels to be deployed and revises the amount of space to be chartered. It also changes the name of the agreement, deletes former Article 17 as obsolete, and corrects the address of one of the parties. As a result of the change in the name of the Agreement, the amendment also restates the Agreement.

Proposed Effective Date: 9/15/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/856.

Agreement No.: 012439–007.

Agreement Name: THE Alliance Agreement.

Parties: Hapag-Lloyd AG and Hapag-Lloyd USA LLC; HMM Company Limited; Ocean Network Express Pte. Ltd.; Yang Ming Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment revises the parties to the agreement to reflect Yang Ming Joint Service Agreement, FMC Agreement No. 201392 in place of the Yang Ming entities.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1912.

Agreement No.: 012447–002.

Agreement Name: THE Alliance/Zim MED–USEC Slot Exchange Agreement.

Parties: Hapag-Lloyd AG; Ocean Network Express Pte. Ltd.; Yang Ming Joint Service Agreement; ZIM Integrated Shipping Services Limited.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment revises the parties to the agreement to reflect Yang Ming Joint Service Agreement, FMC Agreement No. 201392 in place of the Yang Ming entities and deletes Article 15 relating to the transition from Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd. and Nippon Yusen Kaisha into a single party, Ocean Network Express Pte. Ltd. which has been completed.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1926.

Agreement No.: 012462–002.

Agreement Name: THE Alliance/CMA CGM Space Charter Agreement.

Parties: CMA CGM S.A.; Hapag-Lloyd AG and Hapag-Lloyd USA LLC; Ocean Network Express Pte. Ltd.; Yang Ming Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment revises the parties to the agreement to reflect Yang Ming Joint Service Agreement, FMC Agreement No. 201392 in place of the Yang Ming entities and deletes Article 16 relating to the transition from Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd. and Nippon Yusen Kaisha into a single party, Ocean Network Express Pte. Ltd. which has been completed.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/1950.

Agreement No.: 201271–002.

Agreement Name: MED/USEC Vessel Sharing Agreement.

Parties: CMA CGM S.A., APL Co. Pte. Ltd., and American President Lines (operating as a single party ''CMA CGM''); COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; Yang Ming Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment deletes OOCL (Europe) Limited as a party to the agreement.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16275.

Agreement No.: 201271–003.

Agreement Name: MED/USEC Vessel Sharing Agreement.

Parties: CMA CGM S.A., APL Co. Pte. Ltd., and American President Lines (operating as a single party ''CMA CGM''); COSCO SHIPPING Lines Co., Ltd.; Hapag-Lloyd AG; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; Yang Ming Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment revises the parties to the agreement to reflect Yang Ming Joint Service Agreement, FMC Agreement No. 201392 in place of the Yang Ming entities.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/16275.

Agreement No.: 201353–002.

Agreement Name: THE Alliance/Evergreen Vessel Sharing Agreement.

Parties: Evergreen Marine Corporation (Taiwan) Ltd.; Hapag-Lloyd AG; HMM Company Limited; Ocean Network Express Pte. Ltd.; Yang Ming Joint Service Agreement.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The Amendment revises the parties to the agreement to reflect Yang Ming Joint Service Agreement, FMC Agreement No. 201392 in place of the Yang Ming entities.

Proposed Effective Date: 7/28/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/39502.

Dated: August 4, 2023.

William Cody,

Secretary.

[FR Doc. 2023–17050 Filed 8–8–23; 8:45 am]

BILLING CODE 6730–02–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)). If the proposal also

involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843) and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than September 8, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Homeland Bancshares, Inc., Columbia, Louisiana;* to become a bank holding company by acquiring Peoples Bank, Chatham, Louisiana, and also to retain Homeland Federal Savings Bank, Columbia, Louisiana, and Beauregard Federal Savings Bank, DeRidder, Louisiana, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of the Board's Regulation Y.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) One Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Savile Capital Group LLC, Sheridan, Wyoming;* to become a bank holding company by acquiring Farmers State Bankshares, Inc., and thereby indirectly acquiring Wyoming Bank & Trust, both of Cheyenne, Wyoming.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023–17090 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment for the Women's Health USA Patient Safety Organization PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) authorizes AHRQ, on behalf of the Secretary of HHS, to list as a patient safety organization (PSO) an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ accepted a notification of proposed voluntary relinquishment from the Women's Health USA Patient Safety Organization PSO, PSO number P0207, of its status as a PSO, and has delisted the PSO accordingly.

DATES: The delisting was effective at 12:00 Midnight ET (2400) on July 21, 2023.

ADDRESSES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Cathryn Bach, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, MS 06N100B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, 42 U.S.C. 299b-21 to 299b-26, and the related Patient Safety Rule, 42 CFR part 3, published in the **Federal Register** on November 21, 2008 (73 FR 70732–70814), establish a framework by which individuals and entities that meet the definition of provider in the Patient Safety Rule may voluntarily report information to PSOs listed by AHRQ, on a privileged and confidential basis, for the aggregation and analysis of patient safety work product.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of PSOs.

AHRQ has accepted a notification of proposed voluntary relinquishment from the Women's Health USA Patient Safety Organization PSO to voluntarily relinquish its status as a PSO. Accordingly, the Women's Health USA Patient Safety Organization PSO, P0207, was delisted effective at 12:00 Midnight ET (2400) on July 21, 2023.

Women's Health USA Patient Safety Organization PSO has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO and of section 3.108(c)(2)(ii) regarding disposition of PSWP consistent with section 3.108(b)(3). According to section 3.108(b)(3) of the Patient Safety Rule, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Dated: August 3, 2023.

Marquita Cullom,

Associate Director.

[FR Doc. 2023–17002 Filed 8–8–23; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement To Continue Operating the Centers for Independent Living (CILs) Training and Technical Assistance (T&TA) Center

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplemental to the current grant held by Independent Living Research Utilization (ILRU) for technical assistance (TA) to Centers for Independent Living (CILs). The administrative supplement for FY 2023 will be for $1,103,545, which will be the total award for FY 2023.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Peter Nye, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Office of Independent Living Programs; telephone (202) 795–7606; email *peter.nye@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: ACL is required by statute (section 721) to annually set aside 1.8–2% of program funds to provide TA to CILs. For more than 30 years, ILRU continues to receive ACL funding for TA as they are the only national TA center that provides TA to CILs in every state and territory, in both rural and urban areas. In partnership with the National Council on Independent Living (NCIL), the Association of Programs for Rural Independent Living (APRIL), and the University of Montana Rural Institute, ILRU's TA center called ''IL–NET'' is committed to providing training and technical assistance for CILs to enhance their overall efficiency and effectiveness. Their current funding from OILP is set to expire September 29, 2023.

The IL–NET is the only national center for information, training, research, and technical assistance in independent living, targeting both urban and rural areas. It is a program of TIRR Memorial Hermann, a nationally recognized medical rehabilitation facility for persons with disabilities. The IL–NET's mission as the T&TA provider for CILs is to provide training and technical assistance that supports CILs to (1) operate effective organizations; (2) fulfill their role in developing state plans for independent living; (3) monitor, review, and evaluate the implementation of completed plans; and (4) develop partnerships with designated state entities and other agencies to foster effective independent living programs.

Program Name: Centers for Independent Living (CILs) Training and Technical Assistance Center.

Recipient: Independent Living Research Utilization (ILRU).

Period of Performance: The award will be issued for the current project period of September 30, 2023 through September 29, 2024.

Total Award Amount: $1,103,545 in FY 2023.

Award Type: Grant Supplement.

Statutory Authority: The statutory authority is contained in the Rehabilitation Act of 1973, as amended.

Basis for Award: ACL is completing a year-long funded evaluation project conducted by RTI that determines the efficacy of current TA approaches used by the Office of Independent Living Programs. The research includes recommendations as to what should be included in future statements of work. That project will end late September; the findings will inform the scope of work for next year. To that end, the goal of the one-year extension supplement is to continue to meet statutory requirements and provide timely, efficient, and responsive expertise in training and technical assistance for CILs, while allowing ACL to draw from the results of the evaluation research. This continued support to the CIL network will ensure there is no lapse in TA support and help them to improve their outcomes, operations, and governance. It also meets the statutory requirement that 1.8% of Part C funds must be set aside for technical assistance. The part C program received an increase this year, which informs the increase allocation to ILRU.

Dated: August 4, 2023.

Richard Nicholls,

Chief of Staff.

[FR Doc. 2023–17053 Filed 8–8–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a One-Year Supplement To Continue Operating the Statewide Independent Living Councils (SILCs) Training and Technical Assistance (T&TA) Center

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a one-year supplemental to the current grant held by Independent Living Research Utilization (ILRU) for technical assistance (TA) to Statewide Independent Living Councils (SILCs). The purpose of this grant is to provide TA to SILCs that supports them to operate effective organizations; fulfill their role in developing state plans for independent living; monitor, review, and evaluate the implementation of completed plans; and develop partnerships with designated state entities and other agencies to foster effective independent living programs. The administrative supplement for FY 2023 will be for $246,296, which will be the total award for FY 2023.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Peter Nye, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Disabilities, Office of Independent Living Programs; telephone (202) 795–7606; email *peter.nye@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION:

ACL is required by statute to annually set aside 1.8–2% of program funds to provide TA to SILCs. For more than 30 years, ILRU continues to receive ACL funding for TA as they are the only national TA center that provides TA to SILCs in every state and territory. In partnership with the National Council on Independent Living (NCIL), the Association of Programs for Rural Independent Living (APRIL), and the University of Montana Rural Institute, ILRU's TA center, called ''IL–NET'' is committed to providing training and technical assistance for SILCs to enhance their overall efficiency and effectiveness. Their current funding runs through September 29, 2023.

The IL–NET is the only national center for information, training, research, and technical assistance in independent living, targeting both urban and rural areas. It is a program of TIRR Memorial Hermann, a nationally recognized medical rehabilitation facility for persons with disabilities. The IL–NET's mission as the T&TA provider for SILCs is to provide training and technical assistance that supports SILCs to (1) operate effective organizations; (2) fulfill their role in developing state plans for independent living; (3) monitor, review, and evaluate the implementation of completed plans; and (4) develop partnerships with designated state entities and other

agencies to foster effective independent living programs.

Program Name: Statewide Independent Living Councils (SILCs) Training and Technical Assistance Center.

Recipient: Independent Living Research Utilization (ILRU).

Period of Performance: The award will be issued for the current project period of September 30, 2023 through September 29, 2024.

Total Award Amount: $246,296 in FY 2023.

Award Type: Grant Supplement.

Statutory Authority: The statutory authority is contained in the Rehabilitation Act of 1973, as amended.

Basis for Award: ACL is completing a year-long funded evaluation project conducted by RTI that determines the efficacy of current TA approaches used by the Office of Independent Living Programs. The research includes recommendations as to what should be included in future statements of work. That project will end late September 2023; the findings will inform the competition for TA providers next year. The goal of the one-year extension supplement is to continue to meet statutory requirements and provide timely, efficient, and responsive expertise in training and technical assistance for SILCs, while allowing ACL to compete out the TA center for the following year, drawing from the results of the evaluation research. This continued support to the SILC network will ensure there is no lapse in TA support and help them to improve their outcomes, operations, and governance.

Dated: August 4, 2023.

Richard Nicholls,

Chief of Staff.

[FR Doc. 2023–17054 Filed 8–8–23; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Redesignation for the Spokane Tribe of Indians in the State of Washington

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This Notice advises the public that the Indian Health Service (IHS) proposes to expand the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) for the Spokane Tribe of the Spokane Reservation to include the counties of Spokane and Whitman in the State of Washington. The current PRCDA for the Spokane Tribe of the Spokane Reservation includes the Washington counties of Ferry, Lincoln, and Stevens. Spokane Tribal members residing outside of the PRCDA are eligible for direct care services, however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion would be to authorize additional Spokane Tribal members and beneficiaries to receive PRC services.

DATES: Comments must be submitted September 8, 2023.

ADDRESSES: Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways:

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a Comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Carl Mitchell, Director, Division of Regulatory and Policy Coordination, Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443–1116 in advance to schedule your arrival with a staff member.

FOR FURTHER INFORMATION CONTACT: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443–0969 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Background: The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation, 42 CFR 136.22(a)(6). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA, 42 CFR 136.22(b). The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553), 42 CFR 136.22(c). In compliance with this requirement, the IHS is publishing this Notice and requesting public comments.

The Spokane Tribe of the Spokane Reservation is located in the Northeastern part of Washington State. The Tribe is located on an approximately 157,000 acre reservation that is located in Stevens, Lincoln, and Spokane Counties.

The PRC Program is operated as a Federal program through the Wellpinit

Service Unit in Wellpinit, WA. The Portland Area IHS estimates there are currently 480 Tribal members who live within Spokane and Whitman Counties and would become PRC eligible through this proposed expansion. The Tribe states that Tribal members who reside in Spokane and Whitman Counties are socially and economically affiliated with the Tribe through employment, family, community, or services. The Tribe would like to recognize them as eligible for PRC. Accordingly, the IHS proposes to expand the PRCDA of the Spokane Tribe of the Spokane Reservation to include the Washington counties of Spokane and Whitman.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding the PRCDA to include Spokane County and Whitman County, the Spokane Tribe of the Spokane Reservation's eligible population will be increased by an estimated 480 tribal members.

2. The IHS finds that the Tribal members within the expanded PRCDA are socially and economically affiliated with the Spokane Tribe of the Spokane Reservation based on letters from the Tribe, dated May 31, 2022 and August 8, 2022, which noted that the Spokane Tribal Council had determined that tribal members residing in Spokane and Whitman counties are socially and economically affiliated with the Tribe.

3. Spokane and Whitman counties in the State of Washington are ''on or near'' the reservation, as they maintain a common boundary with the current PRCDA consisting of the counties of Ferry, Lincoln, and Stevens in the State of Washington. In addition to this, Spokane County includes a recent addition to the Spokane reservation (*see* 83 FR 18860), and Whitman County includes the Tribe's aboriginal territory.

4. The IHS administers the Wellpinit Service Unit PRC program and will use its existing Federal allocation for PRC to provide services to the expanded population. The Portland Area Director acknowledged that no additional financial resources will be allocated by the IHS to the Portland Area IHS to provide services to Spokane Tribal members residing in Spokane and Whitman counties in the State of Washington.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–17058 Filed 8–8–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Alzheimer's Disease Drug Development.

Date: September 15, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mariel Jais, Ph.D., M.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, RM: 2E400, Bethesda, MD 20892, *mariel.jais@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 3, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17013 Filed 8–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials in Neurology.

Date: August 16–17, 2023.

Time: 9:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: August 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17026 Filed 8–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Study Section Meeting.

Date: September 18–19, 2023.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Marriott Union Square, 480 Sutter Street, San Francisco, CA 94108.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: August 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17024 Filed 8–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 6–7, 2023.

Open Session: September 6, 2023, 12:00 p.m. to 5:00 p.m.

Agenda: Opening Remarks, Administrative Matters.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892.

Closed Session: September 7, 2023, 9:00 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6710B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Ms. Lisa Neal, Committee Management Officer, Committee Management Branch, Eunice Kennedy Shriver National Institute of Child, Health and Human Development, NIH, 6701B Rockledge Drive, Room 2208, Bethesda, MD 20892, (301) 204–1830, *lisa.neal@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Individuals will be able to view the meeting via NIH Videocast. Select the following link for Videocast access instructions: *http://www.nichd.nih.gov/about/advisory/nachhd/Pages/virtual-meeting.aspx.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 3, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17025 Filed 8–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genetic Counselors.

Date: November 16, 2023.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Human Genome Research Institute, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3172, Bethesda, MD 20892, 301–402–8837, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 3, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17014 Filed 8–8–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2023–0003; FXMB123109WEBB0–234–FF09M26000; OMB Control Number 1018–0019]

Agency Information Collection Activities; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; comment period reopening.

SUMMARY: In accordance with the Paperwork Reduction Act, on February 28, 2023, we, the U.S. Fish and Wildlife Service, published a notice announcing that we are proposing to renew an existing information collection (IC) without change. The notice opened a public comment period, which closed on May 1, 2023. We subsequently identified proposed changes to the IC that were not included in the original notice; therefore, we are now republishing the notice in full, including the proposed changes, and reopening the comment period.

DATES: Interested persons are invited to submit comments on or before October 10, 2023.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (reference Office of Management and Budget (OMB) Control Number 1018–0019 in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2023–0003.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On February 28, 2023, we published a notice announcing that we are proposing to renew an existing information collection (88 FR 12695). The notice opened a public comment period, which closed on May 1, 2023. We subsequently identified proposed changes which were not included in the original notice; therefore, we are now republishing the notice in full, including the proposed changes, and reopening the comment period. Our final determination will take into consideration all written comments and information we receive during both comment periods.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–712) designates the Department of the Interior as the primary agency responsible for managing migratory bird populations frequenting the United States and setting hunting regulations that allow for the well-being of migratory bird populations. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. Federal, State, Provincial, Tribal, and local conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the American woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the species. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the woodcock population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting.

State, local, Tribal, Provincial, and Federal conservation agencies, as well as other participants, use Form 3–156 to conduct annual field surveys. Instructions for completing the survey and reporting data are on the reverse of the form. Observers can scan/email, scan/upload via link, mail, or fax Form 3–156 to the Division of Migratory Bird Management, or enter the information electronically through the internet at *https://migbirdapps.fws.gov/woodcock.*

We collect observer information (name, telephone, email address, and mailing address) so that we can contact the observer if questions or concerns arise. Observers provide information on:

- Sky condition, temperature, wind, and precipitation.
- Stop number.
- Odometer reading.
- Time at each stop.
- Number of American Woodcock males heard peenting (calling).
- Disturbance level.

• Comments concerning the survey.

We use the information that we collect to analyze the survey data and prepare reports. Assessment of the population's status serves to guide the Service, the States, and the Canadian Government in the annual promulgation of hunting regulations.

Proposed Revisions

We propose to revise our American Woodcock Singing-ground Survey data collection and data entry process over the 2023–2024 period. We will be eliminating the web browser data entry method and developing a data collection application that can be used on a portable electronic device while conducting field surveys. While we still plan to administer the paper-based survey form to every observer, the observer is not required to submit the paper-based results unless the observer does not utilize the data collection application in the field. Instead, data entry will occur through the application via a computer after the survey is complete. Utilizing this new application, observers will also be able to provide spatial information (*e.g.,* GPS coordinates) for each stop location along the route. This additional piece of information will help maintain a verified spatial reference for the survey.

Initially, we expect the burden time to be higher as respondents adjust to the new method to collect and enter data, and for reviewing the updated instructions and completing the training. However, once observers are trained in using the application, the estimated burden will decrease in subsequent years.

Additionally, since most communication and survey material distribution between observers, state and province coordinators, and the national coordinator is primarily conducted by email, we no longer will be requiring the observer's mailing address and phone number.

The public may request a copy of Form 3–156 contained in this information collection by sending a request to the Service Information Collection Clearance Officer (see **ADDRESSES**).

Title of Collection: North American Woodcock Singing Ground Survey.

OMB Control Number: 1018–0019.

Form Number: Form 3–156.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Provincial, local, and Tribal Governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

TABLE 1—BURDEN ESTIMATES: FIRST YEAR

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Survey—US (In the Field App Collection and Submission)					
Government	291	1	291	3.58	1,042
Survey—CAN (In the Field App Collection and Submission)					
Foreign Gov	101	1	101	3.58	362
Survey—US (App Submission)					
Government	290	1	290	3.72	1,079
Survey—CAN (App Submission)					
Foreign Gov	100	1	100	3.72	372
Survey—US					
Government	2	1	2	1.92	4
Survey—CAN					
Foreign Gov	36	1	36	1.92	69
Totals	820		820		2,928

* Rounded.

TABLE 2—BURDEN ESTIMATES: SUBSEQUENT YEARS

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Survey—US (In the Field App Collection and Submission)					
Government	291	1	291	1.92	559

TABLE 2—BURDEN ESTIMATES: SUBSEQUENT YEARS—Continued

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Survey—CAN (In the Field App Collection and Submission)					
Foreign Gov	101	1	101	1.92	194
Survey—US (App Submission)					
Government	290	1	290	2.05	595
Survey—CAN (App Submission)					
Foreign Gov	100	1	100	2.05	205
Survey—US					
Government	2	1	2	1.92	4
Survey—CAN					
Foreign Gov	36	1	36	1.92	69
Totals	820		820		1,626

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–17077 Filed 8–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2023–N063; FXES11130800000–234–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before September 8, 2023.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* XXXXXX or PER0001234).

- *Email: permitsR8ES@fws.gov.*
- *U.S. Mail:* Susie Tharratt, Regional Recovery Permit Coordinator, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Susie Tharratt, via phone at 916–414–6561, or via email at *permitsR8ES@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and

enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
787376	Bloom Biological, Inc., Santa Ana, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*). • Least Bell's vireo (*Vireo bellii pusillus*). • Pacific pocket mouse (*Perognathus longimembris pacificus*).	CA	Survey, capture, handle, measure, weigh, band, color-band, and release.	Renew and amend.
PER1787424	Ezra Kottler, Lakewood, Colorado.	• Contra Costa goldfields (*Lasthenia conjugens*).	CA	Remove and reduce to possession.	New.
225974	Midpeninsula Regional Open Space District, Los Altos, California.	• San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).	CA	Perform habitat restoration.	Amend.
58866B	Los Angeles Zoo, Los Angeles, California.	• California condor (*Gymnogyps californianus*).	AZ, CA, ID, OR, UT.	Receive, capture, handle, transport, artificially incubate and fertilize eggs; exchange eggs; collect tissue samples; captive breed; enter captive and wild nests; attach identification tags and transmitters; flush individuals at risk; and test for health parameters and administer veterinary treatment, care, and general husbandry while in captivity and the wild.	Renew.
PER3319976	Charleen Rode, Cayucos, California.	• Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey, capture, handle, and release.	New.
72549C	Marty Lewis, Carson, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
39186A	Carlos Alvarado-Laguna, Sacramento, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County distinct population segments.	CA	Survey, capture, handle, and release.	Renew.
021929	Sacramento Splash, Sacramento, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey, capture, handle, release, and collect adult vouchers.	Renew.
PER0011954	Daniel Schrimsher, Salinas, California.	• Arroyo (=arroyo southwestern) toad (*Anaxyrus californicus*).	CA	Survey, capture, handle, and release.	Amend.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
45251C	Emily Moffitt Scricca, Danville, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County distinct population segments.	CA	Survey, capture, handle, and release.	Renew.
87580B	City of Costa Mesa, Costa Mesa, California.	• Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, conduct habitat restoration and maintenance, and collect inoculum.	Renew.
02737B	Susan Dewar, Rocklin, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts.	Renew.
13115C	Lisa Henderson, San Ramon, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*).	CA	Survey, capture, handle, release, and collect adult vouchers.	New.
058073	Susan Christopher, Santa Margarita, California.	• California tiger salamander (*Ambystoma californiense*), Sonoma County and Santa Barbara County distinct population segments.	CA	Survey, capture, handle, and release.	Renew.
811615	Cynthia Daverin, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*). • Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Pursue, survey using record vocalizations.	Renew.
003269	Robert James, San Diego, California.	• Pacific pocket mouse (*Perognathus longimembris pacificus*).	CA	Survey, capture, handle, and release.	Renew.
814222	California Department of Parks and Recreation, San Diego, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Survey using record vocalizations.	Renew.
PER3640597	Kendra Bonsall, Santa Barbara, California.	• Tidewater goby (*Eucyclogobius newberryi*).	CA	Survey, capture, handle, and release.	New.
PER0048094	Sequoia Park Zoo (City of Eureka), Eureka, California.	• California condor (*Gymnogyps californianus*).	AZ, CA, ID, OR, UT.	Receive, capture, handle, transport, rehabilitate, collect tissue samples, test for health parameters, and administer veterinary treatment, care and general husbandry while in captivity and the wild.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Peter Erickson,

Acting Regional Ecological Services Program Manager, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2023–16998 Filed 8–8–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500171689]

Statewide Call for Nominations for Colorado Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Colorado's Northwest, Southwest, and Rocky Mountain Resource Advisory Councils (RAC) to fill existing vacancies, as well as member terms that are scheduled to expire. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than September 8, 2023.

ADDRESSES: Nominations and completed applications should be sent to the BLM Colorado District Offices listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Kirby-Lynn Shedlowski, BLM Colorado Lead Public Affairs Specialist, Denver Federal Center, Building 40 Lakewood, CO 80215; telephone: (303) 239–3671; email: *kshedlowski@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Kirby-Lynn Shedlowski. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits or leases within the area for which the RAC is organized; represent interests associated with transportation or rights-of-way; represent developed outdoor recreation, off-highway vehicle users, or commercial recreation activities; represent the commercial timber industry; or represent energy and mineral development.

Category Two—Representatives of nationally or regionally recognized environmental organizations; dispersed recreational activities; archaeological and historical interests; or nationally or regionally recognized wild horse and burro interest groups.

Category Three—Hold State, county, or local elected office; are employed by a State agency responsible for the management of natural resources, land, or water; represent Indian Tribes within or adjacent to the area for which the RAC is organized; are employed as academicians in natural resource management or the natural sciences; or represent the affected public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Colorado. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographic area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making.

The following must accompany all nominations:

—A completed RAC application, which can either be obtained through your local BLM office or online at: *https://www.blm.gov/sites/default/files/docs/2022-05/BLM-Form-1120-19_RAC-Application.pdf*

—Letters of reference from represented interests or organizations; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM Colorado will issue a press release providing additional information for submitting nominations.

Nominations and completed applications should be sent to the office listed below:

Rocky Mountain RAC

Levi Spellman, BLM Rocky Mountain District Office, 3028 East Main Street, Cañon City, CO 81212; phone: (719) 269–8553; email: *lspellman@blm.gov.*

Northwest RAC

Eric Coulter, BLM Upper Colorado River District Office, 2815 H Road Grand Junction, CO 81056; Phone: (970) 628–5622; email: *ecoulter@blm.gov.*

Southwest RAC

D. Maggie Magee, BLM Southwest Colorado District Office, 2465 South Townsend Avenue, Montrose, CO 81401; Phone: (970) 240–5323; email: *dmagee@blm.gov.*

Authority: 43 CFR 1784.4–1.

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–17055 Filed 8–8–23; 8:45 am]

BILLING CODE 4331–16–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500170889]

Notice of Intent To Amend the Resource Management Plan for the Proposed GridLiance West Core Upgrades Transmission Line Project in Nye and Clark Counties, Nevada and Prepare an Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Nevada State Office (NVSO) intends to prepare a resource management plan amendment (RMPA) with an associated environmental impact statement (EIS) for the GridLiance West Core Upgrades Transmission Line Project (Project). With this notice, the BLM is announcing the scoping period to solicit public comments and identify issues and providing the planning criteria for public review.

DATES: The BLM requests the public submit written comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies by September 8, 2023. To afford the BLM the opportunity to consider issues raised by commenters in the Draft RMPA/EIS, please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will conduct two public scoping meetings (virtually) which will be held August 29, 2023, and August 30, 2023, from 6 p.m. to 8 p.m. Pacific time. Additional information on the meetings, including how to register, can be found on the BLM National NEPA Register at: *https://eplanning.blm.gov/eplanning-ui/project/2025248/510.*

ADDRESSES: You may submit comments on issues and planning criteria related to the project by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2025248/510.*
- *Email: BLM_NV_SNDO_NEPA_Comments@blm.gov.*
- *Mail:* BLM, Southern Nevada District Office, Attn: GridLiance West Core Upgrades Transmission Line Project, 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2025248/510* and at the Southern Nevada District Office.

FOR FURTHER INFORMATION CONTACT: Mary Ann Vinson, Realty Specialist, telephone 702–515–5059; address 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301; email *mvinson@blm.gov.* Contact Ms. Vinson to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Vinson. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM NVSO intends to prepare a potential resource management plan (RMP) amendment with an associated EIS for the Project, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The RMPA is being considered to allow the BLM to evaluate the right-of-way (ROW) grant application for the project, which would require amending the existing 1998 Las Vegas RMP for plan conformance and consistency purposes.

The planning area is located in Clark and Nye Counties, Nevada, and encompasses up to approximately 4,900 acres of public land.

The scope of this land use planning process does not include addressing the evaluation or designation of areas of critical environmental concern (ACECs) and the BLM is not considering ACEC nominations as part of this process.

Purpose and Need

The BLM's purpose and need for this federal action is to respond to FLPMA right-of-way applications submitted by GridLiance under Title V of FLPMA (43 U.S.C. 1761) to amend portions of their existing ROW grants to construct, operate, maintain, and decommission approximately 155 miles of transmission system upgrades across BLM-administered lands in Nye and Clark Counties, Nevada, in compliance with FLPMA, BLM right-of-way regulations (43 Code of Federal Regulations [CFR] 2800), the 2008 BLM NEPA Handbook, U.S. Department of the Interior NEPA regulations, and other applicable federal and state laws and policies. In accordance with FLPMA, public lands are to be managed for multiple uses that 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 (FLPMA section 501(a)(4)). Proposed amendments to the existing ROW grants may require plan amendments to the 1998 Las Vegas RMP, which the BLM will analyze in the EIS. The purpose and need for the plan amendment is to bring the project into compliance and consistency with the 1998 Las Vegas RMP as it pertains to elements of the project for which there is no other option to attain compliance.

Preliminary Alternatives

The Proposed Action is to amend portions of existing BLM ROW grants to construct, operate, maintain, and decommission approximately 155 miles of upgraded alternating current overhead transmission lines on BLM, Las Vegas Paiute Snow Mountain Reservation, Department of Defense, and State of Nevada-administered lands, as well as private lands in Clark and Nye Counties, Nevada. The project is an upgrade of an existing overhead transmission system that is currently comprised of a single-circuit 230-kilovolt (kV) transmission line system and seven substations. The proposed upgrade consists of four segments, with double-circuit 230-kV or double-circuit 500-kV options being considered for each segment, unless otherwise noted:

- *Segment 1:* Sloan Canyon Switchyard to Trout Canyon Switchyard. Includes upgrades and expansions at both switchyards; only the Trout Canyon Switchyard upgrades are located on BLM-administered lands. This segment would be upgraded to a double-circuit 500-kV transmission line, regardless of the voltage option chosen for the remainder of the system.
- *Segment 2:* Trout Canyon Switchyard to Pahrump Substation. Includes upgrades and expansions at the Gamebird Substation and at Pahrump Substation, both located on private lands.
- *Segment 3:* Pahrump Substation to Innovation Substation. Includes upgrades at Innovation Substation. The transmission line upgrades between the Pahrump Substation and the proposed Johnnie Corner Substation would be constructed at either double-circuit 230 kV or double-circuit 500 kV; however, the proposed substation at Johnnie Corner would not be constructed if the transmission line is constructed as double-circuit 230 kV. The portion from the proposed Johnnie Corner Substation

to Innovation Substation would consist of a double-circuit 230-kV transmission line, regardless of the voltage option chosen for the remainder of the system.

- *Segment 4:* Innovation Substation to Northwest Substation. Includes upgrades at the Desert View Substation. This segment would be upgraded to a double-circuit 230-kV transmission line, regardless of the voltage option chosen for the remainder of the system.

The final voltage configuration of the transmission line requested by GridLiance would be determined based on ongoing studies being completed by the California Independent System Operator and would be finalized before the signing of the record of decision (ROD) for the proposed upgrades. GridLiance is currently advancing design efforts for both voltages of the transmission line in order to provide the necessary information for analysis of either option in the EIS. Double-circuit 500-kV components of the project would require a 275-foot-wide right-of-way, while the double-circuit 230-kV components of the project would require a 150-foot-wide right-of-way.

For the majority of Segments 1, 2, and 3, the upgraded transmission line would be constructed adjacent to the existing transmission line in a right-of-way that mostly does not overlap with the existing transmission line right-of-way. A notable exception is the portion of Segment 3 from Johnnie Corner Substation to Innovation Substation where the existing transmission line would be fully removed, and the new line would be constructed in a ROW that mostly would overlap with the existing transmission line ROW. Work in these segments would require upgrades to existing access roads and the development of new access roads to safely access the work areas. Access roads would be improved or constructed to contain a 16-foot-wide travel surface and appropriate ditches and berms. The total disturbance width of the access roads is anticipated to be up to 24 feet. In addition to access roads, the project would require temporary work areas, including laydown yards and pulling and tension sites, as described in the relevant Plans of Development submitted to the BLM by GridLiance. Structures would vary based on the voltage option selected as well as specific site characteristics and would be steel lattice or tubular steel structures between 120 and 200 feet tall.

For Segment 4, the upgraded transmission line would be constructed in an expanded ROW that wholly overlaps with the existing transmission line ROW. Upgrades in this section would be limited to adding a second circuit to the existing tubular steel transmission line poles and reconductoring the existing circuit, both of which would require laydown yards and pulling and tensioning sites. Individual poles that do not meet the structural requirements of the upgraded conductors would need to be replaced.

The project would also involve the decommissioning of the existing single-circuit 230-kV transmission line from the Sloan Canyon Switchyard to the Innovation Substation. In Segments 1, 2, and the portion of Segment 3 from the proposed Johnnie Corner Substation to the Innovation Substation, the existing transmission line would be removed, and any disturbances associated with the line (including roads to tower locations not required for access to the upgraded transmission line) would be reclaimed. For the portion of Segment 3 from approximately the Pahrump Substation to the proposed Johnnie Corner Substation, the existing transmission line is strung on poles shared with an existing 138-kV transmission line owned and operated by Valley Electric Association. In this area, the GridLiance 230-kV transmission conductor would be removed, but the poles and existing Valley Electric Association transmission line would remain. No decommissioning of the existing line in Segment 4 would be required.

The Proposed Action also includes amending the 1998 Las Vegas RMP (updated 2019). One potential amendment would be to adjust the Visual Resource Management (VRM) class associated with portions of the project. The project area includes VRM Classes II, III, and IV within the proposed right-of-way. In some instances, design and mitigation may be insufficient to make the project consistent with VRM classes and may require an RMPA to change the class.

There is one preliminary action alternative being considered involving a modification of Segment 2. This alternative route follows the designated utility corridor approximately 0.5 mile further north before turning west to approach the Pahrump Substation. The total length difference between this alternative and the proposed route is negligible. This alternative route is intended to utilize more of the designated utility corridor and would result in fewer angle structures. The EIS will fully disclose all impacts of this alternative and any other alternatives developed through the EIS process.

A No-Action Alternative is also being considered. Under this alternative the BLM would not issue right-of-way grant amendments for the project and the project would not be constructed. Existing land uses in the project area would continue. Additionally, the BLM would not undertake an RMP amendment.

The BLM welcomes written comments on all preliminary alternatives as well as suggestions for additional alternatives.

Planning Criteria

The planning criteria guide the planning effort and lay the groundwork for effects analysis by identifying the preliminary issues and their analytical frameworks. Preliminary issues for the planning area have been identified by BLM personnel and from early engagement conducted for this planning effort with Federal, State, and local agencies, Tribes, and stakeholders. The BLM has identified 16 preliminary issues for this planning effort's analysis. The planning criteria are available for public review and comment at the ePlanning website (see **ADDRESSES**).

Summary of Expected Impacts

The project is anticipated to cause direct and indirect impacts during construction, operations and maintenance, and decommissioning. During construction (including decommissioning of the redundant existing transmission line) impacts would occur from land disturbance; operation of construction equipment; installation of towers, access roads, and other facilities; and presence of work forces. During operations and maintenance, impacts would occur from continued presence of project facilities and from maintenance activities. Impacts from eventual decommissioning of the upgraded line would be similar to those expected from the construction phase. Cumulative impacts from relevant reasonably foreseeable future actions will also be disclosed in the EIS.

The following resources could be impacted by the project and will be analyzed in the EIS. This is not necessarily a comprehensive list and other resources may be added as a result of scoping. These preliminary resources include geology and soils; general vegetation, riparian, and noxious and invasive species; general wildlife; threatened and endangered species; sensitive species; wetlands; air quality; minerals; paleontological resources; visual resources; National Historic Trails; surface water and groundwater quality and quantity; cultural resources; socioeconomics and environmental justice; public health and safety; land use and recreation; and special designations.

Anticipated Permits and Authorizations

Authorization of this proposal may require amendments to the applicable RMPs in effect for the Southern Nevada District Office to modify locations of some Visual Resource Management class locations involving the proposed ROW Project. Along with the ROW grant issued by the BLM, GridLiance anticipates needing the following authorizations and permits for the proposed project: construction authorization from the Bureau of Indian Affairs; clearance for survey and construction on Department of Defense lands; biological opinion and incidental take permit(s) from the U.S. Fish and Wildlife Service (USFWS) for Endangered Species Act compliance; USFWS Migratory Bird Treaty Act compliance; USFWS Bald and Golden Eagle Protection Act compliance; section 404 permit from the U.S. Army Corps of Engineers for Clean Water Act compliance; effect concurrence from the Nevada State Historic Preservation Office for National Historic Preservation Act compliance; No Hazard Declaration from the Federal Aviation Administration; Department of Homeland Security consultation regarding military radar; Utilities Environmental Protection Act Permit to Construct from the Public Utilities Commission of Nevada; Rare and Endangered Plant Permit from the Nevada State Division of Forestry; Desert Tortoise and Gila Monster Handling Permit from the Nevada Department of Wildlife; Native Cacti and Yucca Commercial Salvaging and Transportation Permit from the Nevada Division of Forestry; Incidental Take Permit from the Nevada Department of Wildlife; Clean Water Act, section 401 Compliance with the Nevada Division of Environmental Protection (NDEP) and Bureau of Water Quality Planning; Notification for Stormwater Management During Construction for the Clean Water Act, section 402 permit for stormwater discharge from NDEP; Groundwater Discharge Permit from NDEP; ROW Occupancy Permit from the Nevada Department of Transportation; Over Legal Size/Load Permit from the Nevada Department of Transportation; Uniform Permit (for transportation of hazardous materials) from the Nevada Department of Public Safety; NDEP Phase 1 Environmental Site Assessment; Clark County Dust Control Permit; Clark County Grading Permit; Clark County Building Permit; Nye County Dust Control Permit; Nye County Grading Permit; and other permits as necessary. Further details on these permitting requirements may be found in the relevant Plans of Development submitted to the BLM by GridLiance.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 90-day comment period on the Draft RMPA/EIS and concurrent 30-day public protest period and 60-day Governor's consistency review on the Proposed RMPA. The Draft RMPA/EIS is anticipated to be available for public review fall 2023 and the Proposed RMPA/Final EIS is anticipated to be available for public protest of the Proposed RMPA spring 2024 with an Approved RMPA and ROD summer 2024.

Public Scoping Process

This notice of intent initiates the scoping period and public review of the planning criteria, which guide the development and analysis of the Draft RMPA/EIS.

The BLM will be holding two virtual scoping meetings (see **DATES** and **ADDRESSES** sections earlier). The date(s) and location(s) of any additional scoping meetings will be announced at least 15 days in advance through the BLM National NEPA Register, news release, and BLM social media pages.

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 and Tribes, along with 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 written comments concerning the Project and RMP amendment, 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 Southern Nevada District Office is the lead agency for this EIS and RMPA. The BLM has initially invited 31 Agencies and 17 Indian Tribal Nations to be cooperating agencies to participate in the environmental analysis of the project. 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 this planning effort.

Nature of Decision To Be Made

The nature of the decision to be made will be the Nevada State Director's selection of land use planning decisions for managing BLM-administered lands under the principles of multiple use and sustained yield in a manner that best addresses the purpose and need.

The BLM will decide whether to grant, grant with conditions, or deny the applications for right-of-way amendments associated with the project. The BLM will also make the decision whether or not to approve any RMP amendment. In the ROD, the BLM will clearly distinguish the RMP amendment decision from the right-of-way grant decision concerning the selected alternative for the project.

Interdisciplinary Team

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in this planning effort: geology and soils, vegetation and noxious and invasive species, wildlife, hydrology, air quality, minerals, paleontology, visual resources, cultural resources, socioeconomics, public health and safety, land use and recreation, and special designations, among others deemed necessary based on the results of the scoping process.

Additional Information

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed plan amendment and all analyzed reasonable alternatives and, in accordance with 40 CFR 1502.14(e), include appropriate mitigation measures not already included in the proposed plan amendment or alternatives. Mitigation

may include avoidance, minimization, rectification, reduction or elimination over time, and compensation, and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA and land use planning processes for this planning effort to help support compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan amendment will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7 and 43 CFR 1610.2)

Jon K. Raby,

State Director.

[FR Doc. 2023–17060 Filed 8–8–23; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500171989; F–86061, F–16301, AA–65515, F–16302, AA–61299, F–16304, F–85667, AA–61005]

Public Land Order No. 7929; Partial Revocation of Public Land Order Nos. 5169, 5173, 5174, 5178, 5179, 5180, 5184, and 5186, as Amended, Modified, and Corrected, and Opening of Additional Lands for Selection by Alaska Native Vietnam-Era Veterans; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes 8 Public Land Orders (PLOs) insofar as they affect approximately 812,956.96 acres of public lands reserved for study and classification, as appropriate, by the Department of the Interior. This order opens these lands specifically to allow for allotment selection by eligible Alaska Native Vietnam-era Veterans and possible conveyance under the Alaska Native Vietnam-era Veterans Land Allotment Program (Allotment Program) established by the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act). The Bureau of Land Management (BLM) analyzed partial revocation of these PLOs and opening of the affected lands for allotment selections and possible conveyances in the Alaska Native Vietnam-era Veterans Land Allotment Program Environmental Assessment (Allotment Program EA) and Finding of No Significant Impact (FONSI) signed on April 21, 2022.

DATES: This PLO takes effect on August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Brittany Templeton, Bureau of Land Management (BLM) Alaska State Office, 222 West Seventh Avenue, Mailstop #13, Anchorage, AK 99513–7504, (907) 271–4214, or *btempleton@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: Sec. 17(d)(1) of Alaska Native Claims Settlement Act (ANCSA) states that ''the Secretary is authorized to classify or reclassify any public lands [so] withdrawn and to open such lands to appropriation under the public land laws in accord with [her] classifications.'' The BLM prepared the Allotment Program EA to evaluate opening public lands subject to ANCSA section 17(d)(1) withdrawals within the Kobuk-Seward Peninsula, Ring of Fire, Bay, Bering Sea—Western Interior, and East Alaska planning areas to selection of allotments by eligible Alaska Native Vietnam-era Veterans under the Allotment Program. The Allotment Program EA evaluated four alternatives, including a no action alternative as well as three action alternatives that only differed in the number of acres of land to be opened. Alternative B opened approximately 27.8 million acres, Alternative C opened approximately 27 million acres, and Alternative D opened approximately 25.7 million acres. The Allotment Program EA supported a FONSI for one or more Secretarial decisions to open all or some of the lands under consideration to allotment selection under the Allotment Program.

On August 15, 2022, PLO No. 7912 implemented Alternative C as detailed in the Allotment Program EA and FONSI by partially revoking 15 PLOs as they affected 27,142,446 acres of public lands and opening the lands for selection under the Allotment Program. Alternative C is the same as Alternative B in every material aspect with the only difference between the alternatives being that Alternative C opened approximately 800,000 fewer acres of land than Alternative B. This Order has the effect of implementing the remainder of Alternative B as detailed in the Allotment Program EA and FONSI by revoking in part 8 of the 15 PLOs partially revoked by PLO 7912 and opening additional lands to native allotment selection and possible conveyance that were not opened by PLO No. 7912. The analysis completed pursuant to Sec. 810 of the Alaska National Interest Lands Conservation Act included in the Allotment Program EA found no significant restriction on subsistence uses due to this action.

PLO Nos. 5169, 5173, and 5174, as amended, modified, or corrected, withdrew public lands for selection by Village and Regional Corporations under sec. 11(a)(3) of ANCSA, and for classification. PLO No. 5178, as amended, modified, or corrected, withdrew public lands for selection by Regional Corporations under sec. 11(a)(3) of ANCSA. PLO No. 5179, as amended, modified, or corrected, withdrew public lands in aid of legislation concerning addition to, or creation of, units of the National Park, National Forest, Wildlife Refuge, and

Wild and Scenic Rivers systems, and to allow for classification of the lands. PLO No. 5180, as amended, modified, or corrected, withdrew public lands to allow for classification and for the protection of the public interest in these lands. PLO No. 5184, as amended, modified, or corrected, withdrew public lands to allow for classification or reclassification of some of areas withdrawn by Sec. 11 of ANCSA. PLO No. 5186, as amended, modified, or corrected, withdrew public lands for classification and protection of the public interest in lands not selected by the State of Alaska.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and Section 17(d)(1) of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Subject to valid existing rights, Public Land Orders No. 5169 (37 FR 5572), 5173 (37 FR 5575), 5174 (37 FR 5576), 5178 (37 FR 5579), 5179 (37 FR 5579), 5180 (37 FR 5583), 5184 (37 FR 5588), and 5186 (37 FR 5589), and any amendments, modifications, or corrections to these Orders, are hereby partially revoked to allow for allotment selection under the Allotment Program, and for no other purposes, insofar as they affect the following described Federal lands in the Kobuk-Seward Peninsula, Ring of Fire, Bay, Bering Sea—Western Interior, and East Alaska planning areas, excepting any lands within 500 feet of the Iditarod National Historic Trail, and any lands within ¼ mile of cultural resource sites, including lands applied for by regional corporations pursuant to ANCSA section 14(h)(1) and known cultural resources sites identified in the Allotment Program EA. The exact locations of these sites are withheld to limit the risk of harm to the cultural resource or site where the resource is located. If an applicant is interested in a particular location, they should contact the BLM to ensure that their application does not overlap with areas excluded from this PLO because of known cultural resource sites or the Iditarod National Historic Trail. Subject to these exclusions, the lands to be opened are described as follows:

Kobuk—Seward Peninsula Resource Management Plan (RMP)

Kateel River Meridian, Alaska

T. 21 N., R. 13 W., unsurveyed,
secs. 4 and 5.
T. 22 N., R. 13 W., unsurveyed,
sec. 22, N1/2;
sec. 27 and secs. 31 thru 34.
T. 2 N., R. 42 W.,
secs. 21, 26, and 27.
T. 8 S., R. 19 W.,
T. 9 S., R. 21 W.,
tract A, that portion within sec. 1.
T. 9 S., R. 31 W., unsurveyed,
secs. 19, 20, and 21.
T. 6 S., R. 32 W., unsurveyed,
sec. 4, that portion within Power Site Classification No. 726;
sec. 33, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE ¼;
sec. 34, W1/2SW1/4.
T. 4 S., R 33 W.,
tract DD, that portion within sec. 32.
T. 5 S., R. 33 W., unsurveyed,
secs. 5 thru 8, secs. 16 thru 21, and secs. 29 thru 32.
T. 6 S., R. 33 W., unsurveyed.
Umiat Meridian, Alaska
T. 4 S., R. 42 W.,
secs. 18, 19, 30, and 31.
T. 3 S., R. 43 W.,
secs. 13 thru 36.
T. 4 S., R. 43 W.,
secs. 13 thru 36.
T. 6 S., R. 43 W.,
sec. 7 and secs. 13 thru 31.
T. 2 S., R. 44 W.,
secs. 31 thru 36.
T. 3 S., R. 44 W.,
secs. 9 thru 14 and secs. 23 and 24.
T. 4 S., R. 44 W.,
secs. 21 thru 28, and secs. 33 thru 36.
T. 5 S., R. 44 W.,
secs. 1 thru 6.
T. 6 S., R. 44 W.,
T. 6 S., R. 45 W.,
secs. 1 thru 3 and secs. 7 thru 36.

The areas described aggregate approximately 174,605.38 acres.

Ring of Fire RMP

Seward Meridian, Alaska

T. 13 N., R. 1 E.,
secs. 4, 5, 6, 8, 9, 10, 15, 16, 21, and 22, those portions lying within Power Site Classification No. 107.
T. 14 N., R. 2 E.,
sec. 1, NE¼NE¼NE¼, E½NW¼NE¼NE¼, NE¼SW¼NE¼NE¼, and N½SE¼NE¼NE¼.
T. 15 N., R. 2 E.,
sec. 36, lot 5.
T. 17 N., R. 2 E.,
sec. 35, lots 16 and 18.
T. 16 N., R. 3 E.,
sec. 3, lot 1;
sec. 4, lots 1, 2, and 4;
sec. 5, lots 1 thru 4, lot 6, NW¼SW¼, S½SW¼, N½SW¼SE¼, N½SW¼SW¼SE¼, N½SE¼SW¼SE¼, and SE¼SE¼;
sec. 6, lots 2 thru 6, lots 8 and 9, E½SW¼, and SE¼;
sec. 9, lots 1 thru 4, SW¼NE¼, E½NE¼NW¼NW¼, NW¼NE¼NW¼NW¼, N½NW¼NW¼NW¼, S½SW¼SW¼NW¼, S½SE¼SW¼NW¼, E½SE¼NW¼, E½NW¼SE¼NW¼, E½SW¼SE¼NW¼, SW¼SW¼SE¼NW¼, SW¼, N½NE¼NE¼SE¼, W½NE¼NW¼SE¼, W½NW¼SE¼, SE¼NW¼SE¼, and SW¼SE¼;
sec. 10, lots 1 thru 5, lot 8, N½NW¼SW¼, N½SE¼NW¼SW¼, N½NE¼SE¼SW¼, SE¼NE¼SE¼SW¼, NE¼SE¼SE¼SW¼, NW¼SW¼SE¼, N½SW¼SW¼SE¼, and SE¼SW¼SW¼SE¼;
sec. 14, lot 4, lots 7 thru 12, and SW¼SW¼;
sec. 15, lots 3 and 4, N½NE¼NW¼NE¼, SW¼, SW¼SW¼SW¼SE¼, and E½SE¼;
sec. 16, W½NE¼, W½, and SE¼;
sec. 22;
sec. 23, lots 4, 5, and 6, S½NE¼, N½NE¼NW¼, SE¼NE¼NW¼, W½NW¼, E½NE¼SE¼NW¼, W½SW¼SE¼NW¼, SW¼, W½NW¼NW¼SE¼, W½SW¼NW¼SE¼, and S½SE¼;
sec. 24, lots 1, 2, 3, and 6, E½SW¼, N½NW¼SW¼, N½SW¼NW¼SW¼, N½SE¼NW¼SW¼, and SE¼;
sec. 25, NE¼NE¼, E½NW¼NE¼, N½NW¼NW¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NE¼, SW¼NE¼, N½SE¼NE¼, NE¼NE¼NE¼NW¼, S½NE¼NW¼, S½NW¼NW¼, S½NW¼, SW¼, and W½SE¼;
secs. 26 and 36.
T. 19 N., R. 3 E.,
sec. 26, lot 10, that portion within the S½SW¼;
sec. 35, lot 2.
T. 13 N., R. 4 E., unsurveyed,
secs. 1, 11, 12, 14, 22, 23, 26, 27, and 34, those portions previously within Public Land Order No. 3324, more particularly described as ¼ mile landward and parallel with the ordinary high-water line of the left bank of the Knik River and the westerly bank of Lake George.
T. 14 N., R. 4 E., unsurveyed,
sec. 36, that portion previously within Public Land Order No. 3324, more particularly described as ¼ mile landward and parallel with the ordinary high-water line of the left bank of the Knik River and the westerly bank of Lake George.
T. 15 N., R. 4 E.,
sec. 1, lots 1 thru 6;
sec. 2, lots 1 and 2;
tract 37.
T. 16 N., R. 4 E.,
sec. 15, lots 6 thru 10;
sec. 16, lots 5 thru 21;
sec. 17, lots 4 thru 8;
sec. 18, lot 1;
sec. 19, lots 1 thru 4 and lots 7 thru 21;
sec. 20, lots 1 thru 5 and lots 8 thru 21;
sec. 21;
sec. 22, lots 2 thru 7 and lots 10 thru 17;
sec. 26, lots 2, 5, 6, and 7;
sec. 27, lots 1, 2, and 3, and lots 5 thru 18;
sec. 28;
sec. 29, lots 2 thru 18, E½NE¼, and W½SW¼;
sec. 30, W½SE¼SW¼SE¼;
sec. 31, lots 4, 8, and 9, NW¼NE¼, E½SW¼NE¼, N½NW¼SW¼NE¼,

SE¼NW¼SW¼NE¼, E½SW¼SW¼NE¼, NE¼NW¼, S½NE¼SW¼NW¼, SE¼SW¼NW¼, S½NW¼SE¼NW¼, SW¼SE¼NW¼, W½SE¼SE¼NW¼, W½NE¼NE¼SW¼, W½SE¼NE¼SW¼, E½NW¼SW¼, W½NE¼SE¼SW¼, W½SE¼SE¼SW¼, E½SE¼, E½NW¼SE¼, E½NW¼NW¼SE¼, E½SW¼NW¼SE¼, E½SW¼SE¼, and NE¼NW¼SW¼SE¼;
sec. 32, lots 1, 2, and 3, N½NW¼, N½SW¼NW¼, NE¼SW¼SW¼NW¼, N½SE¼SW¼NW¼, SE¼SE¼SW¼NW¼, SE¼NW¼, and S½;
sec. 33, lots 1 thru 8, SW¼NE¼, SE¼NW¼, and S½;
sec. 34, lots 3, 6, 8, 10, 14, 15, 18 and 21;
sec. 35, lots 4, 5, 9, 10, and 11, SW¼SW¼.

T. 14 N., R. 5 E., unsurveyed,
secs. 4, 5, 8, 9, 16, 17, 19, and 20, and secs. 29 thru 32, those portions previously within Public Land Order No. 3324, more particularly described as ¼ mile landward and parallel with the ordinary high-water line of the left bank of the Knik River and the westerly bank of Lake George.

T. 15 N., R. 5 E., unsurveyed,
secs. 6, 7, 8, 17, 18, 20, 28, 29, 32 and 33, those portions previously within Public Land Order No. 3324, more particularly described as ¼ mile landward and parallel with the ordinary high-water line of the left bank of the Knik River and the westerly bank of Lake George.

T. 18 N., R. 5 E.,
sec. 4.

T. 21 N., R. 5 E.,
secs. 3, 9, 10, 16, 17, 19, 20, 30 and 31.

T. 22 N., R. 5 E.,
secs. 25, 26, 34, 35, and 36.

T. 19 N., R. 6 E.,
secs. 2, 3, 9, and 16, unsurveyed.

T. 21 N., R. 6 E.,
secs. 2, 3, 10, 11, 14, 15, 21, 22, 28, 29, 31, 32, and 33.

T. 22 N., R. 6 E.,
sec. 1, secs. 11 thru 14, and secs. 23, 26, 30, 31, and 35.

T. 19 N., R. 7 E., unsurveyed,
sec. 1.

T. 15 N., R. 1 W.,
sec. 31, lot 6.

T. 19 N., R. 1 W.,
U.S. Survey No. 5556.

T. 18 N., R. 3 W.,
sec. 22, N½NW¼, SW¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, and W½SE¼SE¼NW¼.

T. 19 N., R. 4 W.,
sec. 7, lot 6 and SE¼SW¼;
sec. 35, SE¼.

T. 20 N., R. 4 W.,
sec. 17, NE¼ and W½NW¼;
sec. 18, lots 1 thru 4 and SE¼NW¼.

T. 23 N., R. 4 W.,
sec. 6, lots 2 thru 7, excepting lot 12, U.S. Survey No. 9034.

T. 24 N., R. 4 W.,
sec. 6, lots 3, 4, and 5, SE¼NW¼, and SE¼SW¼, excepting lots 10 and 12, U.S. Survey No. 9035;
sec. 7, lots 1, 2, and 4, N½NE¼, SE¼SW¼, and SW¼SE¼, excepting lots 7, 8 and 9, U.S. Survey No. 9035;
sec. 17, E½SW¼ and W½SE¼;
sec. 20, NE¼NW¼.

T. 2 N., R. 11 W.,
sec. 18, lots 1 thru 4, NW¼NE¼, NE¼NW¼, and E½NW¼NW¼.

T. 5 N., R. 11 W.,
sec. 19, SE¼NE¼;
sec. 24, lot 5;
sec. 28, NW¼.

T. 2 N., R. 12 W.,
sec. 21, lot 1, SW¼NE¼, NE¼SE¼NE¼, W½SE¼NE¼, SE¼NW¼, NE¼SW¼, that portion of S½NE¼NE¼SE¼ and W½NE¼SE¼ excepting Interim Conveyance No. 782, and NW¼SE¼.

T. 3 N., R. 12 W.,
sec. 15, E½NE¼NW¼SE¼, SW¼NE¼NW¼SE¼, W½NW¼NW¼SE¼, SE¼NW¼NW¼SE¼, S½NW¼SE¼, and SW¼SE¼;
sec. 21, N½SE¼, E½SW¼SE¼, N½NW¼SW¼SE¼, SE¼NW¼SW¼SE¼, NE¼SW¼SW¼SE¼, S½SW¼SW¼SE¼, and SE¼SE¼;
sec. 25, lots 1 and 6.

T. 1 N., R. 13 W.,
sec. 13, N½SW¼SE¼SE¼ and N½SE¼SE¼SE¼;
sec. 23, lot 1;
sec. 24, S½SW¼NW¼NE¼ and SE¼NW¼NE¼.

T. 12 N., R. 20 W., unsurveyed,
secs. 5 thru 8, that portion within Power Site Classification No. 395.

T. 13. N., R. 20 W.,
tract B, that portion within Power Site Classification No. 395 previously excluded from the Tentative Approval for AA–6886 dated February 25, 2002.

T. 5 S., R. 14 W.,
sec. 33, SW¼.

T. 5 S., R. 26 W.,
sec. 36.

Copper River Meridian, Alaska

T. 77 S., R. 91 E., unsurveyed,
lots 2 and 3, U.S. Survey No. 3525.

The areas described aggregate approximately 47,895.51 acres.

Bay RMP

Seward Meridian, Alaska

T. 4 N., R. 31 W.,
tract A, that portion within secs. 32 and 33.

T. 5 S., R. 26 W.,
secs. 25 thru 28 and secs. 31 and 36.

T. 3 S., R. 31 W.,
sec. 26.

T. 10 S., R. 32 W.,
tract A, that portion within sec. 5.

T. 10 S., R. 42 W., unsurveyed,
secs. 1 and 2 and secs. 11 thru 14.

T. 17 S., R. 44 W.,
secs. 3 and 4.

T. 16 S., R. 45 W.,
secs. 7, 18, 19, 28, 29, and 30.

T. 17 S., R. 45 W.,
sec. 1;
sec. 22, N½NW¼SE¼ and N½S½NW¼SE¼;
sec. 23, NE¼, N½NW¼, SE¼NW¼, and N½SE¼;
sec. 24, S½N½SE¼SW¼ and SW¼SW¼SE¼;
sec. 25, W½NW¼NE¼, W½NW¼SW¼NE¼, SW¼SW¼SW¼NE¼, NE¼NW¼, and N½SE¼NW¼;
lots 3, 4, and 9, U.S. Survey No. 4688.

T. 5 S., R. 46 W.,
secs. 8, 16, and 17.

T. 18 S., R. 47 W.,
secs. 2 thru 6 and secs. 10 and 11.

T. 18 S., R. 48 W.,
sec. 1.

The areas described aggregate approximately 22,679.10 acres.

Bering Sea—Western Interior RMP

Fairbanks Meridian, Alaska

T. 12 S., R. 23 W.,
secs. 28 thru 33, unsurveyed.

T. 12 S., R. 27 W., unsurveyed.

Kateel River Meridian, Alaska

T. 27 S., R. 12 E.,
Tract A, that portion within Air Navigation Site No. 140, Mineral Survey No. 2394, and Mineral Survey No. 2395.

T. 24 S., R. 22 E., unsurveyed.

Seward Meridian, Alaska

T. 25 N., R. 22 W.,
U.S. Survey No. 14206.

T. 26 N., R. 22 W.,
U.S. Survey No. 14206.

T. 29 N., R. 35 W.,
tracts A thru F.

T. 30 N., R. 35 W.,
sec. 11.

T. 33 N., R. 35 W.,
secs. 5 and 6.

T. 20 N., R. 37 W., unsurveyed,
sec. 16, that portion within regional selection application AA–10414 excluded from Tentative Approval 2008–0159, Serial No. AA–76403, dated July 18, 2008, except for U.S. Survey No. 14317.

T. 18 N., R. 38 W.,
secs. 29 thru 32.

T. 15 N., R. 51 W.,
sec. 9, SE¼SE¼SE¼, excepting U.S. Survey No. 14319;
sec. 15, NW¼NW¼, N½SW¼NW¼, and SW¼SW¼NW¼, excepting U.S. Survey No. 14319;
sec. 16, NE¼NE¼NE¼, S½NE¼NE¼, N½SE¼NE¼, and SE¼SE¼NE¼, excepting U.S. Survey No. 14319;
U.S. Survey No. 14319.

T. 16 N., R. 51 W.,
sec. 19.

T. 18 N., R. 51 W.,
secs. 25 thru 36.

T. 13 N., R. 59 W., unsurveyed,
secs. 3, 4, 9, and 10;
sec. 15, excepting U.S. Survey No. 5238;
sec. 16;
sec. 21, excepting U.S. Survey No. 5238 and U.S. Survey No. 14187;
sec. 22, excepting U.S. Survey No. 5238;
sec. 27;
sec. 28, excepting U.S. Survey No. 14187;
U.S. Survey No. 14187.

T. 20 N., R. 69 W.,

sec. 6.

The areas described aggregate approximately 88,127.26 acres.

East Alaska RMP

Copper River Meridian, Alaska

T. 8 N., R. 1 E.,
secs. 1 thru 24 and secs. 28 thru 33.
T. 9 N., R. 2 E.,
secs. 7, 18, and 27.
T. 9 N., R. 3 E.,
sec. 23;
sec. 26, lots 1 thru 4, W½NE¼, and W½;
sec. 35, lots 2 thru 19, W½NW¼, and W½SW¼.
T. 10 N., R. 3 E.,
secs. 3 and 24.
T. 11 N., R. 4 E., unsurveyed,
secs. 3, 4, 5, 8, 17, 20, 29, and 32.
T. 12 N., R. 4 E., unsurveyed,
secs. 27, 28, 33, and 34, excepting U.S. Survey No. 14338;
U.S. Survey No. 14338.
T. 11 N., R. 5 E.,
U.S. Survey No. 11038.
T. 14 N., R. 7 E., unsurveyed,
secs. 9, 14, 15, and 16, secs. 21 thru 26, and secs. 35 and 36.
T. 11 N., R. 8 E.,
secs. 1, 2, 11, and 12, partly unsurveyed;
sec. 13, excepting U.S. Survey No. 6738, partly unsurveyed;
sec. 14, lots 1 thru 4, N½, N½SW¼, SE¼SW¼, NW¼SE¼, and that portion lying southerly of the left bank of the Slana River, excepting U.S. Survey No. 6738, partly unsurveyed;
sec. 15, lot 1, N½, SW¼, N½SE¼, and SW¼SE¼, partly unsurveyed;
secs. 16 and 17, partly unsurveyed;
sec. 19, lots 1 and 2, N½, E½SW¼, N½SE¼, N½SW¼SE¼, W½SW¼SW¼SE¼, and N½SE¼SE¼, excepting U.S. Survey No. 7109, partly unsurveyed;
sec. 20, lots 1 thru 4, N½, E½NE¼SW¼, E½SW¼SW¼SW¼, SE¼SW¼SW¼, and SE¼, excepting U.S. Survey Nos. 7109 and 11235, partly unsurveyed;
sec. 21, lots 1 thru 8, NE¼SE¼NE¼, E½NW¼SE¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, SW¼SW¼, and that portion lying southerly of the left bank of the Slana River, partly unsurveyed;
sec. 22, lots 1, 2, 3, 5, 6, 10, and 11, N½NW¼NE¼, N½SW¼NW¼NE¼, N½SW¼SW¼NW¼NE¼, N½SE¼SW¼NW¼NE¼, SE¼NW¼NE¼, N½NW¼, and that portion lying southerly of the left bank of the Slana River, excepting U.S. Survey No. 3343 A, partly unsurveyed;
sec. 23, lots 1 thru 5, NE¼NW¼, S½NW¼, and that portion lying southerly of the left bank of the Slana River, excepting U.S. Survey Nos. 3343 A and 6738, partly unsurveyed;
sec. 28, lot 1;
sec. 29, lots 1, 2, and 3, lots 6 thru 9, NE¼NW¼, NE¼NW¼NW¼, E½NW¼NW¼NW¼, and that portion lying southerly of the left bank of the Slana River and outside the boundary of the Wrangell—St. Elias National Preserve, partly unsurveyed;
sec. 30, lots 3, 4, 5, 7, 8, and 9, W½NW¼NW¼NE¼, SW¼NW¼NE¼, and E½NW¼;
T. 12 N., R. 8 E.,
sec. 36.
T. 14 N., R. 8 E.,
secs. 31, 35, and 36.
T. 12 N., R. 9 E.,
secs. 1, 2, 5, 8, 17, 29, and 31;
sec. 32, lot 2;
tracts B thru J;
lot 2, U.S. Survey No. 4659.
T. 14 N., R. 9 E.,
sec. 27;
tract C.
T. 10 N., R. 10 E., unsurveyed,
secs. 1, 2, and 3;
secs. 4 and 9, those portions lying outside the boundary of the Wrangell-St. Elias National Park;
secs. 10 thru 14;
secs. 15, 16, 22, 23, and 24, those portions lying outside the boundary of the Wrangell-St. Elias National Park.
T. 11 N., R. 10 E., unsurveyed,
secs. 1 thru 29;
sec. 30, excepting U.S. Survey Nos. 5294 and 14336;
sec. 31, excepting U.S. Survey No. 14336;
secs. 32 thru 36;
U.S. Survey No. 14336.
T. 11 N., R. 11 E., unsurveyed.
T. 4 N., R. 1 W.,
sec. 19, lots 34, 35, 117, and 118, and lots 120 thru 124.
T. 7 N., R. 1 W.,
sec. 1;
sec. 2, lots 1 thru 6, S1/2NE1/4, S1/2NW1/4, and N1/2SE1/4;
sec. 12, lot 1, NE1/4, NE1/4NW1/4, S1/2NW1/4, NE1/4SW1/4, S1/2SW1/4, and SE1/4;
secs. 13, 24, 25, and 36;
tract B, those portions within secs. 5 and 6, and secs. 16 thru 20.
T. 8 N., R. 1 W.,
secs. 22 and 27.
T. 4 N., R. 2 W.,
sec. 30, lots 6 and 7;
lots 1 and 2, U.S. Survey No. 10676.
T. 5 N., R. 2 W.,
secs. 26, 27, 34, 35, and 36.
T. 7 N., R. 2 W.,
secs. 1 thru 11, secs. 14 thru 24, and secs. 27 thru 34.
T. 9 N., R. 2 W., partly unsurveyed,
tract C;
tract D, that portion within sec. 7, secs. 16 thru 21, and secs. 28 thru 33.
T. 12 N., R. 2 W., partly unsurveyed,
tract A, that portion within Public Land Order No. 225;
tracts C and D.
T. 13 N., R. 2 W., partly unsurveyed,
tract A, those portions in secs. 1 and 2 within Public Land Order No. 225, those portions within secs. 3 thru 10, those portions in secs. 11, 12, and 14 within Public Land Order No. 225, those portions within secs. 15 thru 22, that portion in sec. 23 within Public Land Order No. 225, that portion within sec. 26, that portion in sec. 27 within Public Land Order No. 225, those portions of secs. 28 thru 31, that portion in sec. 32 within Public Land Order No. 225, that portion within sec. 33, and that portion in sec. 34 within Public Land Order No. 225;
tract B, those portions within secs. 1, 12, 13, 24, 25, and 34, excepting U.S. Survey No. 14433, that portion in sec. 35 within Public Land Order No. 225, and that portion within sec. 36.
T. 14 N., R. 2 W., unsurveyed,
secs. 31 thru 34;
sec. 35, that portion within Public Land Order 225;
sec. 36, excepting lots 2 and 3, U.S. Survey No. 2705, lots 2 and 3, U.S. Survey No. 2705A, U.S. Survey No. 2706, U.S. Survey No. 2706A, U.S. Survey No. 2707, U.S. Survey No. 2707A, U.S. Survey No. 2717, U.S. Survey No. 2717A, and U.S. Survey No. 4182;
lot 3, U.S. Survey No. 2705A;
lot 2, U.S. Survey No. 2706A;
U.S. Survey No. 2707A;
lot 2, U.S. Survey No. 2717A.
T. 3 N., R. 3 W.,
secs. 13 thru 16, secs. 20 thru 29, and secs. 32 thru 36.
T. 4 N., R. 3 W.,
secs. 1 thru 10.
T. 6 N., R. 3 W.,
sec. 12, lot 1.
T. 7 N., R. 3 W.,
secs. 2, 3, and 4, and secs. 6 thru 10.
T. 12 N., R. 3 W., partly unsurveyed,
sec. 3, SW1/4, W1/2SE1/4, and SE1/4SE1/4;
secs. 4, 5, 8, 9, 10, 15, 16, and 17.
T. 13 N., R. 5 W., partly unsurveyed,
tract A, that portion within secs. 2, 3, 10, 11, and 12;
tracts E and F;
U.S. Survey No. 14337.
T. 4 N., R. 8 W.,
tract A, those portions within secs. 2 and 3, within regional selection application AA–11124, excepting U.S. Survey No. 13862, and sec. 23 within regional selection application AA–11124, all excluded from TA 1982–0107.
T. 10 N., R. 10 W., unsurveyed,
secs. 2, 3, 4, 9, 10, and 11, those portions within Power Site Classification No. 443.
T. 8 S., R. 1 W., unsurveyed,
sec. 10, W1/2NE1/4, SE1/4NE1/4, NW1/4, E1/2SW1/4, SW1/4SW1/4, and SE1/4;
sec. 11, N1/2NE1/4, E1/2NW1/4, SW1/4NW1/4, SE1/4SW1/4, and SE1/4;
sec. 12, E1/2NE1/4, NW1/4NE1/4, and S1/2SE1/4;
sec. 13, S1/2NE1/4, NW1/4, and SE1/4;
sec. 14, NE1/4NE1/4, S1/2SW1/4, and SE1/4;
sec. 15, NE1/4 and SW1/4;
sec. 16, W1/2NE1/4, SE1/4NE1/4, NW1/4, and S1/2SE1/4;
sec. 17, NE1/4NE1/4 and NW1/4;
sec. 18, E1/2SW1/4, NW1/4SW1/4, and SE1/4.
T. 2 S., R. 4 W., unsurveyed,
sec. 31.
T. 3 S., R. 4 W., unsurveyed,
secs. 6, 17, and 20.
T. 1 S., R. 7 W.,
secs. 20, 21, and 28.
T. 1 S., R. 2 E.,
secs. 28 thru 30;
sec. 31, lots 1 thru 4, NE1/4, E1/2NW1/4, and E1/2SW1/4;

secs. 32 and 33;
sec. 34, N1/2, SW1/4, N1/2SE1/4, and N1/2N1/2SW1/4SE1/4.
T. 2 S., R. 3 E.,
secs. 16, 17, 18, 21, and 22;
sec. 25, lots 2 thru 7 and S1/2NE1/4;
secs. 26 and 27;
Lot 12, U.S. Survey No. 3579.
T. 2 S., R. 4 E.,
sec. 20, lot 7;
sec. 27, lots 11, 12, and 14, SE1/4NW1/4, and N1/2SW1/4SW1/4;
sec. 29, lots 1 thru 13, S1/2NE1/4, and S1/2NW1/4;
sec. 30, lots 1 thru 20, NW1/4SW1/4NE1/4, S1/2SW1/4NE1/4, S1/2SE1/4NE1/4, and SE1/4NW1/4;
secs. 31 and 32;
sec. 33, lots 2 and 3, and lots 5 thru 15;
sec. 34, lot 1, lots 17 thru 29, and lot 31;
sec. 35, lot 14, excepting IC Nos. 947 and 948;
tract B, U.S. Survey No. 3334;
lots 3, 4, and 5, U.S. Survey No. 11761, excepting IC Nos. 947 and 948.

Fairbanks Meridian, Alaska

T. 19 S., R. 1 W., unsurveyed,
U.S. Survey No. 14473.
T. 18 S., R. 3 W., unsurveyed,
secs. 29, 35 and 36.
T. 19 S., R. 3 W., unsurveyed,
secs. 1 and 2, excepting lots 1 thru 4, U.S. Survey No. 3523, and lot 1, U.S. Survey No. 4317;
sec. 10;
sec. 11, excepting, lots 2 and 3, U.S. Survey No. 3523, and lots 1 and 3, U.S. Survey No. 4317;
secs. 12, 14, and 15;
lot 2, U.S. Survey No. 4317.
T. 18 S., R. 4 W., unsurveyed,
U.S. Survey No. 14472.
Tps. 16 and 20 S., R. 5 W., unsurveyed.
T. 15 S., R. 6 W.,
secs. 3 and 10;
sec. 15, NE1/4, SW1/4, and S1/2SE1/4.
T. 17 S., R. 6 W.,
sec. 33.
T. 18 S., R. 6 W.,
secs. 11, 19, and 20.
Tps. 19 and 20 S., R. 6 W., unsurveyed.
T. 17 S., R. 7 W.,
lot 6, U.S. Survey No. 5596.
T. 18 S., R. 7 W.,
sec. 3, lot 2, that portion excluded from the Interim Conveyance No. 443 as Native Allotment F–15557;
sec. 16, excepting U.S. Survey No. 13992;
secs. 17 and 30;
lot 39, U.S. Survey No. 3229.
T. 20 S., R. 7 W., unsurveyed.
T. 18 S. R. 8 W.,
sec. 1, lots 1 thru 3;
secs. 12, 25, 35, and 36.
T. 19 S. R. 8 W.,
sec. 9.
T. 20 S., R. 8 W., unsurveyed.
T. 19 S., R. 9 W.,
secs. 3, 10, 20, 24, 25, 34 and 35.
T. 20 S., R. 1 E., unsurveyed,
sec. 4, that portion within regional selection AA–11125 Parcel K;
sec. 21;
sec. 23, those portions within regional selections AA–11127, AA–58729, AA–58730, and AA–58731;
sec. 24, those portions within regional selections AA–11127, AA–58728, AA–58732, AA–58733, AA–58734, and AA–58735;
lots 1, 3, and 5, U.S. Survey No. 14342.
T. 21 S., R. 1 E., unsurveyed,
sec. 10, that portion within Public Land Order No. 1536;
secs. 25, 26, 35, and 36.
T. 22 S., R. 1 E., unsurveyed,
secs. 1 and 12.
T. 20 S., R. 2 E., unsurveyed,
secs. 11, 12, and 13, excepting M.S. Nos. 2494, 2495, and 2496.
T. 21 S., R. 2 E., unsurveyed,
sec. 30, S1/2SW1/4NW1/4, S1/2SE1/4NW1/4, and SW1/4;
secs. 31 and 32.
T. 22 S., R. 2 E., unsurveyed,
secs. 5 thru 8;
sec. 30, those portions within regional selections AA–11125 Parcel V and AA–11127 Parcel V.
T. 21 S., R. 6 E., unsurveyed,
lot 2, U.S. Survey No. 4242.
T. 21 S., R. 7 E., unsurveyed,
secs. 6 thru 8, those portions lying southerly and westerly of the centerline of the Denali Highway;
sec. 14, that portion lying southerly of the centerline of the Denali Highway, excepting U.S. Survey Number 14511;
sec. 17, that portion lying westerly of the centerline of the Denali Highway;
secs. 18 and 19;
sec. 20, that portion lying southerly and westerly of the centerline of the Denali Highway;
sec. 23, that portion lying southerly and easterly of the centerline of the Denali Highway;
sec. 24, excepting U.S. Survey Nos. 12147 and 14511;
secs. 25 thru 36.
T. 21 S., R. 8 E., unsurveyed,
secs. 16, 17 and 18, those portions lying southerly of the centerline of the Denali Highway;
sec. 19;
secs. 20 thru 27, those portions lying southerly of the centerline of the Denali Highway;
secs. 28 thru 36.
T. 21 S., R. 9 E., partly unsurveyed,
sec. 32, N1/2, NE1/4SW1/4, W1/2SW1/4, and N1/2SE1/4, those portions lying southerly of the centerline of the Denali Highway;
tract A, that portion lying southerly of the centerline of the Denali Highway, excepting U.S. Survey No. 4425;
tract B, that portion encompassed by PLO No. 1490 and that portion lying southerly of the centerline of the Denali Highway.
T. 21 S., R. 10 E., unsurveyed,
secs. 25 and 31, and secs. 33 thru 36, those portions lying southerly of the centerline of the Denali Highway.
T. 22 S., R. 11 E., unsurveyed,
secs. 25 and 36.
Seward Meridian, Alaska
T. 32 N., R.1 E., unsurveyed,
secs. 11 thru 15;
sec. 16, excepting U.S. Survey No. 4917;
secs. 20 thru 29 and secs. 35 and 36.
T. 33 N., R. 1 E., unsurveyed,
secs. 13 and 24.
T. 32 N., R. 2 E., unsurveyed,
sec. 19;
sec. 20, excepting U.S. Survey No. 4918;
sec. 21 and secs. 28 thru 31.
T. 33 N., R. 2 E., unsurveyed,
secs. 16 thru 21 and sec. 29.
T. 29 N., R. 3 E., unsurveyed,
secs. 1 thru 3 and secs. 9 thru 36.
T. 30 N., R. 4 E., unsurveyed,
secs. 11 thru 14, secs. 23 thru 26, and secs. 35 and 36.
T. 31 N., R. 7 E., unsurveyed,
sec. 2, that portion within Power Site Classification No. 443 on the left bank of the Susitna River;
sec. 3, that portion lying north of the left bank of the Susitna River;
sec. 12, that portion within Power Site Classification No. 443 lying north of the left bank of the Susitna River.
T. 32 N., R. 7 E., unsurveyed,
sec. 32, that portion within Power Site Classification No. 443 lying north of the left bank of the Susitna River.
T. 30 N., R. 9 E., unsurveyed,
sec. 1, that portion within Power Site Classification No. 443.
T. 29 N., R. 11 E., unsurveyed,
secs. 1 thru 7 and secs. 9, 10, and 16, those portions lying within Power Site Classification No. 443.
T. 30 N., R. 11 E., unsurveyed,
secs. 25, 26, 34, 35, and 36, those portions lying within Power Site Classification No. 443.
T. 30 N., R. 12 E., unsurveyed,
secs. 3 and 4;
sec. 8, that portion lying within Power Site Classification No. 443;
secs. 9, 10, 15, and 16;
secs. 17 thru 24 and secs. 29 thru 32, those portions within Power Site Classification No. 443.
T. 31 N., R. 12 E., unsurveyed,
secs. 1 thru 4, secs. 9, 10, 11, 16, 21, and 28, those portions within Power Site Classification No. 443;
sec. 33.
T. 32 N., R. 12 E., unsurveyed,
secs. 1 and 2, secs. 8 thru 11, and secs. 13 thru 16, those portions within Power Site Classification No. 443;
secs. 24 and 25;
secs. 26, 33, 34, and 35, those portions within Power Site Classification No. 443;
sec. 36.
T. 31 N., R. 1 W., unsurveyed,
secs. 28 thru 33.
T. 33 N., R. 1 W., unsurveyed.
secs. 33 and 34.

The areas described aggregate approximately 479,649.71 acres.

The areas described aggregate a total of approximately 812,956.96 acres.

2. At 8 a.m. Alaska time on September 8, 2023, the lands described in Paragraph 1 shall be open to allotment selection under the Allotment Program, subject to valid existing rights. All valid allotment applications received at or prior to 8 a.m. Alaska time on September 8, 2023, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in accordance with 43 CFR 2569.502.

3. No lands are opened by this order for any purpose other than allotment selection and possible conveyance under the Allotment Program.

4. No lands are opened by this order that are within 500 feet of the Iditarod National Historic Trail, or within ¼ mile of cultural resource sites, including lands applied for by regional corporations pursuant to ANCSA section 14(h)(1) and known cultural resources sites identified in the Allotment Program EA. The exact locations of these sites are withheld to limit the risk of harm to the cultural resource or site where the resource is located. If an applicant is interested in a particular location, they should contact the BLM in order to ensure that their application does not overlap with areas excluded from this PLO as a result of known cultural resource sites or the Iditarod National Historic Trail.

(Authority: 43 U.S.C. 1714.)

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2023–16979 Filed 8–8–23; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CO_FRN_MO4500170078]

Notice of Realty Action: Direct Sale of Public Lands in Montrose County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is proposing the non-competitive (direct) sale of a parcel of public lands in Colorado to resolve the inadvertent and unauthorized use of that land. The parcel, located in Montrose County, contains approximately 0.70 acres, and would be sold to Ballantyne Family Limited Partnership.

DATES: Interested parties must submit written comments no later than September 25, 2023.

ADDRESSES: Mail written comments to Suzanne Copping, Field Manager, BLM Uncompahgre Field Office, 2465 South Townsend Avenue, Montrose, CO 81401, or by email to *scopping@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jana Moe, Realty Specialist at the BLM Uncompahgre Field Office, telephone: (970) 240–5324, email: *jpmoe@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The sale will be subject to the applicable provisions of sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM land sale regulations. The appraised fair market value for the parcel is $2,500. The BLM will consider the direct sale, in accordance with sections 203 and 209 of FLPMA, of the following public lands:

New Mexico Principal Meridian, Colorado

T. 49 N., R. 8 W.,
sec 11, lot 1.

The area described contains 0.70 acres, according to the official plat of survey on file with the BLM.

There is no known mineral value in the parcel, therefore the mineral estate would also be conveyed in accordance with section 209 of FLPMA. The proposed sale is in conformance with the BLM Gunnison Gorge National Conservation Area (GGNCA) Resource Management Plan approved in November 2004, and plan maintenance action approved November 4, 2019. The parcel is located within the GGNCA planning area but is not located within the GGNCA boundary. The BLM prepared a parcel-specific environmental assessment (EA), document number DOI–BLM–CO–S054–2020–0006 EA, in connection with this realty action. It can be viewed online at *https://eplanning.blm.gov/eplanning-ui/project/2000347/510.*

The land is suitable for direct sale under FLPMA without competition, consistent with 43 CFR 2711.3–3(a)(5), because there is a need to resolve an inadvertent and unauthorized use of public lands, which are encumbered by privately owned improvements.

Pursuant to the requirements of 43 CFR 2711.1–2(d), publication of this notice in the **Federal Register** will segregate the land from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Until completion of the sale, the BLM will no longer accept land use applications affecting these public lands. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on August 11, 2025, unless extended by the BLM Colorado State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

The patent, if issued, will include the following terms, covenants, conditions, and reservations:

1. A reservation to the United States for ditches and canals constructed by authority of the United States under the Act of August 30, 1890;

2. All valid existing rights issued prior to conveyance;

3. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands; and

4. Additional terms and conditions that the authorized officer deems appropriate.

The EA, appraisal, maps, and environmental site assessment are available for review (see **FOR FURTHER INFORMATION CONTACT**). Interested parties may submit, in writing, any comments concerning the sale, including notifications of any encumbrances or other claims relating to the parcel, to the address above (see **ADDRESSES**).

The BLM Colorado State Director will review adverse comments regarding the proposed sale and may sustain, vacate, or modify this realty action, in-whole or in-part. In the absence of timely objections, this realty action will become the final determination of the Department of the Interior.

In addition to publication in the **Federal Register**, the BLM will also publish this notice in the Montrose Daily Press newspaper, once a week, for 3 consecutive weeks.

Before including your address, phone number, email address, or other personal identifying information in your comments, the BLM will make your entire comment—including your personal identifying information—publicly available at any time. While you can ask us, in your comment, to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2.

Douglas Vilsack,

BLM Colorado State Director.

[FR Doc. 2023–17086 Filed 8–8–23; 8:45 am]

BILLING CODE 4331–16–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–442 and 731–TA–1095–1096 (Third Review)]

Lined Paper School Supplies From China and India

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the countervailing duty order on lined paper school supplies from India and the antidumping duty orders on lined paper school supplies from China and India would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on February 1, 2023 (88 FR 6787) and determined on May 8, 2023 that it would conduct expedited reviews (88 FR 37096, June 6, 2023).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 4, 2023. The views of the Commission are contained in USITC Publication 5450 (August 2023), entitled *Lined Paper School Supplies from China and India: Investigation Nos. 701–TA–442 and 731–TA–1095–1096 (Third Review).*

By order of the Commission.

Issued: August 4, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–17085 Filed 8–8–23; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committees on Appellate, Bankruptcy, and Civil Rules; Hearings of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committees on Appellate, Bankruptcy, and Civil Rules; notice of proposed amendments and open hearings.

DATES: All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on August 15, 2023, but no later than February 16, 2024.

ADDRESSES: Written comments must be submitted electronically, following the instructions provided on the website. Comments will be posted on the website and available to the public.

Public hearings either virtually or in person are scheduled on the proposed amendments as follows:

- Appellate Rules on October 18, 2023, and January 24, 2024;
- Bankruptcy Rules and Forms on January 12, 2024, and January 19, 2024; and
- Civil Rules on October 16, 2023, January 16, 2024, and February 6, 2024.

Those wishing to testify must contact the Secretary of the Committee on Rules of Practice and Procedure by email at: *RulesCommittee_Secretary@ao.uscourts.gov,* at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committees on Appellate, Bankruptcy, and Civil Rules have proposed amendments to the following rules:

- Appellate Rules 6 and 39;
- Bankruptcy Rules 3002.1 and 8006;
- Bankruptcy Official Forms 410, 410C13–M1, 410C13–M1R, 410C13–N, 410C13–NR, 410C13–M2, and 410C13–M2R; and
- Civil Rules 16, 26, and new Rule 16.1.

The text of the proposals will be posted August 15, 2023, on the Judiciary's website at: *https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.*

(Authority: 28 U.S.C. 2073.)

Dated: August 3, 2023.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2023–16976 Filed 8–8–23; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1238]

Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Chemtos, LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 10, 2023. Such persons may also file a written request for a hearing on the application on or before October 10, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 6, 2023, Chemtos, LLC., 16713 Picadilly Court, Round Rock, Texas 78664–8544, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Controlled substance	Drug code	Schedule
Amineptine	1219	I
Mesocarb	1227	I
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
Methiopropamine	1478	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB-144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB- FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate).	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I
5F-AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1H-indazole-3-carboximide)	7025	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide	7031	I
MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB; 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F-EDMB-PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F-MDMB-PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I
MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate).	7042	I
MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide).	7047	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I
5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
5F-CUMYL-PINACA, 5GT-25 (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide)	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUML-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide).	7089	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-MEAP (4-Methyl-alpha-ethylaminopentiophenone)	7245	I
N-Ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7)	7348	I
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I

Controlled substance	Drug code	Schedule
Mescaline	7381	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4′-Chloro-alpha-pyrrolidinovalerophenone	7443	I
MPHP, 4′-Methyl-alpha-pyrrolidinohexiophenone	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-Methyl-alphapyrrolidinopropiophenone (4-MePPP)	7498	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D)	7508	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E)	7509	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C-H)	7517	I
2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C-I)	7518	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C)	7519	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N)	7521	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P)	7524	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
α-PHP, alpha-Pyrrolidinohexanophenone	7544	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
Ethylone	7547	I
Eutylone	7549	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I

Controlled substance	Drug code	Schedule
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Isotonitazene	9614	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl	9817	I
4′-Methyl Acetyl Fentanyl	9819	I
Ortho-Methyl Methoxyacetyl Fentanyl	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I

Controlled substance	Drug code	Schedule
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl Fentanyl	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl	9841	I
Beta′-Phenyl fentanyl	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Crotonyl Fentanyl	9844	I
Cyclopropyl Fentanyl	9845	I
Ortho-Fluorobutyryl Fentanyl	9846	I
Cyclopentyl Fentanyl	9847	I
Ortho-Methyl Acetylfentanyl	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl Carbamate	9851	I
Ortho-Fluoracryl Fentanyl	9852	I
Ortho-Fluoroisobutyryl Fentanyl	9853	I
Para-Fluoro Furanyl Fentanyl	9854	I
2′-Fluoro ortho-fluorofentanyl	9855	I
Beta-Methyl Fentanyl	9856	I
Zipeprol	9873	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Norfentanyl	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Oliceridine	9245	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Phenazocine	9715	II
Thiafentanil	9729	II

Controlled substance	Drug code	Schedule
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to bulk manufacture the listed controlled substances for distribution to its customers. In reference to dug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17036 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1241]

Importer of Controlled Substances Application: Cambrex Charles City

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex Charles City has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 8, 2023. Such persons may also file a written request for a hearing on the application on or before September 8, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 3, 2023, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616–3466, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
4-Anilino-N-phenethyl-4-piperidine (ANPP).	8333	II
Phenylacetone	8501	II
Cocoa Leaves	9040	II
Opium Raw	9600	II
Poppy Straw Concentrate	9670	II

The company plans to import psilocybin for formulation development and clinical trial support for their customers. The remaining listed controlled substances will be imported to support the manufacture into other controlled substances which will be distributed to their customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17038 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1231]

Bulk Manufacturer of Controlled Substances Application: Cambrex High Point, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cambrex High Point, Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 10, 2023. Such persons may also file a written request for a hearing on the application on or before October 10, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public

view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on June 14, 2023, Cambrex High Point, Inc., 4180 Mendenhall Oaks Parkway, High Point, North Carolina 27265–8017, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Oxymorphone	9652	II
Noroxymorphone	9668	II

The company plans to manufacture the above listed controlled substances in bulk for use as internal intermediates and distribution to its customers. No other activities for these drug codes are authorized for this registration.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17030 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1226]

Importer of Controlled Substances Application: Catalent Pharma Solutions, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Catalent Pharma Solutions, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 8, 2023. Such persons may also file a written request for a hearing on the application on or before September 8, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 5, 22023 Catalent Pharma Solutions, LLC, 3031 Red Lion Road Philadelphia, Pennsylvania 19114, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide.	7315	I
5-Methoxy-N,N-dimethyltryptamine.	7431	I
Psilocybin	7437	I
Psilocyn	7438	I
Tapentadol	9780	II

The company plans to import the listed controlled substances as finished dosage unit products for clinical trials, research, and analytical activities. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17021 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1236]

Importer of Controlled Substances Application: Galephar Pharmaceutical Research, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Galephar Pharmaceutical Research, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 8, 2023. Such persons may also file a written request for a hearing on the application on or before September 8, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 13, 2023, Galephar Pharmaceutical Research, Inc., 100 Carr 198 Industrial Park, Juncos, Puerto Rico 00777–383 applied to be registered as an

importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Hydromorphone	9150	II
Morphine	9300	II

The company plans to import the listed controlled substances for analytical purpose only. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17035 Filed 8–8–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1240]

Importer of Controlled Substances Application: Cerilliant Corporation

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cerilliant Corporation has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 8, 2023. Such persons may also file a written request for a hearing on the application on or before September 8, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 10, 2023, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-FMC; FLEPHEDRONE; 1-(4-FLUOROPHENYL)-2-(METHYLAMINO)PROPAN-1-ONE)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Methaqualone	2565	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I

Controlled substance	Drug code	Schedule
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana	7360	I
Parahexyl	7374	I
Mescaline	7381	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
N-Benzylpiperazine	7493	I
4-MePPP (4-Methyl-alphapyrrolidinopropiophenone)	7498	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C-H 2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C-I 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C-C 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
25C-NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
25I-NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Heroin	9200	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Pholcodine	9314	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Dextromoramide	9613	I
Dipipanone	9622	I
Hydroxypethidine	9627	I
Noracymethadol	9633	I
Norlevorphanol	9634	I

Controlled substance	Drug code	Schedule
Normethadone	9635	I
Racemoramide	9645	I
Trimeperidine	9646	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
Tilidine	9750	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Thiofentanyl	9835	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Methamphetamine	1105	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Dihydrocodeine	9120	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Levomethorphan	9210	II
Levorphanol	9220	II
Meperidine	9230	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Levo-alphacetylmethadol	9648	II
Noroxymorphone	9668	II
Racemethorphan	9732	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for the manufacturing of analytical reference standards and distribution to their research and forensic customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17037 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1235]

Importer of Controlled Substances Application: ANI Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: ANI Pharmaceuticals Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before September 8, 2023. Such persons may also file a written request for a hearing on the application on or before September 8, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia

22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on June 16, 2023, ANI Pharmaceuticals Inc., 70 Lake Drive, East Windsor, New Jersey 08520, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tapentadol	9780	II

The substance Tapentadol (9780) will be used in small quantities in support of the development of a drug product for Abbreviated New Drug submission and eventual marketing. No other activity for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of Food Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Claude Redd,

Acting Deputy Assistant Administrator.

[FR Doc. 2023–17034 Filed 8–8–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until October 10, 2023.

FOR FURTHER INFORMATION CONTACT:

If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289 or *lauren.alder.reid@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: This information collection is necessary to allow a practitioner of record to notify the Board that he or she is representing a party before the Board. EOIR is updating the information regarding how to obtain automated case information. In addition, EOIR is clarifying that a practitioner of record is authorized to file a notice of entry of appearance before the Board of Immigration Appeals, as distinguished from the entry of a limited appearance.

Overview of This Information Collection

1. Type of Information Collection: Revision of a previously approved collection.

2. The Title of the Form/Collection: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: EOIR–27. The sponsoring business component: EOIR.

4. Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public: Individuals or households. The obligation to respond is mandatory per 8 CFR 1003.38(g) and 8 CFR 1003.2(g)(1).

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 42,126 respondents will complete each form within approximately 6 minutes.

6. An estimate of the total annual burden (in hours) associated with the collection: 4,213 annual burden hours.

7. An estimate of the total annual cost burden associated with the collection: $331,732.

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
EOIR–27	42,126	1/annually	42,126	6 min	4,213

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: August 4, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–17028 Filed 8–8–23; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Tribal Consultation; Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of Tribal Consultation; virtual meeting.

SUMMARY: The Department of Labor (Department) is announcing that it will conduct a virtual Tribal Consultation in order to obtain input from federally recognized Indian tribes as the Department is considering making a change to the definition of *public official* to include Tribal Officials as part of the UC confidentiality and disclosure regulations.

DATES: This Tribal Consultation meeting will take place on Monday, August 28, 2023, at 2:00 p.m. ET.

ADDRESSES: This virtual meeting will be accessible to the public as a webinar on WorkforceGPS, an online technical assistance platform sponsored by the Employment and Training Administration. To participate in a WorkforceGPS webinar, individuals must register as a member the Workforce GPS platform in advance of the webinar. To become a WorkforceGPS member, please access the registration page at *https://www.workforcegps.org/register* and enter the required information. Registration information for this Tribal Consultation can be found on *https://www.workforcegps.org/events.*

FOR FURTHER INFORMATION CONTACT: Randy Painter, Director, Division of Policy, Legislation, and Regulations, Office of Policy Development and Research, Employment and Training Administration at (202) 693–3979.

SUPPLEMENTARY INFORMATION: The purpose of this Tribal Consultation is to allow the Department to learn more about the effects, benefits, and costs that may result from changing the definition of *public official* in 20 CFR part 603. This part applies to States and State UC agencies, as defined in § 603.2(f) and (g). The Department is exploring potential rulemaking changes, to include expanding the definition of *public official* to include Tribal Officials, as well as other potential changes. The Department wants to explore the implications for federally recognized Indian tribes as the Department determines the most appropriate changes to propose. The Department has issued a Request for Information (RFI) that was published in the **Federal Register** on July 25, 2023 (88 FR 47829) as part of its pre-rulemaking activities.

The Department, through this initial Tribal Consultation, is initiating the Tribal Consultation process by announcing the publication of an RFI regarding the Federal UC law concerning confidentiality and disclosure of UC information. In addition, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249), and the Department's Tribal Consultation Policy (77 FR 71833) require the Department to solicit input from Tribal officials in the development of Federal policies that have Tribal implications. Accordingly, this Tribal Consultation seeks to provide Tribes with an opportunity to provide input as the Department explores the effects, benefits, and costs of a potential change and/or modification to the definition of a *public official* in § 603.2(d), which could have implications for all federally recognized Indian tribes.

Brent Parton,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–16997 Filed 8–8–23; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures to Workers' Under the Migrant and Seasonal Agricultural Worker Protection Act

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Wage Hour Division (WHD)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 8, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Agricultural employers, associations and farm labor contractors use this information collection to disclose employment terms and conditions, wage statements, and housing terms and conditions to migrant/seasonal agricultural workers, to comply with the Migrant Seasonal Agricultural Worker Protection Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 10, 2023 (88 FR 15100).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs

receive a month-to-month extension while they undergo review.

Agency: DOL–WHD.

Title of Collection: Disclosures to Workers' Under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1235–0002.

Affected Public: Private Sector—Businesses or other for-profits; Farms.

Total Estimated Number of Respondents: 94,729.

Total Estimated Number of Responses: 72,606,389.

Total Estimated Annual Time Burden: 1,228,880 hours.

Total Estimated Annual Other Costs Burden: $2,904,255.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–16999 Filed 8–8–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0022]

Nucor Steel Connecticut Incorporated; Revocation of Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the revocation of the April 8, 2016, permanent variance granted to Nucor Steel Connecticut Incorporated (NSCI), from certain provisions of OSHA's standard that regulates the control of hazardous energy (lockout/tagout).

DATES: The revocation of the permanent variance specified by this notice becomes effective on August 9, 2023.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Revocation of Permanent Variance

On April 8, 2016, OSHA granted NSCI a Permanent Variance (81 FR 20680), which permitted NSCI to comply with alternative conditions instead of complying with certain requirements of OSHA's standard for control of hazardous energy, 29 CFR 1910.147. NSCI notified OSHA by letter dated May 12, 2023 (OSHA–2014–0022–014), that they are no longer performing the work activity described in the permanent variance, and for this reason, are requesting revocation of the permanent variance. NSCI's letter states that no employee at NSCI is performing the activity at issue in the variance and NSCI does not anticipate any employee ever performing this task again. NSCI has certified that they informed affected employees of the requested revocation of the permanent variance by posting a copy of the request letter in the location where notices to employees are normally posted.

Because NSCI has ceased performing the work activity addressed in the permanent variance, OSHA hereby revokes the permanent variance granted to NSCI on April 8, 2016 (86 FR 5253). From the date of publication of this notice, NSCI may no longer utilize the alternative control methods described in the permanent variance and need not comply with any alternative conditions described therein. NSCI must instead comply with all provisions of the control of hazardous energy (lockout/tagout) standard, 29 CFR 1910.147, wherever applicable.

II. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to section 29 U.S.C. 655(6)(d), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1905.13.

Signed at Washington, DC, on August 3, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–17081 Filed 8–8–23; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Merit Systems Protection Board.

ACTION: 30-Day notice and request for comments.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB or Board) is seeking approval of a new Information Collection Request (ICR) in accordance with the Paperwork Reduction Act (PRA). The ICR will be submitted to the Office of Management and Budget (OMB) for review and clearance. This information collection is part of MSPB's statutory mission to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. The information collection instruments consist of the Initial Appeal Form (Form 185) in different collection mediums: paper, PDF, and through MSPB's electronic filing system, e-Appeal. Through this collection and approval process, MSPB is complying with normal clearance procedures. The purpose of this notice is to allow 30 days for public comment after submission of the collection to OMB.

DATES: Consideration will be given to all comments received by September 8, 2023.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to the Desk Officer for the Merit Systems Protection Board and sent via electronic mail to *oira.submission@omb.eop.gov.*

All comments must reference OMB Control No. 3124–0NEW, E-Appeal/U.S. Merit Systems Protection Board. All submissions will be posted, without change, to MSPB's website (*www.mspb.gov*) and will include any personal information you provide. Therefore, submitting this information makes it public.

FOR FURTHER INFORMATION CONTACT: D. Fon Muttamara, Chief Privacy Officer, at *privacy@mspb.gov;* (202) 653–7200. You may submit written questions to the Office of the Clerk of the Board by any of the following methods: by email to *privacy@mspb.gov* or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Please reference OMB Control No. 3124–0NEW, E-Appeal/U.S. Merit Systems Protection

Board Appeal Form, with your questions.

SUPPLEMENTARY INFORMATION: MSPB is authorized to adjudicate appeals of certain Federal agency personnel and retirement actions and certain alleged violations of law. *See* 5 U.S.C. 7701(a); 5 U.S.C. 1204. The Board has published its regulations for processing appeals at 5 CFR parts 1201, 1208, and 1209, which include the information required to be submitted to initiate a new appeal. Individuals must provide this information in writing and are not required to use a particular format. Included in this process are collections related to the administration of the appeals process, including point of contact information for appellant attorney representatives who will use the e-Appeal system and a technical support request form for e-Appeal users.

The purpose of collecting the information is to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations. While no specific format is required, MSPB provides an appeal form, MSPB Form 185 (Initial Appeal Form), to assist individuals in the efficient and timely submission of the information.

As set forth in statute and regulation, MSPB is a quasi-judicial agency of limited jurisdiction. The Board's regulations require that appellants provide certain information when filing an appeal so that the Board can determine whether it has jurisdiction over the appeal and whether the appeal has been filed within the applicable time limit. Although an appeal may be filed in any format, including letter form, the Initial Appeal Form is designed to assist individuals in submitting the required information, and to ensure that individuals file appeals that meet the jurisdictional requirements of MSPB. The information required to file an appeal is set forth at 5 CFR 1201.24, 1208.13, 1208.23, and 1209.6. Once obtained, this information allows MSPB to docket the appeal for assignment to an administrative judge or administrative law judge to adjudicate the appeal. If this information is not collected, the process of determining whether MSPB has jurisdiction over any given appeal and any subsequent adjudication will be less efficient and more time consuming.

While this is a new information collection, MSPB has a currently approved information collection, OMB No. 3124–0009, which collects the same information. MSPB has used the information collected through OMB No. 3124–0009 to determine whether MSPB has jurisdiction over any given appeal, and to docket those appeals for adjudication. MSPB is submitting this information collection as a new collection—instead of a renewal of the existing collection—to make an administrative change to the type of collection in accordance with the PRA. This change is unrelated to the overall purpose and use of the information collection. Following OMB approval of this new collection, the existing collection, OMB No. 3124–0009, will be discontinued.

Appeal Form 185

The Initial Appeal Form (Form 185) for this new collection is substantially similar to the currently-approved Initial Appeal Form with the following updates. The instructions at the beginning of the PDF version of the Initial Appeal Form have been updated to address changes in laws or regulations. In addition, the Privacy Act Statement and Public Reporting Burden notice have been updated and moved to the second page of the Initial Appeal Form. The list of agency personnel actions in Part 2 of the Initial Appeal Form has been updated to address changes in laws. Other non-substantive formatting issues have been made throughout the Initial Appeal Form.

Law Firm Point of Contact Collection Form

The law firm point of contact collection form is a new instrument that will collect information to support functionality in MSPB's new e-Appeal system used by attorneys who are the designated representatives of individuals filing an appeal with MSPB.

e-Appeal Technical Support Collection Form

The e-Appeal technical support collection form will collect information from individuals who experience technical issues with MSPB's new e-Appeal system.

Title: Information Collection Submission for ''E-Appeal/U.S. Merit Systems Protection Board Appeal Form.''

OMB Number: 3124–0NEW.

Type of Information Collection: This will be a new information collection.

ICR Status: MSPB intends to request approval of a new information collection from OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

Abstract of Proposed Collection: This information collection is necessary to ensure that individuals submit the required information to file an appeal, as set forth in MSPB's regulations, including information about the appellant and the personnel action or decision that is being appealed.

Affected Public: Individuals and Households.

Estimated Total Number of Respondents: 5,000.

Estimated Frequency of Responses: Once per year.

Estimated Total Average Number of Responses for Each Respondent: 1.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Cost: $294,075.

Comments: Comments should be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to: (a) evaluate whether the collection of information is necessary for the proper performance of the functions of MSPB, including whether the information shall have practical utility; (b) evaluate the accuracy of MSPB's estimate of the burden of the collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; (d) minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate the estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Jennifer Everling,

Acting Clerk of the Board.

[FR Doc. 2023–17082 Filed 8–8–23; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Renewal of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, The National Credit Union Administration (NCUA) is submitting the following extensions of currently approved collections to the Office of Management and Budget (OMB) for renewal.

DATES: Written comments should be received on or before September 8, 2023 to be assured consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mahala Vixamar at (703) 718–1155, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0134.

Title: Truth in Savings (TISA), 12 CFR part 707.

Type of Review: Extension of a previously approved collection.

Abstract: NCUA's TISA regulation requires credit unions to provide specific disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member's or potential member's request. Credit unions that provide periodic statements are required to include information about fees imposed, the annual percentage yield earned during those statement periods, and other account terms. The requirements for creating and disseminating account disclosures, change in terms notices, term share renewal notices, statement disclosures, and advertising disclosures are necessary to implement TISA's purpose of providing the public with information that will permit informed comparisons of accounts at depository institutions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 336,919.

OMB Number: 3133–0166.

Type of Review: Extension of a previously approved collection.

Title: Home Mortgage Disclosure Act (HMDA), 12 CFR 1003 (Regulation C).

Abstract: The collection of this data is required under the Home Mortgage Disclosure Act. The information collection is intended to provide the public with loan data that can be used to help determine whether financial institutions are serving the housing needs of their communities; to assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 145,886.

OMB Number: 3133–0167.

Type of Review: Extension of a previously approved collection.

Title: Foreign Branching, 12 CFR 741.11.

Abstract: This collection covers the additional information a credit union must provide to establish a branch office outside the United States (except for U.S. embassies and military installations). The application must include (1) a business plan, (2) written approval by the state supervisory agency if the applicant is a state-chartered credit union, and (3) documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement actions, including conservatorship and liquidation actions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 33.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2023–17047 Filed 8–8–23; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 8, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–003

1. *Applicant:* Chris Linder, Potomac MD, 20854

Activity for Which Permit Is Requested

Waste Management. The applicant seeks and Antarctic Conservation Act permit to fly a small battery- operated remotely piloted aircrafts (RPAS) to take scenic photos and film of the Antarctic. The RPAS would not be flown over concentrations of birds or mammals or over Antarctic Specially Protected Areas. The RPAS would only be flown by the applicant who has extensive piloting experience in fair weather conditions. Several measures would be taken to prevent against loss of the RPAS. The applicant is seeking a Waste Permit to cover any accidental releases that may result from flying a UAV.

Location

Antarctic Peninsula Region.

Dates of Permitted Activities

January 14, 2024–January 30, 2024.

Kimiko S. Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–17089 Filed 8–8–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. These meetings will primarily take place at NSF's headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF website: *https://new.nsf.gov/events/proposal-review-panels.* This information may also be requested by telephoning, 703/292–8687.

Dated: August 4, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–17018 Filed 8–8–23; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 8, 2023. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2024–004

1. Applicant: Dr. Paul Ponganis, Scripps Institute of Oceanography, UCSD, La Jolla, CA 92093–0204

Activity for Which Permit Is Requested: Take, Harmful Interference, Enter Antarctic Specially Protected Area. The applicant seeks an Antarctic Conservation Act permit authorizing take and harmful interference associated with ongoing research examining the oxygen transport systems of emperor penguins (*Aptenodytes forsteri)* in Antarctica. The applicant proposes capturing up to 38 non-breeding or sub-adult penguins from the McMurdo Sound region or, if necessary, in Cape Washington (ASPA 173). The applicant will access ASPA 173 by fixed-wing aircraft in accordance with the ASPA management plan. Throughout the course of the physiology study, penguins will be kept captive on the sea ice, but will be allowed to dive and forage at will. Research activities involve the administration of general anesthesia and the attachment of instrumentation to measure oxygen levels, heart rate/stroke rate, and dive depth/activity. In some penguins, blood samples may be collected during dives. At the end of each dive study, equipment will be removed, and the penguins will be released at the McMurdo Sea ice edge, where they will be able to rejoin nearby colonies.

Location: McMurdo Sound, ASPA 173: Cape Washington and Silverfish Bay

Dates of Permitted Activities: October 1, 2023–December 20, 2023.

Permit Application: 2024–005

2. Applicant: Rachael Herman, Stony Brook University, Stony Brook, NY 11794–5215

Activity for Which Permit Is Requested: Take, Harmful Interference, Import into USA. The applicant seeks an Antarctic Conservation Act permit authorizing take and harmful interference and import of samples to the USA associated with research examining adaptation of Gentoo penguins (*Pygoscelis papua*) in Antarctica. The applicant proposes collecting blood samples from up to 20

Gentoo penguins, feather samples from up to 5 Gentoo penguins, and blood samples from up to 10 Adelie penguins (*P. adeliae*) from the Antarctic Peninsula region. The applicant also proposes to salvage a maximum of 10 failed gentoo penguin eggs, and up to 2 recently deceased Gentoo penguin carcasses.

Location: Antarctic Peninsula Region.

Dates of Permitted Activities: November 1, 2023–March 31, 2024.

Kimiko Bowens-Knox,

Program Analyst, Office of Polar Programs.

[FR Doc. 2023–17080 Filed 8–8–23; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440; NRC–2023–0136]

Energy Harbor Corp.; Energy Harbor Generation LLC.; Energy Harbor Nuclear Corp.; Perry Nuclear Power Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received an application for the renewal of Facility Operating License No. NPF–58, which authorizes Energy Harbor Nuclear Corp. (Energy Harbor or the applicant), doing business as Energy Harbor Nuclear Generation LLC., to operate Perry Nuclear Power Plant (PNPP), Unit 1. The renewed license would authorize the applicant to operate PNPP for an additional 20 years beyond the period specified in the current license. The current operating license for PNPP expires November 7, 2026.

DATES: The license renewal application referenced in this document was available as of July 12, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0136 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0136. 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 individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Perry Nuclear Power Plant, Unit 1, Docket No. 50–440, License Number NPF–58, License Renewal Application for the Perry Nuclear Power Plant, is available in ADAMS under Accession No. ML23184A081.
- *Public Library:* A copy of the license renewal application for PNPP can be accessed at the following public library: Perry Public Library, 3753 Main St., Perry, OH 44081 and at the Madison Public Library, 6111 Middle Ridge Rd., Madison, OH 44057.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. 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.

FOR FURTHER INFORMATION CONTACT: Vaughn Thomas, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5897; email: *Vaughn.Thomas@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has received an application from PNPP, dated July 3, 2023, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and part 54 of title 10 of the *Code of Federal Regulations,* ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' to renew the operating license for PNPP. Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for PNPP expires November 7, 2026. The PNPP is a Boiling Water Reactor located in Perry, Ohio. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Dated: August 3, 2023.

For the Nuclear Regulatory Commission.

Lauren K. Gibson,

Chief, License Renewal Projects Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2023–17006 Filed 8–8–23; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[Docket ID: OPM–2023–0019]

Submission for Review: 3206–0275, Application for Court-Ordered Benefits for Former Spouses, Standard Form 3119

AGENCY: Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM), Retirement Services, offers the general public and other Federal agencies the opportunity to comment on the review of an expiring information collection request (ICR) with change, titled ''Application for Court-Ordered Benefits for Former Spouses, Standard Form 3119.''

DATES: Comments are encouraged and will be accepted until October 10, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by the following method:

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

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

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is

soliciting comments for this collection (OMB No. 3206–0275). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Standard Form 3119 is used to collect the necessary information on the inaugural attempt, which eliminates the need to re-contact the customer to gather additional required information, ensure that OPM can process the apportionment correctly, and eliminate any delay in payment to the customers.

Analysis

Agency: Office of Personnel Management, Retirement Services.

Title: Application for Court-Ordered Benefits for Former Spouses.

OMB Number: 3206–0275.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 2,500.

U.S. Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2023–16996 Filed 8–8–23; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–427, OMB Control No. 3235–0476]

Proposed Collection; Comment Request; Extension: Rule 10b–17

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 10b–17 (17 CFR 240.10b–17), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 10b–17 requires any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to give notice of the following specific distributions relating to such class of securities: (1) a dividend or other distribution in cash or in kind other than interest payments on debt securities; (2) a stock split or reverse stock split; or (3) a rights or other subscription offering.

There are approximately 7,588 respondents per year. These respondents make approximately 29,952 responses per year. Each response takes approximately 10 minutes to complete. Thus, the total hour burden per year is approximately 4,992 hours. The total internal labor cost of compliance for respondents associated with providing notice under Rule 10b–17 is approximately $431,258.88.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 10, 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: August 4, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–17033 Filed 8–8–23; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98048; File No. SR–NYSE–2023–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 0

August 3, 2023.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on July 31, 2023, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 0 (Regulation of the Exchange and its Member Organizations) to adopt new rule text based on FINRA Rule 0140 (Applicability). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 0 (Regulation of the Exchange and its Member Organizations) to adopt new rule text based on FINRA Rule 0140 (Applicability), Nasdaq Stock Market LLC (''Nasdaq'') General 2 (Organization and Administration), Section 6(a), and Nasdaq BX, Inc. (''Nasdaq BX'') General 2 (Organization and Administration), Section 6(a). Specifically, the Exchange proposes a new subsection (b) in conformity with FINRA Rule 0140(a) (Applicability), Nasdaq General 2, Section 6(a), and Nasdaq BX General 2, Section 6(a).[4] FINRA Rule 0140(a) provides that FINRA's rules apply to all members and persons associated with a member and that persons associated with a member shall have the same duties and obligations as a member under FINRA's rules. The Nasdaq Exchanges' Rules mirror FINRA Rule 0140(a) and similarly provide that Nasdaq and Nasdaq BX rules, as applicable, apply to all members and persons associated with a member and that persons associated with a member shall have the same duties and obligations as a member under such rules. Proposed Rule 0(b) is substantively the same as FINRA Rule 0140(a) except for the inclusion of ''member organization'' to reflect the Exchange's membership.[5]

The Exchange believes that the proposed rule change would improve the clarity of the Exchange's rules by reflecting that the Exchange's rules apply to persons associated with a member organization and that such persons have the same duties and obligations as their Exchange member organization employer. A member organization's compliance with Exchange rules may depend on the actions of persons associated with the member organization. Accordingly, the Exchange believes that the proposed rule, which mirrors the rules of FINRA and the Nasdaq Exchanges, would promote consistency in the Exchange's rules by expressly providing that the Exchange may enforce its rules with respect to persons associated with a member organization, including by taking appropriate disciplinary action against such persons for their or their member firm's violation of NYSE rules. The Exchange notes that the proposed rule does not contemplate disciplinary action against individuals not involved in violations of Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would add clarity to the Exchange's rules. As previously noted, the proposed rule text conforms to current FINRA Rule 0140(a) and the Nasdaq Exchanges' Rules without substantive change. The Exchange believes that adopting separate rule text expressly providing that all Exchange rules apply to persons associated with a member organization and that such persons have the same duties and obligations as their Exchange member organization employer would benefit market participants by providing increased clarity regarding the Exchange's ability to enforce compliance with its rules by persons associated with a member organization, thereby reducing any potential confusion with respect to the Exchange's interpretation or application of its rules. Adding these clarifying statements to the Exchange's rules would also further the goals of transparency and consistency across the Exchange's rules and would provide greater harmonization between Exchange rules and FINRA and Nasdaq Exchanges' rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. For the same reasons, the addition of the proposed rule text would protect investors and the public interest and would therefore be consistent with section 6(b)(5)[8] of the Act. Thus, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed change would be consistent with section 6(b)(1)[9] of the Act because it would provide increased clarity regarding the Exchange's ability to enforce compliance with its rules by persons associated with a member organization, thereby reducing any potential confusion with respect to the Exchange's interpretation or application of its rules. As such, the proposed change would enable the Exchange to be so organized as to have the capacity to be able to enforce compliance by its exchange members and persons associated with its exchange members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, consistent with section 6(b)(1)[10] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with adding clarity and transparency to the Exchange's rules and provide greater harmonization with approved FINRA and Nasdaq Exchanges' rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

[4] For purposes of this filing, Nasdaq and Nasdaq BX are referred to collectively as the ''Nasdaq Exchanges.'' Nasdaq General 2, Section 6(a) and Nasdaq BX General 2, Section 6(a) are referred to collectively as the ''Nasdaq Exchanges' Rules.''

[5] Under the Exchange's rules, the equivalent to the term ''member'' used in FINRA Rule 0140(a) is ''member organization.'' *See* Rules 2(a) & (b).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(1).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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 under section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2023–25 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–NYSE–2023–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2023–25 and should be submitted on or before August 30, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16987 Filed 8–8–23; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–495, OMB Control No. 3235–0553]

Proposed Collection; Comment Request; Extension: Rule 19b–7 and Form 19b–7

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19b–7 (17 CFR 240.19b–7) and Form 19b–7, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The Exchange Act provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or ''SROs''), have primary responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight; the Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 (''CFMA''). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, ''security futures products''). The CFMA removed this restriction and provided that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission (''CFTC'').

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be notice-registered national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be limited-purpose national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.[1] Rule 19b–7 and Form 19b–7 implemented this procedure. Effective April 28, 2008, the SEC amended Rule 19b–7 and Form 19b–7 to require that Form 19b–7 be submitted electronically.[2]

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Exchange Act, whether the proposed rule change is consistent with the Exchange Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in effect or be abrogated.

[1] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

[2] *See* Securities Exchange Act Release No. 57526 (March 19, 2008), 73 FR 16179 (March 27, 2008).

The respondents to the collection of information are SROs. [3] Two respondents file an average total of approximately 2 responses per year. Each response takes approximately 12.5 hours to complete and each amendment takes approximately 3 hours to complete, which corresponds to an estimated annual response burden of 25 hours ((2 rule change proposals × 12.5 hours) plus (0 amendments [4] × 3 hours)). The total industry burden for filings is 50 hours.[5] The average internal cost of compliance per response to file a Form 19b–7 is $5,555.[6] The total internal cost of compliance for a respondent is $11,110 per year and the total industry internal cost of compliance is $22,220 per year.[7]

In addition to filing its proposed rule changes and any amendments thereto with the Commission, a respondent is also required to post each of its proposals and any amendments thereto, on its website. This process takes approximately 0.5 hours to complete per proposal and 0.5 hours per amendment. Thus, for approximately 2 responses and no amendments,[8] the total annual reporting burden on a respondent to post these on its website is 1 hour and the total industry burden per year is 2 hours.[9] Further, a respondent is required to update its rulebook, which it maintains on its website, to reflect the changes that it makes in each proposal and any amendment thereto. Thus, for all filings that were not withdrawn by a respondent (there were 0 withdrawn filings in calendar years 2019–2021) or disapproved by the Commission (there were 0 disapproved filings in calendar years 2019–2021), a respondent was required to update its online rulebook to reflect the effectiveness of 2 filings on average, each of which takes approximately 4 hours to complete. Thus, the total annual reporting burden for updating an online rulebook is 8 hours and the total industry burden is 16 hours.[10]

The total industry burden per year for rule changes, updating and posting rule changes and updating the online rulebook is estimated to be 68 burden hours.[11] As described above, the total internal cost of compliance for a respondent is estimated to be $11,110 per year and the total industry internal cost of compliance is estimated to be $22,220 per year.[12] The net change in estimated total aggregate burden hours decreased from 102 to 68 (reduction of 34 burden hours). Similarly, with respect to the internal dollar cost burden of respondents, the total industry internal dollar costs has decreased overall due to one less respondent. The total industry internal cost of compliance decreased from $30, 300 to $22,220.

Compliance with Rule 19b–7 is mandatory. Information received in response to Rule 19b–7 is not kept confidential; the information collected is public information.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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: August 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16991 Filed 8–8–23; 8:45 am]

BILLING CODE 8011–01–P

[3] There are currently two Security Futures Product Exchanges and one Limited Purpose National Securities Association, the National Futures Association. One of the Security Futures Product Exchanges, however, is conditionally exempted from filing proposed rule changes using Form 19b–7. Therefore, there are currently two respondents to Form 19b–7.

[4] SEC staff notes that even though no amendments were received in the previous three years and that staff does not anticipate the receipt of any amendments, calculation of amendments is a separate step in the calculation of the PRA burden and it is possible that amendments are filed in the future. Therefore, instead of removing the calculation altogether, staff has shown the calculation as anticipating zero amendments.

[5] This estimate is based on 2 respondents × 25 hours per year per respondent which equals 50 burden hours for the entire industry.

[6] This estimate is based on 11.5 legal hours multiplied by an average hourly rate of $462 plus 1 hour of paralegal work multiplied by an average hourly rate of $242. The wage data is for an attorney and paralegal respectively, from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for inflation and an 1,800-hour work-year and then multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[7] This estimate is based on 2 responses × $5,555 per response equals $11,110 per respondent per year and 2 respondents × $11,110 equals $22,220 or the total industry cost per year.

[8] *See supra* note 4.

[9] This estimate is based on 2 proposals per year × 0.5 hours per filing plus 0 amendments × 0.5 hours.

[10] This estimate is based on 2 proposals per year × 4 hours which equals 8 hours. As noted, there were 0 withdrawn filings and 0 disapproved filings. There are 2 respondents × 8 hours per year equals a total industry burden of 16 hours.

[11] This estimate is the sum of the total industry (2 respondents) burden hours for rule filings (50 hours), updating and posting rule changes (2 hours) and updating rules (16 hours).

[12] This estimate is based on 2 responses × $5,555 per response equals $11,110 per respondent per year and 2 respondents × $11,110 equals $22,220 or the total industry cost per year.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98051; File No. SR–EMERALD–2023–13]

Self-Regulatory Organizations; MIAX Emerald, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

August 3, 2023.

I. Introduction

On June 7, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–EMERALD–2023–13) to increase fees for the MIAX Emerald Top of Market (''ToM'') market data product and establish fees for the MIAX Emerald Complex Top of Market (''cToM'') market data product. The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 26, 2023.[4] Pursuant to section 19(b)(3)(C) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 97767 (June 20, 2023), 88 FR 41442 (''Notice'').

the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposed Rule Change

The Exchange proposes to increase fees for the ToM market data product and establish fees for the cToM market data product.[6] According to the Exchange, the ToM feed provides subscribers with top of book quotations based on options orders and quotes entered into the System[7] and resting on the Exchange's Simple Order Book[8] as well as administrative messages.[9] The cToM feed provides subscribers with the same information as TOM as it relates to the Strategy Book[10] (*i.e.,* best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange), plus additional information specific to complex orders (*i.e.,* identification of the complex strategies currently trading on the Exchange, complex strategy last sale information, and the status of securities underlying the complex strategy).[11]

The Exchange proposes to increase the fee for Internal Distributors[12] from $1,250 per month to $2,000 per month and External Distributors[13] from $1,750 per month to $3,000 per month for the ToM data feed.[14] The Exchange also proposes to assess a fee on Internal Distributors of $2,000 per month and External Distributors of $3,000 per month for the cToM feed.[15] The Exchange will assess the increased ToM and new cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use ToM or cToM, and will reduce such fees for new Distributors for the first month during which they subscribe to ToM or cToM based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use ToM or cToM.[16]

III. Suspension of the Proposed Rule Changes

Pursuant to section 19(b)(3)(C) of the Act,[17] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to section 19(b)(1) of the Act,[18] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') 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. The Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

In support of the proposal, the Exchange states its belief that the proposed fees overall are fair and reasonable as a form of ''cost recovery plus the possibility of a reasonable return'' for the Exchange's aggregate costs of offering the ToM and cToM data feeds.[19] Specifically, the Exchange states the fees are based on a ''cost-plus model'' used to determine a reasonable fee structure that is informed by the Exchange's understanding of different use of products by different types of participants.[20] According to the Exchange, employing a methodology that is the ''result of an extensive review and analysis,'' it estimates the total projected annual cost of providing the ToM and cToM data feeds to be $665,296.[21] To arrive at these figures, the Exchange states that it undertook a thorough internal analysis of nearly every expense in the Exchange's general expense ledger to determine whether each such expense related to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense supported the provision of ToM and cToM data feeds.[22] The Exchange states that it determined the total cost for the Exchange and its affiliated markets for each cost driver[23] through a company-wide this process that included discussions with senior management, Exchange department heads, and the Finance Team.[24] The Exchange further

[5] 15 U.S.C. 78s(b)(3)(C).

[6] The Exchange initially filed the proposed fee change on December 28, 2022, with an effective date of January 1, 2023. *See* Securities Exchange Act Release No. 96625 (January 10, 2023), 88 FR 2688 (January 17, 2023) (SR–EMERALD–2022–37). That filing was withdrawn by the Exchange and the Exchange filed new proposed fee changes with additional justification (SR–EMERALD–2023–04) on February 23, 2023. *See* Securities Exchange Act Release No. 97078 (March 8, 2023), 88 FR 15813 (March 14, 2023). The Exchange subsequently withdrew that filing and replaced it with SR–EMERALD–2023–10 on April 11, 2023. *See* Securities Exchange Act Release No. 97326 (April 19, 2023), 88 FR 25043 (April 25, 2023). The Exchange subsequently withdrew that filing and replaced it with the instant filing to provide additional information and a revised justification for the proposal, which is discussed herein. *See* Notice, *supra* note 4, at 41442.

[7] The term ''System'' means the automated trading system used by the Exchange for the trading of Securities. *See* Exchange Rule 100.

[8] The term ''Simple Order Book'' means ''the Exchange's regular electronic book of orders and quotes.'' *See* Exchange Rule 518(a)(15).

[9] *See* Notice, *supra* note 4, at 41443.

[10] The ''Strategy Book'' is each Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[11] *See* Notice, *supra* note 4, at 41443. The Exchange states that cToM is a distinct market data product from ToM. The Exchange also states that ToM subscribers are not required to subscribe to cToM, and that cToM subscribers are not required to subscribe to ToM. *See id.* at 41443–44.

[12] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). *See* Fee Schedule, Section 6(a). All members or non-members that determine to receive any market data feed from the Exchange, or its affiliates, must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (''Exchange Data Agreement''). *See* Notice, *supra* note 4, at 41451. Pursuant to the Exchange Data Agreement, ''Internal Distributors'' are restricted to the ''internal use'' of any market data they receive, meaning they may only distribute the Exchange's market data to their officers and employees and their affiliates. *See id.*

[13] ''External Distributors'' may distribute the Exchange's market data to persons who are not their officers, employees, or affiliates, and may charge their own fees for the distribution of such market data. *See id.*

[14] *See* Notice, *supra* note 4, at 41443.

[15] *See id.* at 41444.

[16] New cToM Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM, divided by the total number of trading days in the affected calendar month. *See id.*

[17] 15 U.S.C. 78s(b)(3)(C).

[18] 15 U.S.C. 78s(b)(1).

[19] *See id.* 41450.

[20] *See id.* at 41450. In addition, the Exchange states that the proposed monthly cToM fees for Internal and External Distributors are identical to the fees that the Exchange proposes to charge for ToM. *See id.* at 41444. The Exchange also states that cToM was provided free of charge for the past four years, since the cToM market data product was established on the Exchange, the Exchange absorbed all costs associated with compiling and disseminating cToM during that time, and the Exchange now proposes to establish fees for cToM to recoup its ongoing costs going forward. *See id.* at 41443.

[21] *See id.* at 41446. The Exchange states that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. *See id.* at 41449. The Exchange has calculated the annual cost for producing ToM to subscribers to be $317,753, and $347,543 for cToM. *See id.* at 41443.

[22] *See id.* at 41446.

[23] The Exchange defines ''cost drivers'' within the filing as the costs necessary to deliver each of the core services, *see infra* note 25, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses. *See Notice supra* note 4, at 41445.

[24] *See id.* at 41445. The Exchange states that because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange's parent company determines the actual cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers. *See id.* According to the Exchange, its allocation

states that it determined what portion of the cost allocated to the Exchange pursuant to this methodology is to be allocated to each core service, including the appropriate allocation to market data.[25] The Exchange states that through this allocation methodology, the Exchange ''applied an estimated allocation of each cost driver to each core service'' and ''[e]ach of the [resulting] cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocation to the Exchange pursuant to the initial allocation.'' [26]

The Exchange states that the $665,296 aggregate annual costs for providing the ToM and cToM data feeds is the sum of to the following individual line-item costs: (1) Human Resources at $354,553; (2) Network Infrastructure (fiber connectivity) at $9,428; (3) Data Center at $20,630; (4) Hardware and Software Maintenance and Licenses at $22,202; (5) Depreciation at $21,167; and (6) Allocated Shared Expenses at $237,316.[27] The Exchange represents that it estimates that the proposed fees will result in an annual revenue of approximately $804,000, which is a potential profit margin of 17% over the cost of providing ToM and cToM market data feeds.[28]

The Exchange states its belief that a 17% rate of return is reasonable because it allows the Exchange to ''recoup all of its expenses for providing the ToM and cToM data products'' and that any additional revenue would represent no more than what the Exchange believes to be a reasonable rate of return.[29] In addition, the Exchange states its belief that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products.[30]

In further support of the proposal, the Exchange states its belief that the fees are reasonable, fair, and equitable, and not unfairly discriminatory, because they are designed to align fees with services provided, are allocated fairly and equitably among the various categories of users of the feeds with any differences among categories of users being justified and appropriate, and will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds.[31] Moreover, the Exchange asserts that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[32]

Finally, the Exchange asserts that the proposed fees would not cause any unnecessary or inappropriate burden on inter-market competition because other exchanges already have similar market data fees and they are free to adopt comparable fee structures subject to the Commission's rule filing process.[33] Furthermore, the Exchange asserts that the allowing the Exchange, or any new market entrant, to waive fees for a period of time to allow it to become established, such as the Exchange did with cToM, will encourage market entry and thus ultimately promote competition.[34] The Exchange also asserts that the proposed rule change would not cause any unnecessary or inappropriate burden on intra-market competition because the proposed fees are associated with the usage of the data feed by each market participant based on whether the market participant internally and externally distributes the Exchange data.[35]

To date, the Commission has not received any comment letters on the revised justifications for the increase in ToM market data fees or the establishment of the cToM market data fees.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[36] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [37]

Section 6 of the Act, including sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [38] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [39] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[40]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to increase fees for the ToM market data feeds and establish fees for the cToM market data feeds are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[41]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[42]

methodology ensures that no portion of any cost would be allocated twice or double-counted between the Exchange and its affiliated markets. *See id.*

[25] *See id.* at 41446. The Exchange describes ''core services'' as services provided by the Exchange, including transactions, market data, membership services, physical connectivity, and ports (which provides order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). *See id.*

[26] *Id.*

[27] *See id.* at 41446–47.

[28] *See id.* at 41446, 41448.

[29] *Id.* at 41450. The Exchange also states that an approximately 17% mark-up is fair and reasonable after taking into account the costs related to creating, generating and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures. *Id.* at 41448.

[30] *Id.* at 41450.

[31] *See id.*

[32] *See id.* at 41451. In addition, the Exchange argues that it utilizes more resources to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of the Exchange's staff. *See id.*

[33] *See id.* at 41452.

[34] *See id.*

[35] *See id.*

[36] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[37] *See id.*

[38] 15 U.S.C. 78f(b)(4).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(8).

[41] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[42] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on

Continued

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to sections 19(b)(3)(C)[43] and 19(b)(2)(B)of the Act[44] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[45] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities'';[46]
- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers'';[47] and
- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].''[48]

As discussed in section III above, the Exchange made various arguments in support of their proposal. The Commission believes that there are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.''[49] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[50] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[51]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[52]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by August 30, 2023. Rebuttal comments should be submitted by September 13, 2023. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[53]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–EMERALD–2023–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–EMERALD–2023–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or

efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[44] 15 U.S.C. 78s(b)(2)(B).

[45] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] 17 CFR 201.700(b)(3).

[50] *See id.*

[51] *See id.*

[52] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

[53] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–EMERALD–2023–13 and should be submitted on or before August 30, 2023. Rebuttal comments should be submitted by September 13, 2023.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act,[54] that File No. SR–EMERALD–2023–13, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16988 Filed 8–8–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98050; File No. SR–MIAX–2023–23]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

August 3, 2023.

I. Introduction

On June 7, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–MIAX–2023–23) to increase fees for the MIAX Top of Market (''ToM'') market data product and establish fees for the MIAX Complex Top of Market (''cToM'') market data product. The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 26, 2023.[4] Pursuant to section 19(b)(3)(C) of the Act,[5] the Commission is hereby: (1) temporarily suspending the proposed rule change; and (2) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

II. Background and Description of the Proposed Rule Change

The Exchange proposes to increase fees for the ToM market data product and establish fees for the cToM market data product.[6] According to the Exchange, the ToM feed provides subscribers with top of book quotations based on options orders and quotes entered into the System[7] and resting on the Exchange's Simple Order Book[8] as well as administrative messages.[9] The cToM feed provides subscribers with the same information as TOM as it relates to the Strategy Book[10] (*i.e.,* best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange), plus additional information specific to complex orders (*i.e.,* identification of the complex strategies currently trading on the Exchange, complex strategy last sale information, and the status of securities underlying the complex strategy).[11]

The Exchange proposes to increase the fee for Internal Distributors[12] from $1,250 per month to $2,000 per month and External Distributors[13] from $1,750 per month to $3,000 per month for the ToM data feed.[14] The Exchange also proposes to assess a fee on Internal Distributors of $2,000 per month and External Distributors of $3,000 per month for the cToM feed.[15] The Exchange will assess the increased ToM and new cToM fees on Internal and External Distributors in each month the Distributor is credentialed to use ToM or cToM, and will reduce such fees for new Distributors for the first month during which they subscribe to ToM or cToM based on the number of trading days that have been held during the month prior to the date on which that subscriber has been credentialed to use ToM or cToM.[16]

III. Suspension of the Proposed Rule Changes

Pursuant to section 19(b)(3)(C) of the Act,[17] at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to section 19(b)(1) of the Act,[18] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization (''SRO'') if it appears to the Commission

[54] 15 U.S.C. 78s(b)(3)(C).

[55] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 97768 (June 20, 2023), 88 FR 41423 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] The Exchange initially filed the proposed fee change on December 28, 2022, with an effective date of January 1, 2023. *See* Securities Exchange Act Release No. 96626 (January 10, 2023), 88 FR 2699 (January 17, 2023) (SR–MIAX–2022–49). That filing was withdrawn by the Exchange and the Exchange filed new proposed fee changes with additional justification (SR–MIAX–2023–07) on February 23, 2023. *See* Securities Exchange Act Release No. 97080 (March 8, 2023), 88 FR 15803 (March 14, 2023). The Exchange subsequently withdrew that filing and replaced it with SR–MIAX–2023–17 on April 11, 2023. *See* Securities Exchange Act Release No. 97327 (April 19, 2023), 88 FR 25032 (April 25, 2023). The Exchange subsequently withdrew that filing and replaced it with the instant filing to provide additional information and a revised justification for the proposal, which is discussed herein. *See* Notice, *supra* note 4, at 41423.

[7] The term ''System'' means the automated trading system used by the Exchange for the trading of Securities. *See* Exchange Rule 100.

[8] The term ''Simple Order Book'' means ''the Exchange's regular electronic book of orders and quotes.'' *See* Exchange Rule 518(a)(15).

[9] *See* Notice, *supra* note 4, at 41424.

[10] The ''Strategy Book'' is each Exchange's electronic book of complex orders and complex quotes. *See* MIAX Rule 518(a)(17).

[11] *See* Notice, *supra* note 4, at 41424. The Exchange states that cToM is a distinct market data product from ToM. The Exchange also states that ToM subscribers are not required to subscribe to cToM, and that cToM subscribers are not required to subscribe to ToM. *See id.*

[12] A ''Distributor'' of the Exchange's data is any entity that receives a feed or file of data either directly from the Exchange or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). *See* MIAX Fee Schedule, Section 6(a). All members or non-members that determine to receive any market data feed from the Exchange must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (''Exchange Data Agreement''). *See* Notice, *supra* note 4, at 41431. Pursuant to the Exchange Data Agreement, ''Internal Distributors'' are restricted to the ''internal use'' of any market data they receive, meaning they may only distribute the Exchange's market data to their officers and employees and their affiliates. *See id.*

[13] ''External Distributors'' may distribute the Exchange's market data to persons who are not their officers, employees, or affiliates, and may charge their own fees for the distribution of such market data. *See* Notice, *supra* note 4, at 41431–32.

[14] *See* Notice, *supra* note 4, at 41424.

[15] *See id.*

[16] New cToM Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been credentialed to use cToM, divided by the total number of trading days in the affected calendar month. *See id.* at 41424.

[17] 15 U.S.C. 78s(b)(3)(C).

[18] 15 U.S.C. 78s(b)(1).

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. The Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

In support of the proposal, the Exchange states its belief that the proposed fees overall are fair and reasonable as a form of ''cost recovery plus the possibility of a reasonable return'' for the Exchange's aggregate costs of offering the ToM and cToM data feeds.[19] Specifically, the Exchange states the fees are based on a ''cost-plus model'' used to determine a reasonable fee structure that is informed by the Exchange's understanding of different use of products by different types of participants.[20] According to the Exchange, employing a methodology that is the ''result of an extensive review and analysis,'' it estimates the total projected annual cost of providing the ToM and cToM data feeds to be $650,680.[21] To arrive at these figures, the Exchange states that it undertook a thorough internal analysis of nearly every expense in the Exchange's general expense ledger to determine whether each such expense related to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense supported the provision of ToM and cToM data feeds.[22] The Exchange states that it determined the total cost for the Exchange and its affiliated markets for each cost driver [23] through a company-wide this process that included discussions with senior management, Exchange department heads, and the Finance Team.[24] The Exchange further states that it determined what portion of the cost allocated to the Exchange pursuant to this methodology is to be allocated to each core service, including the appropriate allocation to market data.[25] The Exchange states that, through this allocation methodology, the Exchange ''applied an estimated allocation of each cost driver to each core service'' and ''[e]ach of the [resulting] cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocation to the Exchange pursuant to the initial allocation.'' [26]

The Exchange states that the $650,680 aggregate annual costs for providing the ToM and cToM data feeds is the sum of to the following individual line-item costs: (1) Human Resources at $367,278; (2) Network Infrastructure (fiber connectivity) at $1,695; (3) Data Center at $17,371; (4) Hardware and Software Maintenance and Licenses at $21,375; (5) Depreciation at $34,091; and (6) Allocated Shared Expenses at $208,870.[27] The Exchange represents that it estimates that the proposed fees will result in an annual revenue of approximately $840,000, which is a potential profit margin of 23% over the cost of providing ToM and cToM market data feeds.[28]

The Exchange states its belief that a 23% rate of return is reasonable because it allows the Exchange to ''recoup all of its expenses for providing the ToM and cToM data products'' and that any additional revenue would represent no more than what the Exchange believes to be a reasonable rate of return.[29] In addition, the Exchange states its belief that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products.[30]

In further support of the proposal, the Exchange states its belief that the fees are reasonable, fair, and equitable, and not unfairly discriminatory, because they are designed to align fees with services provided, are allocated fairly and equitably among the various categories of users of the feeds with any differences among categories of users being justified and appropriate, and will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds.[31] Moreover, the Exchange asserts that it is reasonable, equitable, and not unfairly discriminatory to assess Internal Distributors fees that are lower than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights, including rights to commercialize such market data.[32]

Finally, the Exchange asserts that the proposed fees would not cause any unnecessary or inappropriate burden on inter-market competition because other exchanges already have similar market data fees and they are free to adopt comparable fee structures subject to the Commission's rule filing process.[33] Furthermore, the Exchange asserts that the allowing the Exchange, or any new market entrant, to waive fees for a period of time to allow it to become established, such as the Exchange did with cToM, will encourage market entry and thus ultimately promote competition.[34] The Exchange also asserts that the proposed rule change would not cause any unnecessary or inappropriate burden on intra-market competition because the proposed fees are associated with the usage of the data feed by each market participant based on whether the market participant internally and externally distributes the Exchange data.[35]

[19] *See id.* 41431.

[20] *See id.* at 41431. In addition, the Exchange states that the proposed monthly cToM fees for Internal and External Distributors are identical to the fees that the Exchange proposes to charge for ToM. *See id.* at 41424. The Exchange also states that cToM was provided free of charge for the past six years, since the cToM market data product was established on the Exchange, the Exchange absorbed all costs associated with compiling and disseminating cToM during that time, and the Exchange now proposes to establish fees for cToM to recoup its ongoing costs going forward. *See id.* at 41424.

[21] *See id.* at 41426 and 41427. The Exchange states that the Cost Analysis is based on the Exchange's 2023 fiscal year of operations and projections. *See id.* at 41430. The Exchange has calculated the annual cost for producing ToM to subscribers to be $371,817, and $278,863 for cToM. *See id.* at 41424.

[22] *See id.* at 41427.

[23] The Exchange defines ''cost drivers'' within the filing as the costs necessary to deliver each of the core services, *see infra* note 25, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses. *See Notice supra* note 4, at 41426.

[24] *See id.* at 41426. The Exchange states that because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange's parent company determines the actual cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers. *See id.* According to the Exchange, its allocation methodology ensures that no portion of any cost would be allocated twice or double-counted between the Exchange and its affiliated markets. *See id.*

[25] *See id.* at 41426–27. The Exchange describes ''core services'' as services provided by the Exchange, including transactions, market data, membership services, physical connectivity, and ports (which provides order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). *See id.*

[26] *Id.* at 41427.

[27] *See id.* at 41427.

[28] *See id.* at 41431.

[29] *Id.* The Exchange also states that an approximately 23% mark-up is fair and reasonable after taking into account the costs related to creating, generating and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures. *Id.* at 41429.

[30] *Id.* at 41431.

[31] *See* Notice, *supra* note 4, at 41431.

[32] *See id.* at 41431. In addition, the Exchange argues that it utilizes more resources to support External Distributors as compared to Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of the Exchange's staff. *See id.* at 41432.

[33] *See id.* at 41432.

[34] *See id.*

[35] *See id.*

To date, the Commission has not received any comment letters on the revised justifications for the increase in ToM market data fees or the establishment of the cToM market data fees.

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.[36] The instructions to Form 19b–4, on which exchanges file their proposed rule changes, specify that such statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements.'' [37]

Section 6 of the Act, including sections 6(b)(4), (5), and (8), require the rules of an exchange to: (1) provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities; [38] (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [39] and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[40]

In temporarily suspending the Exchange's proposed rule change, the Commission intends to further consider whether the proposal to increase fees for the ToM market data feeds and establish fees for the cToM market data feeds are consistent with the statutory requirements applicable to a national securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[41]

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.[42]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to sections 19(b)(3)(C) [43] and 19(b)(2)(B) of the Act [44] to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[45] the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(4) of the Act, which requires that the rules of a national securities exchange ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities''; [46]
- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange not be ''designed to permit unfair discrimination between customers, issuers, brokers, or dealers''; [47] and
- Whether the Exchange has demonstrated how the proposed fees are consistent with section 6(b)(8) of the Act, which requires that the rules of a national securities exchange ''not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [48]

As discussed in section III above, the Exchange made various arguments in support of their proposal. The Commission believes that there are questions as to whether the Exchange has provided sufficient information to demonstrate that the proposed fees are consistent with the Act and the rules thereunder.

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.'' [49] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[50] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.[51]

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated, not be unfairly discriminatory, and not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[52]

V. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such

[36] *See* 17 CFR 240.19b–4 (Item 3 entitled ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change'').

[37] *See id.*

[38] 15 U.S.C. 78f(b)(4).

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(b)(8).

[41] *See* 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

[42] For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

[44] 15 U.S.C. 78s(b)(2)(B).

[45] *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *See id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. *See id.*

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] 17 CFR 201.700(b)(3).

[50] *See id.*

[51] *See id.*

[52] *See* 15 U.S.C. 78f(b)(4), (5), and (8).

comments should be submitted by August 30, 2023. Rebuttal comments should be submitted by September 13, 2023. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[53]

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2023–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–23 and should be submitted on or before August 30, 2023. Rebuttal comments should be submitted by September 13, 2023.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(3)(C) of the Act,[54] that File No. SR–MIAX–2023–23, be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16983 Filed 8–8–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–154, OMB Control No. 3235–0122]

Proposed Collection; Comment Request; Extension: Rule 17a–10

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–10 (17 CFR 240.17a–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5 [1] (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The Commission staff estimates that the current hour burden under Rule 17a–10 is approximately 44,892 hours per year and the current cost burden is $0.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 10, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief

[53] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[54] 15 U.S.C. 78s(b)(3)(C).

[55] 17 CFR 200.30–3(a)(57).

[1] Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which is used by broker-dealers to provide certain required information to the Commission.

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: August 3, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–16992 Filed 8–8–23; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2023–0030]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one new information collection for public comment and ultimately OMB approval. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.* Submit your comments online referencing Docket ID Number [SSA–2023–0030].

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, Mail Stop 3253 Altmeyer, 6401 Security Blvd., Baltimore, MD 21235, Fax: 833–410–1631, Email address: *OR.Reports.Clearance@ssa.gov.*

Or you may submit your comments online through *https://www.reginfo.gov/public/do/PRAMain,* referencing Docket ID Number [SSA–2023–0030].

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 10, 2023. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. 0960–NEW. Social Security Income Simplification Process Phase I (iSSI).

Overview.

SSA is embarking on a multi-year effort to simplify the Supplemental Security Income (SSI) application process. This presents a formidable challenge, based on the inherent complexity of the program.

The SSI program legally requires SSA to request extensive amounts of information from SSI applicants to make accurate eligibility and payment determinations. This is because the SSI program is, by statute, intended to provide assistance based on the current needs of a specific individual, with eligibility and payment amounts frequently fluctuating. Accordingly, it takes a significant number of questions to accurately identify an applicant's situation and needs. The framework of the SSI program will not change regardless of the type of application claimants must complete. However, we recognize that the current process is burdensome and challenging for the public, and we are doing what we can to reduce this burden and improve access to SSI.

As part of this effort, our goal is to develop a fully online, simplified SSI application process. As an important step toward that goal, we are currently planning to implement in late 2023 the SSI Simplification Phase I initiative, or iSSI. iSSI will be a pathway in the existing Social Security internet Claim (iClaim) System that will streamline and shorten the SSI application for Title XVI [1] disability applicants. iClaim is an online portal the public can use to apply for multiple types of Social Security benefits. Currently, this includes Retirement, Spouse's, and Disability Insurance benefits (DIB) (Title II SSDI). Although SSI Simplification Phase I/iSSI will be part of iClaim, the initiative relates to three existing OMB-approved SSA Information Collection Requests (ICRs) in total. Further details about iSSI and these three related ICRs follow.

How Will iSSI Work?

iSSI will work as follows:

- Title XVI applicants who want to use the internet to apply for SSI will use the iClaim system to initiate the application process and establish the protective filing date of the application. Applicants filing for themselves can authenticate online using one of our existing authentication methods, while applicants assisting others can use iClaim without authenticating. Although SSA encourages respondents to authenticate in iClaim, they can continue to use the system without authentication.
- When applicants who use iClaim authenticate themselves, the iClaim system can use some information already within SSA records. For all applicants, the iClaim system will prompt the Social Security Disability (Disability Insurance Benefit (DIB)) questions and pre-populate the applicant's answers within the iSSI portion of the iClaim pages. The applicants would then only need to answer simplified eligibility related questions, excerpted from the deferred SSI application, that will form the core of iSSI. These are what SSA refers to as ''basic eligibility questions.''
- After answering the DIB and SSI basic eligibility questions, applicants will be automatically transferred to other existing steps within the SSI Application iClaim path, such as providing medical information (using the i3368, OMB No. 0960–0579) and signing a medical release using the i827 (OMB No. 0960–0623). This process will be seamless to the applicant, as the iClaim system will take them from page to page without interruption.
- Once the applicant submits the information online, SSA technicians will review it for completeness and send it to the Disability Determination Services (DDS) to make a disability determination. The DDS can make a decision based on the application materials and evidence the respondent provides; by obtaining medical evidence and/or work history from the applicant; or by scheduling a consultative examination (if needed).
- We will allow applicants filing for themselves and third-party assistors (*i.e.,* respondents acting on behalf of claimants) to use the new iSSI process. (Note: Although iClaim does not allow a third party to electronically sign on behalf of the applicant, the new process will not require the applicant to visit a field office. Rather, SSA will mail a copy of the third party's responses to the DIB and SSI application questions to the applicant, and the applicant may either sign the application and return it via mail, or wait for an SSA employee to call them to give verbal attestation in lieu of a wet signature.)

[1] Title XVI disability payments, or SSI, are needs-based and are reserved for low-income individuals with limited assets. This is in contrast to Title II disability benefits, or Social Security Disability Insurance (SSDI), which are not needs-based, are reserved for those who have worked/paid corresponding taxes for the appropriate work quarters, and do not have any associated income or asset limitations. There is already an online Title II application included as a pathway in the overall iClaim application.

To Which Existing SSA ICRs Does iSSI Relate, and How Will It Interact With Them?

iSSI relates to three existing OMB-approved ICRs: 0960–0618, Application for Social Security Benefits (Specifically the Social Insurance Disability (DIB) SSA–16); 0960–0229 (SSA–8000, Application for Supplemental Security Income); and 0960–0444 (SSA–8001, Application for Supplemental Security Income (Deferred or Abbreviated). The SSA–16 is fully electronic through the iClaim system, and forms SSA–8000 and SSA–8001 are available as either paper forms or Intranet screens that SSA employees can complete while interviewing applicants. Recent discussions with third-party helpers and advocates indicate that they regularly complete and mail the paper SSA–8000 on behalf of applicants. However, that adds an unnecessary burden to responders, as the information is only needed after the medical approval. SSA data shows that approximately 52% of the SSI applications SSA processed were SSA–8000 applications, while the remaining 48% use the SSA–8001. The new online iSSI streamlined application will make it easier for applicants to use the SSA–8001 by allowing more responders to file online, and by paving the way for the future implementation of the new streamlined SSI questions on the other service channels (*i.e.,* in person or phone interviews).

(1) 0960–0618/Social Security Benefits Applications.

The Social Security Benefit Applications can be submitted through the online iClaim system. iClaim offers a timesaving and streamlined process by importing some existing information already in SSA's records, and prepopulating answers when applicable as the applicant moves seamlessly from one form to another. As well, iClaim uses dynamic pathing, which ensures claimants are only asked to complete the questions that are relevant to them.

iClaim currently offers a limited Title XVI application to apply for SSI payments. Applicants navigate the SSA website to learn about benefits for which they can apply online. SSA directs them to iClaim to use the current limited SSI application if they meet the requirements listed below:

- Indicate intent to file,
- Allege disability and are under the age of 64 and 10 months,
- Are U.S. citizens,
- Have never been married; and
- Have never filed for SSI or named as a parent on a child's SSI record

However, the new SSI Simplification Phase 1 pathway, as described above, will expand to US residents and add the new streamlined SSI questions to avoid collecting unnecessary information or contacting responders for additional information. The updated iClaim burden figures provided below reflect the inclusion of new SSI claimants who will now be using iSSI to apply:

SSA–1

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Average theoretical cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Paper version (SSA–1)	17,604	1	11	3,227	$29.76 *	.....	$96,036 ***
Interview/Phone MCS	1,679,321	1	10	279,887	29.76 *	19 **	24,155,359 ***
Interview/Office MCS	51,648	1	10	8,608	29.76 *	24 **	870,986 ***
Internet First Party	1,835,958	1	15	458,990	29.76 *	.....	13,659,542 ***
Third party initiated (complete and submit)	81,810	1	15	20,453	29.76 *	.....	608,681 ***
Totals	3,666,341	.....	.....	771,165	.....	.....	39,390,604 ***

SSA–2

Paper version (SSA–2)	6,723	1	15	1,681	29.76 *	.....	50,027 ***
Interview/Phone MCS	358,225	1	14	83,586	29.76 *	19 **	5,863,434 ***
Interview/Office MCS	8,227	1	14	1,920	29.76 *	24 **	155,079 ***
Internet First Party	119,129	1	15	29,782	29.76 *	.....	886,312 ***
Totals	492,304	.....	.....	116,969	.....	.....	6,954,852 ***

SSA–16

Paper version (SSA–16)	46,032	1	20	15,344	29.76 *	.....	456,637 ***
Interview/Phone MCS	723,281	1	19	229,039	29.76 *	19 **	13,632,401 ***
Interview/Office MCS	10,843	1	19	3,434	29.76 *	24 **	231,265 ***
Internet First Party	667,806	1	15	166,952	29.76 *	.....	4,968,492 ***
Internet Third party	561,014	1	15	140,254	29.76 *	.....	4,173,959 ***
Totals	2,008,976	.....	.....	555,023	.....	.....	23,462,754 ***

Grand Total

Totals	6,167,621	.....	.....	1,443,157	.....	.....	69,808,210 ***

* We based this figure on the average hourly wage for all occupations as reported by the U.S. Bureau of Labor Statistics (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2023 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(2) 0960–0229/SSA–8000, Application for Supplemental Security Income (SSI).

Form SSA–8000 is the full SSI application. SSA instructs technicians to use the SSA–8000 for initial claim interviews when respondents:

- Have a condition that would likely meet a medical allowance (*e.g.,* terminal illness, presumptive blindness, compassionate allowance (CAL)

conditions such leukemia, Lymphoma, etc.,) which allows technicians to simultaneously submit the application for medical evaluation and continue the income and resources development. This process ensures that the medical evaluation is not delayed due to any pending non-medical development;

- File for aged benefits;
- File together with a spouse (*i.e.,* couple cases); or
- Meet the Expeditious Handling criteria (*e.g.,* homeless, pre-release from public instructions, etc.).

It is possible that someone who otherwise would have gone to a field office or called SSA to complete a full SSA–8000 might now complete the new iSSI at the beginning of the process, and would then be called by SSA at a later point to provide the additional required information. iClaim asks these applicants to provide us with their intent to file for SSI (when filing for DIB using iClaim) or contact us to set up an appointment and file with the assistance of a technician. These applicants will also have the option to complete the iSSI pathing in iClaim. This process will continue with the implementation of Phase 1. For individuals who are aged (*i.e.,* age of 64 and 10 months) or married filing for SSI, iClaim will not display the iSSI pathing; rather, the system will indicate that SSA will contact the applicants later to complete their SSI application.

For the individuals who now start off with the iSSI and have a condition that would likely meet a medical allowance, the filed application is flagged as a priority case to expedite the process. SSA technicians will quickly review the application, refer it to the DDS for medical evaluation, and simultaneously develop and secure additional information as needed. However, with the new iSSI, the universe of respondents will expand, and the amount of time needed to complete file their applications will decrease. Projected updated burden figures are reflected below:

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Intranet CCE or SSI Claims System	674,154	1	35	393,257	$21.29 *	19 **	$12,917,473 ***
SSA–8000 (Paper Version)	34,244	1	40	22,829	21.29 *	19 **	716,898 ***
Internet SSI (iSSI) converted into CCE intranet full application	1,080	1	20	360	21.29 *	19 **	14,946 ***
Total	709,478	.....	.....	416,446	.....	.....	13,649,317 ***

* We based this figure by averaging both the average DI payments based on SSA's current FY 2023 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

(3) 0960–0444/SSA–8001, Application for Supplemental Security Income (Deferred or Abbreviated).

SSA uses this shortened version of the SSI application to determine an applicant's potential eligibility for SSI, specifically to (1) provide a formal notification when non-medical information the applicant provides results in ineligibility; or (2) defer the complete development of non-medical issues until the DDS approves the medical portion of the disability process.

Specifically, SSA technicians use the SSA–8001 when the filing respondents seem to meet the non-medical eligibility requirements for at least one month and SSA can defer other development until the respondent receives a notice of medical allowance. After the initial interview and upon receiving medical allowance, technicians contact respondents who filed for SSI using the SSA–8001 to develop any deferred issues and update the information about income and resources from the time the respondent filed the application up to the month the respondent received SSA's approval. At that point, SSA technicians use the Intranet version of the SSA–8000 to develop the remaining necessary information (from the perspective of the applicant, through a personal interview).

SSA anticipates that the majority of respondents for the new iSSI would have otherwise completed the SSA–8001. Accordingly, we are revising the burden for the SSA–8001 to reflect this reduction:

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical cost amount (dollars) *	Average wait time in field office or for teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
Intranet CCE or SSI Claims System	426,388	1	28	198,981	$21.29 *	19 **	$7,110,945 ***
Internet Claim System (iSSI) First party	76,500 +	1	6	7,650	12.81 *	.....	97,997 ***
Internet Claim System (iSSI) Third party	71,000 +	1	6	7,100	29.76 *	.....	211,296 ***
SSA–8001 (Paper Version)	38,304	1	28	17,875	21.29 *	19 **	638,806 ***
Total	612,192	.....	.....	231,606	.....	.....	8,059,044 ***

+ We are not double counting the number of respondents in this ICR, as we do not account for the iSSI (iClaim) respondents under 0960–0618, we only account for them here.

* We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (*https://www.ssa.gov/legislation/2023factsheet.pdf*), and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*), as well as the average of both the average DI payments based on SSA's current FY 2023 data and the average U.S. worker's hourly wages, as reported by Bureau of Labor Statistics.

** We based this figure on averaging both the average FY 2023 wait times for field offices and teleservice centers, based on SSA's management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

What Will the Benefits of iSSI Be in Comparison to Our Current Processes?

- iSSI will be much *simpler* than the current process for the early stages of the SSI application process. Rather than completing a paper form, calling or visiting a field office to preserve a protective filing date, or assembling significant amounts of information to begin an application, the applicants will now just need to start the online DIB application process and answer the new iSSI basic eligibility questions. Once SSA receives the answers to the questions, we will determine whether further development is needed, and will contact the claimant if necessary.
- iSSI will also be more *convenient and somewhat faster* than the initial stages of the current application process. Primarily, this is because the iClaim system pre-populates information from SSA's records for authenticated applicants that the applicant might otherwise have needed to provide. As well, iSSI will seamlessly move the applicant on to the other next steps described above (*e.g.,* completion of the i3368). Moreover, applicants will save time that might have been required for a field office visit or a phone appointment.
- Finally, iSSI will, for the first time, offer an *electronic option to non-U.S. citizens.* Currently, a non-U.S. citizen is told they will be contacted by an SSA employee to initiate an application. With iSSI, we will be able to utilize citizenship and country information from SSA's records for authenticated applicants.

Dated: August 3, 2023.

Naomi Sipple,

Reports Clearance Officer, Office of Regulations and Reports Clearance, Office of Legislation and Congressional Affairs, Social Security Administration.

[FR Doc. 2023–16994 Filed 8–8–23; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request for Change in Use From Aeronautical to Non-Aeronautical at Salisbury-Ocean City: Wicomico Regional Airport, Salisbury, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of request for a change in use of on-airport property.

SUMMARY: The FAA proposes to rule and invites public comment on Wicomico County's request to change 24.5 acres of federally obligated airport property at Salisbury-Ocean City: Wicomico Regional Airport, Salisbury, MD from aeronautical to non-aeronautical use. This acreage was originally purchased with federal financial assistance through the Airport Improvement Program. The proposed use of land after the sale will be compatible with the airport and will not interfere with the airport or its operation.

DATES: Comments must be received on or before September 8, 2023.

FOR FURTHER INFORMATION CONTACT: Comments on this application may be mailed or delivered to the following address: Anthony Rudy, Airport Manager, Salisbury-Ocean City: Wicomico Regional Airport, 5485 Airport Terminal Road, Unit A, Salisbury, MD 21804, (410) 548–4827, and at the FAA Washington Airports District Office: Matthew J. Thys, Manager, Washington Airports District Office, 13873 Park Center Road, Suite 490S, Herndon, VA 20171, (703) 487–3980.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by grant agreements. The following is a brief overview of the request.

Wicomico County has submitted a land release request seeking FAA approval for the change in use of approximately 24.5 acres of federally obligated airport property from aeronautical to non-aeronautical use. The property is situated within the approach to Runway 14 but outside of the runway protection zone. Due to this location, the subject area is unable to be utilized for aviation.

The 24.5 acres of land to be released consist of 12.7 acres of Parcel 24 and 11.8 acres of Parcel 63. Parcel 63 was originally purchased with federal financial assistance through the AIP program under Grant Agreement 3–24–0025–37–2007. The FAA has determined the proposed project would have no material impact on aircraft operations, at, to or from the airport; would not affect the safety of people and property on the ground adjacent to the airport as a result of aircraft operations; and would not have an adverse effect on the value of prior Federal investments to a significant extent. Subsequent to the implementation of the proposed change in use, rents received by the airport from this property is considered airport revenue, and will be used in accordance with 49 U.S.C. 47107(b) and the FAA's Policy and Procedures Concerning the Use of Airport Revenue published in the **Federal Register** on February 16, 1999. The proposed use of the property will not interfere with the airport or its operation.

Issued in Herndon, Virginia.

Matthew J. Thys,

Manager, Washington Airports District Office.

[FR Doc. 2023–16986 Filed 8–8–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2023–0057]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated August 1, 2023, the Buckingham Branch Railroad (BBRR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers). FRA assigned the petition Docket Number FRA–2023–0057.

Specifically, BBRR requests relief from § 240.201(d), which requires that only certified persons operate locomotives and trains. The relief would allow noncertified persons to pay a fee and operate a locomotive as part of a ''Hand on the Throttle'' program in partnership with the Virginia Museum of Transportation. In support of its petition, BBRR notes that the relief would only apply to persons participating in the program, and that participants would be under the direct supervision of a certified and qualified locomotive engineer. Further, all movements would take place during daylight hours and at restricted speed. BBRR also specifies that the section of track on which the program will run will be under absolute block authority and derails with red flags will be placed at the beginning and end of the segment.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in

connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by September 25, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–17083 Filed 8–8–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.: DOT–OST–2023–0120]

Notice of Proposed Waiver of Buy America Requirements for the Pacific Island Territories and the Freely Associated States

ACTION: Notice; request for comments.

SUMMARY: The Department of Transportation (DOT) is seeking comments on a proposed temporary general applicability public interest waiver of the requirements of section 70914(a) of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (IIJA) and related domestic preference statutes administered by DOT and its Operating Administrations (OAs) for federal financial assistance awarded for infrastructure projects located in the Commonwealth of Northern Mariana Islands (CNMI), Guam, and American Samoa, collectively referred to as the Pacific Island territories. The proposed waiver would also apply to financial assistance that is subject to a DOT domestic preference statute and provided by DOT to the Freely Associated States in the Pacific (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia). BABA only applies to the United States and its territories. The waiver would provide time for the Department to collect and analyze evidence to determine if a more targeted waiver of these requirements is in the public interest. The waiver would also allow time for the Department and its OAs to offer technical assistance to potential assistance recipients in the remote communities in the Pacific Island territories and Freely Associated States. The waiver will remain in effect for 18 months after the effective date of the final waiver and will be reviewed as often as necessary.

DATES: Comments must be received by August 24, 2023.

ADDRESSES: Please submit your comments to the U.S. Government electronic docket site at *http://www.regulations.gov,* Docket: DOT–OST–2023–0120. Note: All submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at *darren.timothy@dot.gov* or at 202–366–4051. For legal questions, please contact Jennifer Kirby-McLemore, DOT Office of the General Counsel, 405–446–6883, or via email at *jennifer.mclemore@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Buy America preferences set forth in Section 70914(a) of BABA included in the IIJA require that all iron, steel, manufactured products, and construction materials used for infrastructure projects in the United States under federal financial assistance awards be produced in the United States.

Under Section 70914(b) and in accordance with the Office of Management and Budget (OMB)'s Guidance Memorandum M–22–11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, DOT may waive the BABA application in any case in which it finds that: (i) applying the domestic content procurement preference would be inconsistent with the public interest; (ii) types of iron, steel, manufactured products, or construction materials are not produced in the U.S. in sufficient and reasonably available quantities or of a satisfactory quality; or (iii) the inclusion of iron, steel, manufactured products, or construction materials produced in the U.S. will increase the cost of the overall project by more than 25 percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) calendar days for public comment on the proposed waiver; and submit the proposed waiver to the OMB Made in America Office (MIAO) for review to determine if the waiver is consistent with policy.

BABA also provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA section 70917(a)–(b). Federal financial assistance programs administered by DOT's Operating Administrations (OAs) [1] are subject to a variety of mode-specific statutes that apply particular Buy America [2] requirements to iron, steel, and manufactured products, including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD). Recent annual appropriations acts have also required DOT to apply the Buy American Act (41 U.S.C. chapter 83) to funds appropriated under those acts,[3] where a mode-

[1] DOT OAs that provide or administer financial assistance covered under this proposed waiver include the Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Transit Administration (FTA); and the Maritime Administration (MARAD).

[2] In this notice, references to ''Buy America'' include domestic preference laws called ''Buy American'' that apply to DOT financial assistance programs.

[3] For example, section 409 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2022 states that ''no funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply

Continued

specific statute is not in place. These statutes also allow for waivers of the Buy America requirements to be issued when the Department determines that doing so is in the public interest.

DOT and its OAs provide financial assistance to the three Pacific Island territories of Guam, American Samoa, and CNMI through both discretionary grants and allocated programs, including assistance programs for highways and bridges, public transportation, airports, and port facilities. The Freely Associated States (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia) in the Pacific region are also eligible recipients of discretionary grants under FAA's Airport Improvement Program (AIP).

Over five years from FY 2018 to FY 2022, DOT OAs provided over $340 million in financial assistance for 160 capital projects in the Pacific Island territories under various programs where infrastructure is an eligible activity and may be subject to BABA or other existing DOT Buy America requirements. FAA also provided $88 million in AIP discretionary grants to the Freely Associated States in the Pacific region for 20 projects over that same time period.

Economies in the Pacific Islands are over 5,000 miles from the mainland United States and must import products via air or sea. These economies have few local heavy manufacturers and largely rely on established regional supply chains from east Asia, Australia, and New Zealand. Most goods, equipment, materials, and supplies are imported and rely on shipping with associated timelines and unpredictable shipping fuel costs fluctuations. Moreover, materials sourced from the United States lead to additional shipping fees and longer lead times, thus significantly extending construction activity schedules. Lastly, ongoing gaps in supply chain availability impact lead times for materials, increasing project timelines. For these reasons, DOT is concerned that complying with Buy America requirements may increase already elevated project time and costs—particularly in the short run—and seeks time to better understand the local manufacturing footprint and the balance of equities for residents of the Pacific Island territories. DOT is aware that substantial changes to shipping and supply chains to incorporate domestic sourcing requirements in the Pacific Island territories could take multiple years to establish.

In considering this waiver, DOT consulted with the relevant Federal assistance programs in the respective OAs, including the regional offices in those agencies that directly administer DOT funding programs in the Pacific Island territories and Freely Associated States. DOT also relied on other communications that it has received from stakeholders in those territories. For example, CNMI and Guam have cited their isolated location in the Western Pacific and reliance on ocean freight as the only mode of transporting commodities to the island as creating significant challenges in obtaining materials from domestic sources, with impacts on both project costs and delivery schedules. The two territories have also indicated that shipping construction materials from the continental United States raises shipping costs by approximately 30 percent above the cost to ship directly to the islands from Asia.

Other Federal agencies have also conducted outreach efforts to the Pacific Island territories and received similar feedback. For example, representatives from American Samoa have indicated to the Federal Emergency Management Agency that ''As a containerized community, our territories depend on goods, equipment, materials, and supplies to be imported.'' They further stated that ''we can purchase equipment from foreign countries closer to American Samoa and with reasonable prices and shorter shipping time.'' American Samoa representatives also noted that availability of materials from nearby foreign countries such as New Zealand and Australia would result in a significant cost savings to the grantors.

Proposed Waiver and Request for Comments

DOT is proposing to use its authority under Section 70914(b)(1) to waive the Act's Buy America preferences for iron and steel, manufactured products, and construction materials used in infrastructure projects located within the Pacific Island territories of CNMI, Guam, or American Samoa and funded under DOT-administered financial assistance programs. The proposed waiver would apply to all awards obligated after the effective date and, in the case of awards obligated prior to the effective date, all expenditures for non-domestic iron, steel, manufactured products, and construction materials incurred after the effective date.

Because many DOT-administered financial assistance programs are also subject to program-specific domestic preference requirements, the waiver proposed in this notice would also apply to those requirements. Specifically, the waiver would also be an exercise of DOT's authority to issue public interest waivers under 23 U.S.C. 313(b)(1), 49 U.S.C. 5323(j); 46 U.S.C. 54101(d)(2)(B)(i)(I), 49 U.S.C. 50101(b)(1), and 41 U.S.C. chapter 83. Under those DOT authorities, the proposed waiver would also apply to projects in the Freely Associated States (the Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia).[4]

The proposed duration of the waiver is 18 months after the effective date of the final waiver. The Department will review this waiver in 12 months to assess whether it remains necessary to the fulfillment of DOT's missions and goals and consistent with applicable legal authorities, such as the IIJA, Executive Order 14005, and OMB M–22–11. The Department may, based on the results of that review, terminate the waiver, or take action to develop a new waiver in consultation with the MIAO.

Without the waiver, DOT-assisted infrastructure projects located within the Pacific Island territories and Freely Associated States will continue to experience challenges with product delivery, availability, reliability, and project scheduling. Infrastructure project schedules rely on readily available products delivered within reasonable timeframes. Due to the extreme distances that manufacturers for products produced in the mainland United States would have to ship products to the Pacific Island territories and Freely Associated States and due to the lack of existing local product supply networks for these products, manufacturers may not be able to assure on-time delivery of compliant products and associated projects in the Pacific Island territories and Freely Associated States could potentially face unreasonable scheduling uncertainty.

On the other hand, the proposed waiver will likely help grant recipients establish rules and procedures to manage Buy America requirements. Furthermore, the waiver will provide recipients more options to efficiently complete projects.

with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 8301–8305, popularly known as the ''Buy American Act'').''

[4] The proposed waiver under section 70914(b)(1) of the Act excludes projects in the Freely Associated States because the requirements under section 70914(a) are applicable only to infrastructure projects ''in the United States'' and, therefore, the BABA requirements to not apply to projects in the Freely Associated States. However, airports located in the Freely Associated States are eligible recipients under FAA's Airport Improvement Program, and the Buy American requirements specific to that program would thus also apply to the Freely Associated States.

Uncertainties regarding capacity, shipping, and supply networks make domestic sourcing in the Pacific Island territories and Freely Associated States challenging for assistance recipients, shippers, and DOT staff in the short run. DOT is engaging to understand opportunities to leverage existing shipping and transportation processes to make domestic sourcing feasible over the longer term.

Under OMB Memorandum M–22–11, agencies are expected to assess ''whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products'' as appropriate before granting a public interest waiver. DOT's analysis has concluded that this assessment is not applicable to this waiver.

DOT will consider all comments received in the initial 15-day comment period during our consideration of the proposed waiver, as required by Section 70914(c)(2) of the BIL. Comments received after this period, but before notice of our finding is published in the **Federal Register**, will be considered to the extent practicable. Pursuant to Section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), if FHWA makes a finding that a waiver is appropriate under 23 U.S.C. 313(b), FHWA will also invite public comment on this finding for an additional 5 days following the date of publication of the finding. Comments received during that period will be reviewed, but the finding will continue to remain valid. Those comments may influence DOT/FHWA's decision to terminate or modify a finding.

Issued in Washington, DC, on: August 3, 2023.

Carlos Monje, Jr.,

Under Secretary of Transportation for Policy.

[FR Doc. 2023–17003 Filed 8–8–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST– 2023–0106]

Privacy Act of 1974; System of Records

AGENCY: Federal Aviation Administration and Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation (DOT).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT) proposes to update and reissue a DOT Federal Aviation Administration (FAA) system of records titled, ''DOT/FAA 801 Aviation Registration Records.'' This Privacy Act System of Records Notice (hereafter ''Notice'') is titled ''DOT/FAA 801 Aviation Registration Records'' and updated to reflect the discontinuation of the General Aviation (GA) ADS–B Rebate Program and the issuance of the Remote Identification of Unmanned Aircraft Final Rule. This Notice covers records about individuals who register manned and unmanned aircraft or submit a Notice of Identification (in the case of foreign-registered unmanned aircraft). It also covers records about individuals who apply for a Privacy International Civil Aviation Organization (ICAO) address or submit problem reports to the FAA to report issues or problems with ADS–B related services provided by the FAA.

DATES: Submit comments on or before September 8, 2023. The Department may publish an amended Systems of Records Notice considering any comments received. This modified system will be effective immediately upon publication. The routine uses will be effective September 8, 2023.

ADDRESSES: You may submit comments, identified by docket number DOT–OST–2023–0106—by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251. Instructions: You must include the agency name and docket number DOT–OST–2023–0106. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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 docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact: Karyn Gorman, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; *privacy@dot.gov;* or 202.527.3284.

SUPPLEMENTARY INFORMATION:

Notice Updates

This Notice update includes substantive changes to: system location, system manager, authorities, purpose, categories of individuals, categories of records, record source categories, routine uses of records maintained in the system, policies and practices for storage of records, policies and practices for retrieval of records, policies and practices for retention and disposal of records, and record access procedures; and non-substantive changes to: administrative, technical and physical safeguards, contesting record procedures, and notification procedures. Additional updates include editorial changes, to simplify and clarify language and reformatting the text of the previously published Notice to align with the requirements of the Office of Management and Budget Memoranda (OMB) A–108 and to ensure consistency with other Notices issued by the Department of Transportation.

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Transportation (DOT)/Federal Aviation Administration (FAA) proposes to update and reissue a DOT system of records titled, ''DOT/FAA 801 Aviation Registration Records,'' previously published at 81 FR 54187 (Aug. 15, 2016).

This system of records serves as the central and legal repository of all aircraft registration of manned and unmanned aircraft and Notices of Identification (for foreign-registered unmanned aircraft) submitted to the FAA. The information maintained in these registration and identification files includes identifying and contact information of individuals who register manned and unmanned aircraft or submit a Notice of Identification (in the case of foreign-registered unmanned aircraft) with the FAA.

This system of records also covers records related to the ADS–B Traffic Information Service—Broadcast (TIS–B) and Flight Information Service—Broadcast (FIS–B). These records are created when a pilot submits an ADS–B/TIS–B/FIS–B Problem Report to the FAA to report an issue or problem with any of the ADS–B related services provided by the FAA. The FAA uses the email address collected to communicate back to the reporting pilot about the issue or problem they reported.

Additionally, this system of records covers records related the Privacy ICAO Address Program. The Privacy ICAO Address Program allows aircraft operators to utilize an alternate aircraft ID and Privacy ICAO Address to mask their aircraft's identity while flying within U.S. domestic airspace. Aircraft operators may apply for a Privacy ICAO Address on the FAA website: *https://adsbperformance.faa.gov/PIA/Application.aspx.*[1] Use of the alternate aircraft ID and Privacy ICAO Address limits the extent to which the aircraft can be identified by non-FAA parties receiving the ADS–B signal. The information collected and maintained includes identifying and contact information of individuals who have applied for a Privacy ICAO Address and the assigned Privacy ICAO Addresses, respectively.

Finally, the previous Notice introduced the 14 CFR part 91, Automatic Dependent Surveillance Broadcast (ADS–B) Out Performance Final Rule which mandated that aircraft flying in certain controlled airspace be equipped with ADS–B Out technology. Aircraft equipped with ADS–B Out technology automatically transmit/broadcast an aircraft's GPS position, altitude, velocity and other information (*e.g.,* aircraft registration number, which is linkable to an individual) to ground stations and to ADS–B In-equipped aircraft in the vicinity.

This update is due to the following changes:

(1) Discontinuation of the General Aviation (GA) ADS–B Rebate Program: To accelerate compliance with the 2010 ADS–B Out Performance Final Rule, the FAA offered a financial incentive to owners of general aviation aircraft who equipped their aircraft with ADS–B Out technology. This incentive was known as the GA ADS–B Rebate Program. The GA ADS–B Rebate Program terminated in 2021; consequently, the FAA no longer offers a financial incentive to owners of general aviation aircraft that equip their aircraft with ADS–B Out technology. As the previous Notice stated, and per the retention schedule that requires the FAA to maintain these records until at least 2027, this Notice will continue to cover the GA ADS–B Rebate Program payment records until they are destroyed. The ADS–B Compliance Monitor (ADS–B CM) Program, which included the GA ADS–B Rebate Program, was renamed Automatic Dependent Surveillance—Broadcast Performance Monitor (APM). That system no longer receives GA ADS–B Rebate Program data; however, it does receive Privacy Act data from the Privacy ICAO Address Program.

(2) Issuance of the Remote Identification of Unmanned Aircraft Final Rule: On January 15, 2021, the FAA published the Remote Identification of Unmanned Aircraft Final Rule, which requires unmanned aircraft possess remote identification capabilities. Remote identification is the capability of an unmanned aircraft in flight to broadcast over radio frequency spectrum certain identification, location, and performance information that people on the ground and other airspace users can receive. These message elements can be broadcast by technology built into the unmanned aircraft (''Standard Remote ID'') or by external Remote ID-equipped broadcast modules attached to the unmanned aircraft. Remote identification provides airspace awareness to the FAA, national security agencies, law enforcement entities, and other officials charged with ensuring public safety and the safety and efficiency of the airspace of the United States.[2]

Relevant to this Notice, the Final Rule also requires owners of remote identification compliant unmanned aircraft to provide the standard remote identification unmanned aircraft's serial number or the remote identification broadcast module's serial number to the FAA during registration and imposes additional production and design requirements on manufacturers to ensure that broadcast equipment complies with the Final Rule. Additionally, the Final Rule requires that foreign-registered aircraft operators, who could in some instances be U.S. citizens, submit a Notice of Identification (NOI) prior to operating their foreign-registered aircraft in U.S. airspace. The NOI must include the aircraft operator's (and, if applicable, authorized representative's) name, address, telephone number, and email address; the country of registration, and; the unmanned aircraft's or the remote identification broadcast module's serial number.

The FAA is updating the SORN to make the following substantive changes:

1. *System Location:* This Notice updates the system location by removing the address for the ADS–B CM database and the GA ADS–B Rebate application database, and associated records, which were located at FAA William J. Hughes Technical Center, 101 Atlantic City International Airport, Egg Harbor Township, New Jersey 08405. This Notice updates the address for the Civil Aviation Registry System,[3] which is located at: Civil Aviation Registry Applications, Enterprise Data Center (EDC) Airmen Records Building (ARB) at the Mike Monroney Aeronautical Center (MMAC), 6500 South MacArthur Boulevard, Oklahoma City, OK 73169–6901. The system location is also being updated to add new systems: (1) Civil Aviation Registration Electronic Services (CARES), Aircraft Registration Branch, AFB–710 Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25505, Oklahoma City, OK, 73125, Email: *9-AMC-AFS750-Aircraft@faa.gov* located in the Amazon Web Services (AWS) East/West Government Cloud; and (2) FAADroneZone, UAS Integration Office, AUS–410, Federal Aviation Administration, 800 Independence Ave SW Washington, DC, 20591.

2. *System Manager:* This Notice is updated to include the system manager contact information for all systems this Notice covers.

3. *Authorities:* This Notice updates the authorities section to reflect the authorities for all systems this Notice covers.

4. *Purpose:* This Notice updates the purpose to remove reference to determining eligibility for and issuance of a rebate for equipage under the GA ADS–B Rebate Program. In addition, the purpose is being updated to include the Part 89 NOI requirements for the Remote Identification of Unmanned Aircraft Final Rule and to more explicitly describe the Privacy ICAO Address Program.

5. *Categories of individuals:* This Notice updates the categories of individuals to include: aircraft operators, authorized representatives, and aircraft dealers.

6. *Categories of records:* This Notice updates the categories of records to include: aircraft operator or authorized representative contact information; date of birth; NOI; Confirmation of Identification (COI) Number; and designated agent name, address, email, phone number and fax.

7. *Record Source Categories:* This Notice updates the record source categories by replacing ''individuals'' with aircraft owners, aircraft operators, authorized representatives, foreign-

[1] OMB Control Number: 2120–0779.

[2] The FAA does not collect these message elements on a routine basis; therefore, this Notice does not cover their collection or maintenance. If these message elements were collected by the FAA or provided to FAA by law enforcement, they would be maintained in an investigative file and covered by the System of Records Notice associated with that file.

[3] This system will eventually be replaced by the Civil Aviation Registry Electronic Services (CARES) system, which is located in the Amazon Web Services (AWS) East/West Government Cloud.

registered aircraft operators (who in some instances could be U.S. citizens), lien holders, lessees, and aircraft dealers, for greater transparency, and to reflect new record source categories associated with the new systems that are obtaining coverage under this Notice.

8. *Routine Use:* This Notice updates the routine uses section to add one new system-specific routine use. The new routine use will allow the FAA to disclose information to (a) government agencies, whether Federal, State, Tribal, local or foreign, when necessary or relevant to an investigation of a violation or potential violation of law, whether civil, criminal, or regulatory, that the agency is charged with investigating or enforcing; and, (b) to government agencies, whether Federal, State, or local responsible when necessary or relevant to threat detection in connection with critical infrastructure protection. This routine use is compatible to the purpose of this SORN. Specifically, this routine use is compatible with the system's oversight purpose, and its purpose for assisting other government agencies investigate or prosecute violations or potential violations of law. The routine use section is also being updated to remove the reference to credit card information, as the FAA no longer actively uses this information.

In accordance with OMB Circular A–108 recommendations, the routine uses section is also being updated to include the Department of Transportation's general routine uses applicable to this Notice as they were previously only incorporated by reference. Specifically, the Department is replacing the statement in DOT/FAA 801 that referenced the ''Statement of General Routine Uses'' with all of the general routine uses that apply to this system of records. This update does not substantially affect any of the existing routine uses for records maintained in this system.

9. *Records Storage:* Except for the hard copy canceled aircraft registration records that are being maintained as paper records, all records are electronically stored.

10. *Records Retrieval:* The retrievability of records is updated to add that Part 89 NOI records are retrievable by COI number, unmanned aircraft serial number, or operator's (or authorized representative's) name. The retrievability of GA ADS–B Rebate Program has been removed, as that program has been discontinued and the records are no longer being retrieved. The retrievability of aircraft descriptions has been removed, because retrieving by this method will not display a record specific to an individual. The retrievability of records is updated to add that TIS–B/FIS–B Problem reports are retrievable by aircraft registration number.

11. *Retention and Disposal:* The previous Notice referred to the FAA's submission to NARA of a recommended retention period for aircraft registration records submitted under 14 CFR part 48 (to cover small unmanned aircraft [sUAS]). This Notice updates the retention and disposal section to reflect that all aircraft registration records, not only those submitted under 14 CFR part 47, will be maintained as permanent records in accordance with existing NARA Schedule N1–237–04–03. Therefore, references to 14 CFR part 48 (sUAS) aircraft registrations have been removed from the retention and disposal section. The Notice also updates the retention and disposal section to reflect that records related GA ADS–B Rebate Program Payment records will be maintained until at least 2027 under NARA General Records Schedule 1.1 item 10. In addition, the Notice updates the retention and disposal section to reflect that records related to Part 89 NOI will be maintained for three years under NARA DAA–0237–2023–0007–0003. Finally, this Notice updates the retention and disposition section to reflect that records related to APM (which includes the Privacy ICAO Address program) will be maintained for three years under NARA DAA–0237–2020–0002–0001.

12. *Records Access:* The records access procedures are being updated to reflect that signatures on signed requests for records must either be notarized or accompanied by a statement made under penalty of perjury in compliance with 28 U.S.C. 1746.

The following non-substantive changes to the administrative, technical, and physical safeguards, contesting records procedures, and notification procedures have been made to improve the transparency and readability of the Notice:

13. *Administrative, Technical and Physical Safeguards:* This Notice updates the administrative, technical and physical safeguards to align with the requirements of OMB Memoranda A–108 and for consistency with other DOT/FAA SORNs.

14. *Contesting Records:* This Notice updates the procedures for contesting records to refer the reader to the record access procedures section rather than the ''System Manager.''

15. *Notifications:* This Notice updates the notification procedures to refer the reader to the record access procedures section rather than the ''System Manager.''

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A ''System of Records'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (*e.g.,* to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

Federal Aviation Administration, Department of Transportation, DOT/FAA 801 Aviation Registration Records.

SECURITY CLASSIFICATION:

Sensitive, unclassified

SYSTEM LOCATION:

The system locations are as follow:

1. Civil Aviation Registry System: Civil Aviation Registry Applications, Enterprise Data Center (EDC) Airmen Records Building (ARB) at the Mike Monroney Aeronautical Center (MMAC), 6500 South MacArthur Boulevard, Oklahoma City, OK 73169–6901 and the Enterprise Architecture and Solutions Environment (EASE) Mainframe, which resides at the U.S. Department of Agriculture (USDA) National Information Technology Center (NITC) in Kansas City, Missouri.

2. Civil Aviation Registration Electronic Services (CARES): Aircraft Registration Branch, AFB–710 Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25505, Oklahoma City, OK, 73125, Email: *9-AMC-AFS750-Aircraft@faa.gov* located in the Amazon Web Services (AWS) East/West Government Cloud.

3. FAADroneZone (including, but not limited to, Part 89 Notice of Identification): UAS Integration Office,

AUS–410, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC, 20591.

4. APM (Privacy ICAO Address Program): Enterprise Data Center (EDC) at the William J. Hughes Technical, Center (WJHTC) in Atlantic City, New Jersey.

SYSTEM MANAGER:

1. Civil Aviation Registry System: Civil Aviation Registry Applications, Manager, Aircraft Registration Branch, AFB–710 Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25505, Oklahoma City, OK, 73125, Email: *9-AMC-AFS750-Aircraft@faa.gov.*

2. Civil Aviation Registration Electronic Services: Manager, Aircraft Registration Branch, AFB–710 Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25505, Oklahoma City, OK, 73125, Email: *9-AMC-AFS750-Aircraft@faa.gov.*

3. FAADroneZone: (including, but not limited to, Part 89 Notice of Identification): Manager, UAS Integration Office, AUS–410, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, Email: *UAShelp@faa.gov.*

3. APM (Privacy ICAO Address): Manager, FAA William J. Hughes Technical Center, En-Route & Oceanic Second Level Engineering Group, NAS System Manager—ADS–B Support Tools (SAPT & APM), AJM–2522, Email: *9-ACT-PMO-ATS-HELPDESK@faa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 106, 44102, 44103, 44104, 44105, 44106, 44107, 44110, 44111, 44809, and 44807; 14 CFR parts 45, 47–49, and § 89.130.

PURPOSE(S) OF THE SYSTEM:

To provide a register of United States civil aircraft to aid in the national defense and to support a safe and economically strong civil aviation system, and to meet treaty requirements under the Convention on International Civil Aviation, Annex 7. To safely integrate UA into the national airspace. To determine that aircraft are registered in accordance with the provisions of 49 U.S.C. 44103. To support FAA safety programs and agency management. To aid law enforcement and aircraft accident investigations. To serve as a repository of legal documents to determine legal ownership of aircraft. To provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives. To aid in compliance with FAA standards including but not limited to agency enforcement regulations. To educate owners regarding safety requirements for operation. To receive and record payment of aircraft registration and recordation fees. To provide an alternate aircraft ID and ICAO aircraft address for aircraft operators, which limits the extent to which the aircraft can be identified by non-FAA parties capturing the ADS–B signal.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aircraft owners, aircraft operators (or authorized representatives), aircraft dealers, lien holders, and lessees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aircraft registration numbers; aircraft manufacturer name, model, and serial numbers; aircraft operator, authorized representative, or registered owner name, address, email, telephone number, citizenship, and organization/company; designated agent name, address, email, phone number and fax; date of birth; legal records (*e.g.,* evidence of ownership, divorce decree, and court order); registration information: (status: pending, valid, expired, canceled; type of ownership: individual, partnership, corporation, non-citizen corporation, Limited Liability Co., government, co-ownership; airworthiness: Type, status); aircraft registration documents; instruments affecting aircraft ownership: loan, lien, or lease interests; applications for airworthiness; major repair and alteration reports; NOI and COI; operator ID; ADS–B/TIS–B/FIS–B Problem Reports including pilot's name and information about the reported issue/problem, including location and aircraft avionics equipage from pilots. GA ADS–B Rebate Program Payment records will be maintained until at least 2027, the timeframe specified in NARA General Records Schedule 1.1, item 10.

RECORD SOURCE CATEGORIES:

Sources of records includes aircraft owners, aircraft operators (or their authorized representative), foreign-registered aircraft operators (who in some instances could be U.S. citizens), lien holders, lessees and aircraft dealers, manufacturers of aircraft, maintenance inspectors, mechanics, and FAA officials. All forms associated with this system and subject to the Paperwork Reduction Act have been approved by the Office of Management and Budget (OMB) under the referenced information collection requests: OMB control numbers 2120–0697 and 2120–0779.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to other disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

SYSTEM SPECIFIC ROUTINE USES

1. To the public (including government entities, title companies, financial institutions, international organizations, and others), when permitted, information, including aircraft owner's name, address, United States Registration Number, aircraft type, legal documents related to title or financing of an aircraft and ADB–S summary reports, in order to facilitate aviation safety, security, and commerce. Emails and telephone numbers of small unmanned aircraft system (sUAS) owners registered under 14 CFR part 48 will not be disclosed to the Public pursuant to this Routine Use.

2. To law enforcement, when necessary and relevant to an FAA enforcement activity.

3. To government agencies, whether Federal, State, Tribal, local or foreign, information necessary or relevant to an investigation of a violation or potential violation of law, whether civil, criminal, or regulatory, that the agency is charged with investigating or enforcing; as well as, to government agencies, whether Federal, State, or local responsible for threat detection in connection with critical infrastructure protection.

DEPARTMENTAL ROUTINE USES

4. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

5. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision

concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

6. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her official capacity, or (c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

7b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. The information contained in this system of records will be disclosed to the Office of Management and Budget, OMB, in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

9. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

10. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

11. A record from this system of records may be disclosed as a routine use to the Coast Guard and to the Transportation Security Administration (TSA) if information from this system was shared with either agency when that agency was a component of the Department of Transportation before its transfer to the Department of Homeland Security and such disclosure is necessary to accomplish a DOT, TSA, or Coast Guard function related to this system of records.

12. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

13. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

14a. To appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14b. To another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

15. DOT may disclose records from this system, as a routine use, to the Office of Government Information

Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

16. DOT may disclose records from this system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

17. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

18. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)), homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment'', November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

With the exception of older aircraft registration records that are being maintained as paper records and have not yet been converted into electronic form, all records are electronically stored. Backup copies of imaged records are stored at remote locations, including but not limited to the FAA's government cloud.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records of registered and cancelled aircraft in the digital image system may be retrieved by registration number, the manufacturer's name, model, and serial number, and by the name of the current registered owner. Hard copy canceled aircraft records may be retrieved using a former registration number and the manufacturer's name, model, and serial number. TIS–B/FIS– B records may be retrieved by the aircraft registration number. Part 89 NOI records may be retrieved by COI number, unmanned aircraft serial number, or operator's (or authorized representative's) name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Aircraft registration records will be maintained as permanent records in accordance with the National Archives and Records Administration (NARA) Schedule N1–237–04–03. In accordance with that schedule, paper copies of registration submissions are destroyed once the original is scanned into the system and the digital image is determined to be an adequate substitute for paper records. Copies of the Aircraft Registration system are transferred to NARA on an annual basis. The FAA will maintain GA ADS–B Rebate Program payment records for at least six years after the program has ended (until at least 2027), the timeframe specified in NARA General Records Schedule 1.1, item 10. For records related to Part 89 NOI, the FAA has submitted a new records retention and disposition schedule DAA–0237–2023–0007–0003 to NARA and is proposing to maintain the records for 3 years after the COI has either expired or been cancelled. The FAA will retain Part 89 NOI records until it receives approval of the record disposition authority from NARA. The FAA will retain APM records (which includes the Privacy ICAO Address program) for three years, in accordance with NARA Schedule DAA–0237–2020–0002–0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to individuals who have a need to know the information for the performance of their official duties and who have clearances or permissions. Access to records in this system are limited to those with appropriate security credentials, an authorized purpose, and need-to-know. The FAA deploys role-based access controls in addition to other protection measures reviewed and certified by the FAA's cybersecurity professionals to maintain the confidentiality, integrity, and availability requirements of the system.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of whether this system of records contains information about them may contact the System Managers at the address provided in the section ''System Manager.'' When seeking records about yourself from this system of records or any other Departmental system of records your request must conform to the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

CONTESTING RECORD PROCEDURES:

See ''Records Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

A full notice of this system of records, DOT/FAA 801, Aviation Registration Records, was published in the **Federal Register** on August 15, 2016 (81 FR 54187), DOT/FAA 801, Aircraft Registration Records, December 17, 2015 (80 FR 77697) and DOT/FAA 801, Aircraft Registration System, April 11, 2000 (65 FR 19518).

Issued in Washington, DC.

Karyn Gorman,

Chief Privacy Officer.

[FR Doc. 2023–17073 Filed 8–8–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Information Return for Publicly Offered Original Issue Discount Instruments

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 information return for publicly offered original issue discount instruments.

DATES: Written comments should be received on or before October 10, 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 1545–0887 or Information Return for Publicly Offered Original Issue Discount Instruments.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information Return for Publicly Offered Original Issue Discount Instruments.

OMB Number: 1545–0887.

Form Number: 8281.

Abstract: Internal Code section 1275(c)(2) requires the furnishing of certain information to the IRS by issuers of publicly offered debt instruments having original issue discount. Regulations section 1.1275–3 prescribes that Form 8281 shall be used for this purpose. The information on Form 8281 is used to update Publication 1212, List of Original Issue Discount Instruments.

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.

Estimated Number of Respondents: 2,500.

Estimated Time per Response: 6 hours, 7 minutes.

Estimated Total Annual Burden Hours: 15,300 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: August 3, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–17029 Filed 8–8–23; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on August 21, 2023 on ''China's Current Economy: Implications for Investors and Supply Chains.''

DATES: The hearing is scheduled for Monday, August 21, 2023 at 9:30 a.m.

ADDRESSES: Members of the public will be able to attend in person at Dirksen 430 or view a live webcast via the Commission's website at *www.uscc.gov. Visit the Commission's website for updates to the hearing location or possible changes to the hearing schedule. Reservations are not required to view the hearing online or in person.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov*. *Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov*. Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the seventh public hearing the Commission will hold during its 2023 reporting cycle. The hearing will start with an evaluation of the health of China's financial sector, assessing the extent of China's evolving fiscal and financial challenges and the consequent implications for China's economic growth. Next, the hearing will examine China's role in global capital markets, including how Chinese firms raise capital from abroad via offshore tax havens and how China's sovereign wealth funds invest and deploy China's foreign exchange reserves. Finally, the hearing will address developments in U.S.-China trade relations and U.S. supply chain resiliency, looking at the major trends reshaping U.S. supply chain strategies in addition to China's efforts to secure dominance in key technology areas, such as clean energy technology.

The hearing will be co-chaired by Commissioner Robin Cleveland and Commissioner Kimberly T. Glas. Any interested party may file a written statement by August 21, 2023 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Public Law 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), as amended by Public Law 109–108

(November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: August 1, 2023.

Daniel W. Peck,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2023–16990 Filed 8–8–23; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0922]

Agency Information Collection Activity Under OMB Review: IBM Skillsbuild Training Program Application—Pilot Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain, select* ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0922.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *Maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0922'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: White House Cyber Initiative, as supported by VA Principal Deputy Under Secretary for VA Benefits, Mr. Michael Frueh.

Title: IBM Skillsbuild Training Program Application—Pilot Program, VAF 22–10282.

OMB Control Number: 2900–0922.

Type of Review: Extension of a previously approved collection.

Abstract: The IBM SkillsBuild Program is an IBM-sponsored pilot training program administered by VA to provide free virtual Information Technology (IT) training. SkillsBuild is a free online learning platform that provides adult learners with the opportunity to gain or improve IT skills that meet the needs of employers in the High-Technology industry. VA will provide the opportunity for Veterans, Service members, spouse, children, and caregivers to access free, self-paced, virtual training and credentials in Cybersecurity and Data Analytics. This virtual training in the field of Cybersecurity and Data Analytics is an enhanced resource for Veterans and transitioning Service members who are seeking job training and credentials to pursue a career in Technology. The IBM Skillsbuild Training Program Application (Intake Form), VA Form 22–10282 will allow eligible candidates to register and apply on a first-come, first-served basis to participate in the program, and the form will be sent via Email to *Vettecpartner@va.gov.,* for processing.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 34930 on May 31, 2023, page(s) 34930–34931.

Affected Public: Individuals and Households.

Estimated Annual Burden: 100 hours.

Estimated Average Burden Time per Respondent: 10 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 600.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–16995 Filed 8–8–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 152 August 9, 2023

Part II

Securities and Exchange Commission

17 CFR Parts 240 and 275
Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 275

[Release Nos. 34–97990; IA–6353; File No. S7–12–23]

RIN 3235–AN00; 3235–AN14

Conflicts of Interest Associated With the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing new rules (''proposed conflicts rules'') under the Securities Exchange Act of 1934 (''Exchange Act'') and the Investment Advisers Act of 1940 (''Advisers Act'') to eliminate, or neutralize the effect of, certain conflicts of interest associated with broker-dealers' or investment advisers' interactions with investors through these firms' use of technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes. The Commission is also proposing amendments to rules under the Exchange Act and Advisers Act that would require firms to make and maintain certain records in accordance with the proposed conflicts rules.

DATES: Comments should be received on or before October 10, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–12–23 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–23. 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 of submission. The Commission will post all comments on the Commission's website (https://www.sec.gov/rules/proposed.shtml). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. 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.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at www.sec.gov to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Blair B. Burnett, Senior Counsel, Investment Company Regulation Office, Michael Schrader, Senior Counsel, Chief Counsel's Office, Sirimal R. Mukerjee, Senior Special Counsel, and Melissa Roverts Harke, Assistant Director, Investment Adviser Regulation Office, Division of Investment Management, at (202) 551–6787 or *IArules@sec.gov*, and Kyra Grundeman and James Wintering, Special Counsels, Anand Das, Senior Special Counsel, Kelly Shoop, Branch Chief, Devin Ryan, Assistant Director, John Fahey, Deputy Chief Counsel, and Emily Westerberg Russell, Chief Counsel, Office of Chief Counsel, Division of Trading and Markets, at (202) 551–5550 or *tradingandmarkets@sec.gov*, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment: 17 CFR 240.15l–2 under the Exchange Act[1] (''proposed rule 240.151–2'') and 17 CFR 275.211(h)(2)–4 under the Advisers Act[2] (''proposed rule 275.211(h)(2)–4'' and, together with proposed rule 240.15l–2, ''proposed conflicts rules''); and amendments to 17 CFR 240.17a–3 and 17 CFR 240.17a–4 (''rules 17a–3 and 17a–4'') under the Exchange Act and 17 CFR 275.204–2 under the Advisers Act (''rule 204–2'' and, together with the proposed amendments to rules 17a–3 and 17a–4, ''proposed recordkeeping amendments'').

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[1] Unless otherwise noted, when we refer to the Exchange Act, we are referring to 15 U.S.C. 78, and when we refer to rules under the Exchange Act, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR 240].

[2] Unless otherwise noted, when we refer to the Advisers Act, we are referring to 15 U.S.C. 80b, and when we refer to rules under the Advisers Act, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275].

I. Introduction

The adoption and use of newer technologies, such as predictive data analytics (''PDA''), by broker-dealers and investment advisers (together, ''firms'') have accelerated.[3] In some instances, firms' use of PDA and similar technologies may be subject to statutory or regulatory investor protections, but in other cases, it may not. Firms' use of PDA-like technologies can bring benefits in market access, efficiency, and returns. To the extent that firms are using PDA-like technologies to optimize for their own interests in a manner (intentionally or unintentionally) that places these interests ahead of investor interests, however, investors can suffer harm. Further, due to the scalability of these technologies and the potential for firms to reach a broad audience at a rapid speed, as discussed below, any resulting conflicts of interest could cause harm to investors in a more pronounced fashion and on a broader scale than previously possible.[4]

We believe the current regulatory framework should be updated to help ensure that firms are appropriately addressing conflicts of interests associated with the use of PDA-like technologies. As a result, we are proposing specific protections to complement those already required under existing regulatory frameworks[5] to better protect investors from harms arising from these conflicts.

A. Overview

Broker-dealers may have a range of conflicts of interest with their retail investors.[6] Likewise, investment advisers may have conflicts of interest with respect to advisory clients and investors in their pooled investment vehicle clients.[7] Some of these conflicts of interest are inherent to the relationship between these firms and investors. For example, an investment adviser that is paid a percentage fee based on assets under management has an incentive to encourage a client to move assets into his or her advisory account, which could conflict with investors' interest, for example, to retain assets in a 401(k) plan or other retirement account. Similarly, a broker-dealer that receives transaction-based (*e.g.,* commission) compensation has an incentive to maximize the frequency of transactions, which could increase costs to the investor or expose them to other risks associated with excess trading.

Many broker-dealers and investment advisers also have conflicts of interest associated with other common business practices. For example, some investment product sponsors offer revenue sharing payments, creating an incentive for broker-dealers and investment advisers that accept such payments to favor those investments. Similarly, firms that offer proprietary products have an incentive to favor those products over other non-proprietary alternatives. Dual registrant and affiliated firms that offer both brokerage and advisory accounts have an incentive to steer investors toward the account type that is most profitable for the firm, regardless of whether it is in the best interest of the investor. Unless adequately addressed, these conflicts of interest can cause broker-dealers and investment advisers to place their interests ahead of investors' interests.

Broker-dealers and investment advisers operate within regulatory frameworks that in many cases require them to, as applicable, disclose, mitigate, or eliminate conflicts.[8] These regulatory frameworks play a fundamental role in protecting retail investors of broker-dealers, clients of investment advisers, and investors in pooled investment vehicle clients of investment advisers (together, ''investors'') from the negative effects of firms placing their own interests ahead of investors' interests. As the markets grow and evolve, however, and specifically, as firms adopt and utilize newer technologies to interact with investors, we are evaluating our regulations' effectiveness in protecting investors from the potentially harmful impact of conflicts of interest.

Recently, firms' adoption and use of PDA-like technologies[9] have

[3] *See* Deloitte, Artificial intelligence: The next frontier for investment management firms (Feb. 5, 2019), *https://www.deloitte.com/global/en/Industries/financial-services/perspectives/ai-next-frontier-in-investment-management.html* (''AI is providing new opportunities which extend far beyond cost reduction and efficient operations. Many investment management firms have taken note and are actively testing the waters, applying cognitive technologies and AI to various business functions across the industry value chain.''); Blake Schmidt and Amanda Albright, *AI Is Coming for Wealth Management. Here's What That Means, Bloomberg Markets* (Apr. 21, 2023), *https://www.bloomberg.com/news/articles/2023-04-21/vanguard-fidelity-experts-explain-how-ai-is-changing-wealth-management* (discussing experts views on AI impact on the wealth management industry). As discussed more below, in addition to PDA, firms have adopted and used artificial intelligence (''AI''), including machine learning, deep learning, neural networks, natural language processing (''NLP''), or large language models (including generative pre-trained transformers or ''GPT''), as well as other technologies that make use of historical or real-time data, lookup tables, or correlation matrices (collectively, ''PDA-like technologies''). *See, e.g.,* Q. Zhu and J. Luo, *Generative Pre-Trained Transformer for Design Concept Generation: An Exploration,* Proceedings of the Design Society, Design Vol 2 (May 2022), *https://www.cambridge.org/core/journals/proceedings-of-the-design-society/article/generative-pretrained-transformer-for-design-concept-generation-an-exploration/41894D82DCBC0610B5B6E68967B7047F* (''GPT are language models pre-trained on vast quantities of textual data and can perform a wide range of language-related tasks.'') (citations omitted).

[4] *See infra* section I.C.

[5] *See infra* section III.C.3.

[6] While the proposed conflicts rules do not use or define the term ''retail investors,'' we use that term in this release to mean ''a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes,'' which is consistent with the definition of ''retail investor'' in Form CRS and would include both current and prospective retail customers. *See* Form CRS, Sec. 11.E. Separately, we note that, for broker-dealers, the proposed conflicts rule defines ''investor'' consistent with the definition of ''retail investor'' in Form CRS.

[7] Proposed rule 275.211(h)(2)–4 would apply to clients and prospective clients of advisers as well as investors and prospective investors in pooled investment vehicles advised by those advisers.

[8] *See https://www.sec.gov/rules/final/2019/34-86031.pdf,* Exchange Act Release No. 86031 (June 5, 2019) [84 FR 33318 (July 12, 2019)] (''Reg BI Adopting Release''); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)], at section II.C. (''Fiduciary Interpretation'') (describing an adviser's fiduciary duties to its clients). Additionally, rule 206(4)–8 under the Advisers Act prohibits certain statements, omissions, and other acts, practices, or courses of business as fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

[9] Artificial intelligence is generally used to mean the capability of a machine to imitate intelligent human behavior and machine learning is a subfield of artificial intelligence that gives computers the

Continued

accelerated.[10] While this adoption and use can bring potential benefits for firms and investors (*e.g.,* with respect to efficiency of operations, which can generate cost savings for investors, or enhancing the efficiency of identifying investment opportunities that match an investor's preferences, profile, and risk tolerances), they also raise the potential for conflicts of interest associated with the use of these technologies to cause harm to investors more broadly than before.[11]

While the presence of conflicts of interest between firms and investors is not new, firms' increasing use of these PDA-like technologies in investor interactions may expose investors to unique risks. This includes the risk of conflicts remaining unidentified and therefore unaddressed or identified and unaddressed. The effects of such unaddressed conflicts may be pernicious, particularly as this technology can rapidly transmit or scale conflicted actions across a firm's investor base.[12] For example, conflicts of interest can arise from the data the technology uses (including any investor data) and the inferences the technology makes (including in analyzing that data, other data, securities, or other assets). These issues may render a firm's identification of such conflicts for purposes of the firm's compliance with applicable Federal securities laws more challenging without specific efforts both to fully understand the PDA-like technology it is using[13] and to oversee conflicts that are created by or transmitted through its use of such technology.[14]

Moreover, PDA-like technologies may have the capacity to process data, scale outcomes from analysis of data, and evolve at rapid rates.[15] While valuable in many circumstances, these technologies could rapidly and exponentially scale the transmission of any conflicts of interest associated with such technologies to investors.[16] For example, a firm may use PDA-like technologies to automatically develop advice and recommendations that are then transmitted to investors through the firm's chatbot, push notifications on its mobile trading application (''app''), and robo-advisory platform. If the advice or recommendation transmitted is tainted by a conflict of interest because the algorithm drifted[17] to advising or recommending investments more profitable to the firm or because the dataset underlying the algorithm was biased toward investments more profitable to the firm, the transmission of this conflicted advice and recommendations could spread rapidly to many investors.

Unless adequately addressed, the use of these PDA-like technologies may create or transmit conflicts of interest that place a firm's interests ahead of investors' interests. This may arise not only when a firm is providing investment advice or recommendations, but also in the firm's sales practices and investor interactions more generally, such as design elements, features, or communications that nudge or prompt more immediate and less informed action by the investor.[18] In light of these developments and risks, and for the reasons we describe further below, we are proposing that a firm's use of certain PDA-like technologies in an investor interaction that places the firm's interests ahead of the investors' interests involves a conflict of interest that must be eliminated or its effects neutralized in accordance with the proposed conflicts rules.

B. Background

1. Evolution in the Investment Industry and Its Technology Use

Over the last several decades, firms' use of technology to interact with investors and provide products and services has evolved significantly, and with it, the nature and extent of the conflicts of interest this use can create. When Congress first enacted the

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ability to learn without explicitly being programmed. *See generally* Sara Brown, *Machine Learning, Explained,* MIT Sloan School of Management (Apr. 21, 2021), *https://mitsloan.mit.edu/ideas-made-to-matter/machine-learning-explained.* Predictive data analytics draws inferences from large data sets, relying on hypothesis-free data mining and inductive reasoning to uncover patterns to make predictions about future outcomes, and may use natural language processing, signal processing, topic modeling, pattern recognition, machine learning, deep learning, neural networks, and other advanced statistical methods. *See* Nathan Cortez, *Predictive Analytics Law and Policy: Mapping the Terrain: Challenging Issues in Specific Private Sector Contexts, Substantiating Big Data in Health Care,* 14 ISJLP 61, 65 (Fall 2017). *See generally* Financial Industry Regulatory Authority, Inc. (''FINRA''), Artificial Intelligence (AI) in the Securities Industry 5 (June 2020) (''FINRA AI Report''), *https://www.finra.org/sites/default/files/2020-06/ai-report-061020.pdf;* Financial Stability Board, Artificial Intelligence and Machine Learning in Financial Services: Market Developments and Financial Stability Implications (Nov. 1, 2017) (''FSB AI Report''), *https://www.fsb.org/wp-content/uploads/P011117.pdf; see also* Department of the Treasury, et al., Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning (Feb. 2021) [86 FR 16837, 16839–40 (Mar. 31, 2021)] (''Treasury RFI'').

[10] *See infra* section I.B.

[11] *See, e.g., For AI in Asset Management, Tomorrow is Here,* Markets Media (Mar. 28, 2023), *https://www.marketsmedia.com/for-ai-in-asset-management-tomorrow-is-here/* (citing possible benefits for investment managers in generating alpha, improving efficiency, enhancing product and content distribution, and enhancing risk management and customer experience); Christine Schmid, *AI in Wealth: from Science Fiction to Science Fact,* FinExtra (June 8, 2023), *https://www.finextra.com/blogposting/24323/ai-in-wealth-from-science-fiction-to-science-fact* (citing potential benefits in personalized portfolio creation, enhanced investor engagement, democratized personalized investing, and reduced information overload).

[12] *See, e.g.,* Sophia Duffy and Steve Parrish, You Say Fiduciary, I Say Binary: A Review and Recommendation of Robo-Advisors and the Fiduciary and Best Interest Standards, 17 Hastings Bus. L.J. 3, at 26 (2021) (stating that the impact of firm conflicts of robo-advisors ''are arguably more detrimental than personal conflicts between an advisor and client because the number of clients impacted by the firm conflict is potentially exponentially higher.'') (''Robo-Advisors and the Fiduciary and Best Interest Standards'').

[13] *See, e.g., infra* section II.A.2.b and II.A.3 (discussing the testing and policies and procedures requirements, respectively, of the proposed conflicts rules, which if implemented in accordance with the proposal, would necessitate firms' developing an understanding of the PDA-like technologies they use).

[14] *See, e.g.,* Sohnke M. Bartram, Jurgen Branke & Mehrshad Motahari, *Artificial Intelligence in Asset Management* (2020) (''AI in Asset Management'') (''Understanding and explaining the inferences made by most AI models is difficult, if not impossible. As the complexity of the task or the algorithm grows, opacity can render human supervision ineffective, thereby becoming an even more significant problem.'').

[15] *See, e.g.,* Eray Elicik, *Artificial Intelligence vs. Human Intelligence: Can a game-changing technology play the game?* (Apr. 20, 2022), *https://dataconomy.com/2022/04/is-artificial-intelligence-better-than-human-intelligence/* (''Compared to the human brain, machine learning (ML) can process more data and do so at a faster rate.''); David Nield, *Google Engineers 'Mutate' AI to Make It Evolve Systems Faster Than We Can Code Them* (Apr. 17, 2020), *https://www.sciencealert.com/coders-mutate-ai-systems-to-make-them-evolve-faster-than-we-can-program-them* (''[R]esearchers have tweaked [a machine learning system] to incorporate concepts of Darwinian evolution and shown it can build AI programs that continue to improve upon themselves faster than they would if humans were doing the coding.'').

[16] *See* Robo-Advisors and the Fiduciary and Best Interest Standards, *supra* note 12, at 26. *See also* FINRA AI Report, *supra* note 9 (discussing exploration of the use of AI tools by market participants and noting, among other things, that firms should ensure sound governance and supervision, including effective means of overseeing suitability of recommendations, conflicts of interest, customer risk profiles and portfolio rebalancing) (internal quotations and citation omitted); Y. Minsky, Communications of the ACM, OCaml for the Masses (Sept. 27, 2011), *https://dl.acm.org/doi/pdf/10.1145/2018396.2018413* (explaining that ''technology carries risk. There is no faster way for a trading firm to destroy itself than to deploy a piece of trading software that makes a bad decision over and over in a tight loop'' and that the author's employer seeks to control these risks by ''put[ting] a very strong focus on building software that was easily understood—software that was readable.'').

[17] *See infra* note 157 and accompanying text.

[18] *See, e.g.,* CFA Institute, *Ethics and Artificial Intelligence in Investment Management: A Framework for Professionals* (2022) (stating that professionals should ensure they understand the sources of any potential conflicts generated by the use of algorithms and work with developers to ensure that such systems do not inappropriately incorporate fee considerations in the algorithm generating the investment advice).

Exchange Act and the Advisers Act, firms were increasingly deploying what were then considered advanced technologies, such as punch cards and telex machines. As technology improved, firms began adopting other technologies, such as computers, email, spreadsheets, and the internet. The Commission has previously observed that these and other technologies have helped to promote transparency, liquidity, and efficiency in our capital markets.[19] If responsibly implemented and overseen by firms, new technologies can aid firms' interactions with investors, and bring greater access and product choice, potentially at a lower cost, without compromising investor protection, capital formation, and fair, orderly, and efficient markets.

Where once investors placed trades with their broker in-person, they eventually began to place orders over the phone, and then through a website. Now investors can instantaneously place a trade directly through an app on a smart phone and, instead of a recommendation delivered by a human, they may receive push notifications potentially designed to affect trading behavior. These technological interactions can be designed to respond to human behavior, for example, sending increased notifications for certain investment products depending on where the person scrolling through investment products pauses on her smartphone. As technology continues to evolve, we believe that firms are likely to increase their reliance on behavioral science frameworks in influencing investor behavior.[20] Investors that previously met in person with their advisers are now able to access computer-generated advice that is delivered rapidly in an app to many investors by, for example, a robo-adviser. Rather than advertising in local newspapers, making cold calls, or relying on referrals, firms are now digitally targeting investors.[21]

In recent years, we have observed a rapid expansion in firms' reliance on technology and technology-based products and services.[22] The use of technology is now central to how firms provide their products and services to investors.[23] Some firms and investors in financial markets now use new technologies such as AI, machine learning, NLP, and chatbot technologies to make investment decisions and communicate between firms and investors.[24] In addition, existing technologies for data-analytics and data collection continue to improve and find new applications.[25]

2. Current PDA-Like Technology Use and Expected Growth

Financial market participants currently use AI and machine learning technologies in a variety of ways. For example, algorithmic trading is a widely used application of machine learning in finance, where machine-learning models analyze large datasets and identify patterns and signals to optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes.[26] Moreover, the advent and growth of services available on certain digital platforms, such as those offered by online brokerages and robo-advisers, have multiplied the opportunities for retail investors, in particular, to invest and trade in securities, and in small amounts through fractional shares.[27]

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[19] *See* Interpretation on Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)], at section I; *see also* Investment Adviser Marketing, Investment Advisers Act No. 5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)], at section I (''Investment Adviser Marketing Release'') (noting that the rules are ''designed to accommodate the continual evolution and interplay of technology and advice'').

[20] *See, e.g.,* Robert W. Cook, President and CEO of FINRA, *Statement Before the Financial Services Committee U.S. House of Representatives* (May 6, 2021), *https://www.finra.org/media-center/speeches-testimony/statement-financial-services-committee-us-house-representatives* (addressing the ''recent trends of retail trading platforms is the use of 'game-like' and other features that may encourage investor behaviors'' and ''the growing prevalence of these features''); Margaret Franklin, *Investment Gamification: Not All Cons, Some Important Pros,* Kiplinger (Feb. 20, 2023), *https://www.kiplinger.com/investing/investment-gamification-pros-and-cons* (discussing the use of behavioral techniques and the rising influence of social media, and stating that the gamification ''style of trading, ushered in largely by the next generation of investors, is likely here to stay.''). *See also* James Tierney, *Investment Games,* 72 Duke L.J. 353, 355 (Nov. 2022) (describing the growth of retail investing and discussing gamification, including how ''mobile app developers have innovated in user-interface design to compete with incumbent brokers [by including features such as] intuitive and appealing design, as well as digital engagement practices that encourage interaction with the app and that shape the information users consider in investing,''); Jill E. Fisch, GameStop and the Reemergence of the Retail Investor, 102 B.U. L. Rev. 1799, 1802 (Oct. 2022) (discussing gamification and the ''evidence that retail investment and engagement will both continue and evolve.''); Ernst & Young, *Social investing: behavioral insights for the modern wealth manager* (Apr. 2021), *https://www.ey.com/en_us/wealth-asset-management/social-investing-behavioral-insights-for-the-modern-wealth-manager* (''As firms continue to develop social investing operating models, they can use behavioral science frameworks to better understand how their client segments are influenced by digital design and choice architecture[.]'').

[21] *See, e.g.,* Disclosure Innovations in Advertising and Other Communications with the Public, FINRA Regulatory Notice 19–31 (Sept. 19, 2019), *https://www.finra.org/rules-guidance/notices/19-31; see also* Leslie K. John, Tami Kim, and Kate Barasz, *Ads that Don't Overstep,* Harvard Bus. Rev. (Jan.– Feb. 2018), *https://hbr.org/2018/01/ads-that-dont-overstep.*

[22] *See generally* Marc Andreessen, *Why Software Is Eating the World,* Wall St. J. (Aug. 20, 2011), *http://www.wsj.com/articles/SB10001424053111903480904576512250915629460* (discussing, among other things, the transformation of the financial services industry by software over the last 30 years) (''Why Software is Eating the World''); Robo-Advisors and the Fiduciary and Best Interest Standards, *supra* note 12, at 4 (stating that ''[o]ver the past decade, robo-advisors, or automated systems for providing financial advice and services, are becoming more and more popular'' and discussing estimated growth); Nicole G. Iannarone, *Fintech's Promises and Perils Computer as Confidant: Digital Investment Advice and the Fiduciary Standard,* 93 Chi.-Kent L. Rev. 141, 141 (2018) (''Automated investment advisers permeate the investment industry. Digital investment advisers are the fastest growing segment of financial technology (FinTech) and are disrupting traditional investment advisory delivery models.'') (citations omitted).

[23] *See, e.g.,* Investment Adviser Marketing Release, *supra* note 19, at section I (''The concerns that motivated the Commission to adopt the advertising and solicitation rules [in 1961 and 1979, respectively] still exist today, but investment adviser marketing has evolved with advances in technology. In the decades since the adoption of both the advertising and solicitation rules, the use of the internet, mobile applications, and social media has become an integral part of business communications. Consumers today often rely on these forms of communication to obtain information, including reviews and referrals, when considering buying goods and services. Advisers and third parties also rely on these same types of outlets to attract and refer potential customers.''); FINRA Investor Education Foundation, *Investors in the United States: The Changing Landscape* (Dec. 2022) *https://www.finrafoundation.org/sites/finrafoundation/files/NFCS-Investor-Report-Changing-Landscape.pdf* (discussing, among others, website and mobile app use for placing trades and use of social media sites for obtaining investment information).

[24] Michael Kearns & Yuriy Nevmyvaka *Machine Learning for Market Microstructure and High Frequency Trading,* High Frequency Trading—New Realities for Traders, Markets and Regulators (David Easley, Marcos Lopez de Prado & Maureen O'Hara editors, Risk Books, 2013); *see also* Christian Thier & Daniel dos Santos Monteiro, *How Much Artificial Intelligence Do Robo-Advisors Really Use?* (Aug. 31, 2022), *https://ssrn.com/abstract=4218181;* Imani Moise, *Bond Investing Gets the Robo-Adviser Treatment,* The Wall Street Journal (June 7, 2023), *https://www.wsj.com/articles/buying-bonds-is-hard-heres-a-way-to-let-a-robot-do-it-70a4587b.*

[25] Natasha Lekh & Petr Pátek, *What's the Future of Web Scraping in 2023?,* APIFY Blog (Jan. 20, 2023), *https://blog.apify.com/future-of-web-scraping-in-2023/;* Jon Martindale, *Best Apps to Use GPT–4, Digitaltrends* (May 4, 2023), *https://www.digitaltrends.com/computing/best-apps-to-use-gpt-4/.*

[26] *See generally* Alessio Azzutti, Wolf-Goerge Ringe, H. Siegfried Stiehl, *Machine Learning, Market Manipulation, and Collusion on Capital Markets: Why the ''Black Box'' Matters,* 43 U. Pa. J. Int'l L. 1 (2021), *https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2035&context=jil* (''Machine Learning and Market Manipulation'') (discussing current uses of algorithmic trading and exploring the risks to market integrity in connection with the evolving uses of artificial intelligence in algorithmic trading).

[27] *See, e.g.,* Nolan Schloneger, *A Case for Regulating Gamified Investing,* 56 Ind. L. Rev. 175 (2022) (''Th[e] rise [of investing applications] is largely attributed to zero commission and

Continued

This increased accessibility has been one of the key factors associated with the increase of retail investor participation in U.S. securities markets in recent years.[28] Firms have also expanded their use of technology to include ''digital engagement practices'' or ''DEPs,'' such as behavioral prompts, differential marketing, game-like features (commonly referred to as ''gamification''), and other design elements or features designed to engage retail investors when using a firm's digital platforms (*e.g.,* website, portal, app) [29] for services such as trading, robo-advice, and financial education. Our staff has observed that firms use technology to more efficiently develop investment strategies, including by using technology to automate their services, and to analyze the success of specific features and marketing practices at influencing retail investor behavior.[30] Firms may also seek to lower expenses by replacing customer service personnel with chatbots that can address common customer questions, and outsourcing their back office operations to vendors that rely heavily on technology.[31]

The rate at which PDA-like technologies continues to evolve is increasing [32] and firms are exploring and deploying AI-based applications across different functions of their organizations, including customer facing, investment, and operational activities.[33] These PDA-like technologies are complex and may include several categories of machine learning [34] algorithms, such as deep learning,[35] supervised learning,[36] unsupervised learning,[37] and reinforcement learning [38] processes.[39] In the past few years, these PDA-like technologies have made increasing use of natural language processing and natural language generation.[40] For example, AI has revolutionized chatbots by enabling them to understand and respond to natural language more accurately and learn and improve responses over time, leading to more personalized interactions with users. Recently, a new wave of online chatbots has rapidly moved machines using AI into new territory.[41] Some of these chatbots have passed what is known as the ''Turing test'' and have become virtually indistinguishable from humans in particular situations.[42] AI use is increasing year over year and in an array of applications.[43] For instance, some robo-advisers use chatbots and NLP technology for their online platforms to provide investment advice and manage investment portfolios.[44] These platforms may use a combination of AI, machine learning, NLP, and chatbot technologies to provide personalized investment recommendations to customers based on customer risk tolerance and investment goals.

As a result of a growing desire to perform functions remotely and through automated means, the COVID–19 pandemic accelerated the adoption of certain PDA-like technologies.[45] Many

fractional-share trading.''); John Csiszar, *How Our Approach to Investing Has Changed Forever,* YAHOO! (Mar. 10, 2021), *https://www.yahoo.com/now/approach-investing-changed-forever-190007929.html* (''Fractional share trading is just in its infancy but appears well on its way to changing how consumers approach investing. With fractional share trading, you can invest any dollar amount into stock, even if you don't have enough to buy a single share . . . . Fractional share investing allows nearly anyone to get involved in the stock market without needing $100,000 or more to buy a properly diversified portfolio of individual stock names.''). *See also* Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf* (''Some brokers have sought to attract new customers by offering the ability to purchase fractional shares. Fractional shares give investors the ability to purchase less than 1 share of a stock.''). Any staff statements represent the views of the staff. They are not a rule, regulation, or statement of the Commission. Furthermore, the Commission has neither approved nor disapproved their content. These staff statements, like all staff statements, have no legal force or effect: they do not alter or amend applicable law; and they create no new or additional obligations for any person.

[28] *See, e.g.,* Maggie Fitzgerald, *Retail Investors Continue to Jump Into the Stock Market After GameStop Mania,* CNBC (Mar. 10, 2021), *https://www.cnbc.com/2021/03/10/retail-investor-ranks-in-the-stock-market-continue-to-surge.html* (providing year-over-year app download statistics for Robinhood, Webull, Sofi, Coinbase, TD Ameritrade, Charles Schwab, E-Trade, and Fidelity from 2018–2020, and monthly figures for January and February of 2021); John Gittelsohn, *Schwab Boosts New Trading Accounts 31% After Fees Go to Zero,* Bloomberg (Nov. 14, 2019), *https://www.bloomberg.com/news/articles/2019-11-14/schwab-boosts-brokerage-accounts-by-31-after-fees-cut-to-zero* (noting that Charles Schwab opened 142,000 new trading accounts in October, a 31% jump over September's pace).

[29] Examples of DEPs include the following: social networking tools; games, streaks and other contests with prizes; points, badges, and leaderboards; notifications; celebrations for trading; visual cues; ideas presented at order placement and other curated lists or features; subscriptions and membership tiers; and chatbots.

[30] *See, e.g.,* SEC Investor Bulletin: Robo-Advisers (Feb. 23, 2017), *https://www.sec.gov/oiea/investor-alerts-bulletins/ib_robo-advisers* (discussing automated digital investment advisory programs); *see also* FINRA AI Report, *supra* note 9 (discussing three areas where broker-dealers are evaluating or using AI in the securities industry: communications with customers, investment processes, and operational functions).

[31] *See, e.g., SS&C Gets Automation Rolling with 180 'Digital Workers',* Ignites (Feb. 9, 2023), *https://www.ignites.com/c/3928224/508304?referrer_module=searchSubFromIG&highlight=SS&C.*

[32] *See, e.g.,* Robin Feldman and Kara Stein, *AI Governance in the Financial Industry,* 27 Stan. J.L. Bus. & Fin. 94, 122 (2022) (describing AI as ''a technology that is rapidly evolving and capable of learning.'').

[33] *See, e.g.,* Merav Ozair, *FinanceGPT: The Next Generation of AI-Powered Robo Advisors and Chatbots* (June 27, 2023), *https://www.nasdaq.com/articles/financegpt-the-next-generation-of-ai-powered-robo-advisors-and-chatbots* (describing current uses and development) (''FinanceGPT'').

[34] FINRA described ''Machine Learning (ML)'' as ''a field of computer science that uses algorithms to process large amounts of data and learn from it. Unlike traditional rules-based programming, [machine learning] models learn from input data to make predictions or identify meaningful patterns without being explicitly programmed to do so. There are different types of [machine-learning] models, depending on their intended function and structure[.]'' *See* FINRA AI Report, *supra* note 9.

[35] FINRA described a ''deep learning model'' as a model ''built on an artificial neural network, in which algorithms process large amounts of unlabeled or unstructured data through multiple layers of learning in a manner inspired by how neural networks function in the brain. These models are typically used when the underlying data is significantly large in volume, obtained from disparate sources, and may have different formats (*e.g.,* text, voice, and video).'' *See id.*

[36] FINRA described a ''supervised machine learning'' as a model that ''is trained with labeled input data that correlates to a specified output. . . . The model is continuously refined to provide more accurate output as additional training data becomes available. After the model has learned from the patterns in the training data, it can then analyze additional data to produce the desired output . . . .'' *See id.*

[37] As described by FINRA, in unsupervised machine learning, ''the input data is not labeled nor is the output specified. Instead, the models are fed large amounts of raw data and the algorithms are designed to identify any underlying meaningful patterns. The algorithms may cluster similar data but do so without any preconceived notion of the output . . . .'' *See id.*

[38] As described by FINRA, in reinforcement learning, ''the model learns dynamically to achieve the desired output through trial and error. If the model algorithm performs correctly and achieves the intended output, it is rewarded. Conversely, if it does not produce the desired output, it is penalized. Accordingly, the model learns over time to perform in a way that maximizes the net reward . . . .'' *See id.*

[39] *See also* FSB AI Report, *supra* note 9; Treasury RFI, *supra* note 9.

[40] *See, e.g.,* FINRA AI Report, *supra* note 9.

[41] *See* Cade Metz, *How Smart Are the Robots Getting?,* The New York Times (Jan. 20, 2023, updated Jan. 25, 2023).

[42] *Id.* The Turing test is a subjective test determined by whether the person interacting with a machine believes that they are interacting with another person. *See id.*

[43] *Embracing the Rapid Pace of AI,* MIT Technology Review Insights (May 19, 2021), *https://www.technologyreview.com/2021/05/19/1025016/embracing-the-rapid-pace-of-ai/.*

[44] *See, e.g.,* FinanceGPT, *supra* note 33 (describing current uses and development).

[45] *See, e.g.,* Joe McKendrick, *AI Adoption Skyrocketed Over the Last 18 Months,* Harvard Bus. Rev. (Sept. 27, 2021), *https://hbr.org/2021/09/ai-adoption-skyrocketed-over-the-last-18-months* (''The [COVID–19] crisis accelerated the adoption of analytics and AI, and this momentum will continue into the 2020s, surveys show. Fifty-two percent of companies accelerated their AI adoption plans because of the Covid crisis, a study by PwC finds. Just about all, 86%, say that AI is becoming a 'mainstream technology' at their company in 2021. Harris Poll, working with Appen, found that 55% of companies reported they accelerated their AI strategy in 2020 due to Covid, and 67% expect to further accelerate their AI strategy in 2021.'');

expect this momentum to continue, with AI becoming a mainstream technology across many industries, including the financial sector.[46] Organizations, including firms in the securities industry,[47] are using AI in a multitude of ways, including responding to customer inquiries, automating back-office processes, quality control,[48] risk management, client identification and monitoring, selection of trading algorithms, and portfolio management.[49] Others are actively developing investment advisory services based on PDA-like technologies.[50] Further, recent advancements in data collection techniques have significantly enhanced the scale and scope of data analytics, and its potential applications. Due to increases in processing power and data storage capacity, a vast amount of data is now available for high-speed analysis using these technologies.[51]

Furthermore, the range of data types has also expanded, with consumer shopping histories, media preferences, and online behavior now among the many types of data that data analytics can use to synthesize information, forecast financial outcomes, and predict investor and customer behavior.[52] Consequently, these technologies can be applied in novel and powerful ways which may be subtle, such as using the layout of an app and choice of data presentation and formatting to influence trading decisions.[53] Some trading apps use PDA and AI/machine learning along with detailed user data to increase user engagement and trading activity.[54]

Any risks of conflicts of interest associated with AI use will expand as firms' use of AI grows. These risks will have broad consequences if AI makes decisions that favor the firms' interests and then rapidly deploys that information to investors, potentially on a large scale.[55] Firms' nascent use of AI may already be exposing investors to these types of risks as well as others.[56] We are concerned that firms will intentionally or unintentionally take their own interest into account in the data or software underlying the applicable AI, as well as the applicable PDA-like technologies, resulting in investor harm. Among other things, a firm may use these technologies to optimize for the firm's revenue or to generate behavioral prompts or social engineering to change investor behavior in a manner that benefits the firm but is to the detriment of the investor.

3. Commission Protection of Investors as Technology Has Evolved

As noted above, firms' use of technology and subsequent adaptation incorporating emerging technologies are not new.[57] At the same time, the Commission has addressed firms' relationships with investors in a variety of ways to ensure investor protection as use of technology in those relationships has evolved over time.[58] The proposal, thus, is consistent with the Commission's practice of evolving our regulation in light of market and technological developments.

Broker-dealers and investment advisers are currently subject to extensive obligations under Federal securities laws and regulations, and, in the case of broker-dealers, rules of self-regulatory organizations,[59] that are

KPMG, *Thriving in an AI World: Unlocking the Value of AI Across Seven Key Industries* (May 2021), at 5, *https://advisory.kpmg.us/articles/2021/thriving-in-an-ai-world.html* (''Thriving in an AI World''); Blake Schmidt and Amanda Albright, *AI Is Coming for Wealth Management. Here's What That Means, Bloomberg Markets* (Apr. 21, 2023), *https://www.bloomberg.com/news/articles/2023-04-21/vanguard-fidelity-experts-explain-how-ai-is-changing-wealth-management* (discussing experts views on AI impact on the wealth management industry).

[46] *Id.*

[47] *See* IOSCO, *The use of artificial intelligence and machine learning by market intermediaries and asset managers* (Sept. 2021), at 1 (''IOSCO AI/ML Report''), *iosco.org/library/pubdocs/pdf/IOSCOPD684.pdf* (''Artificial Intelligence (AI) and Machine Learning (ML) are increasingly used in financial services, due to a combination of increased data availability and computing power. The use of AI and ML by market intermediaries and asset managers may be altering firms' business models.'').

[48] *See* Thriving in an AI World, *supra* note 45; *see also* FINRA AI Report, *supra* note 9, at 5–10 (noting the use of AI in the securities industry for communications with customers, investment processes, and operational functions); FINRA, *Deep Learning: The Future of the Market Manipulation Surveillance Program https://www.finra.org/media-center/finra-unscripted/deep-learning-market-surveillance* (''FINRA's Market Regulation and Technology teams recently wrapped up an extensive project to migrate the majority of FINRA's market manipulation surveillance program to using deep learning in what is perhaps the largest application of artificial intelligence in the RegTech space to date.''); Machine Learning and Market Manipulation, *supra* note 26; IOSCO AI/ML Report, *id.*

[49] IOSCO AI/ML Report, *supra* note 47.

[50] *See, e.g.,* Hugh Son, *JPMorgan is developing a ChatGPT-like A.I. service that gives investment advice, CNBC* (May 25, 2023), *https://www.cnbc.com/2023/05/25/jpmorgan-develops-ai-investment-advisor.html* (discussing a trademark application filed by JPMorgan for a product called IndexGPT that will utilize ''cloud computing software using artificial intelligence'' for ''analyzing and selecting securities tailored to customer needs[.]'').

[51] *See, e.g.,* Dimitris Andriosopoulos et al., *Computational Approaches and Data Analytics in Financial Services: A Literature Review,* 70 J. Operational Rsch. Soc. 1581 (2019), *https://doi.org/10.1080/01605682.2019.1595193;* James Lawler & Anthony Joseph, *Big Data Analytics Methodology in the Financial Industry,* 15 Info. Sys. Ed. J. 38 (July 2017), *https://isedj.org/2017-15/n4/ISEDJv15n4p38.html.*

[52] Daniel Broby, *The Use of Predictive Analytics in Finance,* 8 J. Fin & Data Sci. 145 (Nov. 2022), *https://doi.org/10.1016/j.jfds.2022.05.003;* OECD, *Artificial Intelligence, Machine Learning and Big Data in Finance: Opportunities, Challenges, and Implications for Policy Makers* (2021), *https://www.oecd.org/finance/financial-markets/Artificial-intelligence-machine-learning-big-data-in-finance.pdf.*

[53] *See, e.g.,* Sayan Chaudhury and Chinmay Kulkarni, *Design Patterns of Investing Apps and Their Effects on Investing Behaviors* (2021) (''Chaudhury & Kulkarni''), *dl.acm.org/doi/fullHtml/10.1145/3461778.3462008* (''investing apps can be considered as technical and social choice architectures that influence investing behavior'').

[54] *See, e.g.,* Alex McFarland, *10 ''Best'' AI Stock Trading Bots,* Unite.AI (June 4, 2023), *https://www.unite.ai/stock-trading-bots/.*

[55] *See, e.g.,* Robo-Advisors and the Fiduciary and Best Interest Standards, *supra* note 12 (stating that the impact of firm conflicts of robo-advisors ''are arguably more detrimental than personal conflicts between an advisor and client because the number of clients impacted by the firm conflict is potentially exponentially higher.''). *See also* AI in Asset Management, *supra* note 14 (''AI can make wrong decisions based on incorrect inferences that have captured spurious or irrelevant patterns in the data. For example, ANNs [artificial neural networks] that are trained to pick stocks with high expected returns might select illiquid, distressed stocks.''); FINRA AI Report, *supra* note 9, at 11–19 (noting that the use of AI ''raises several concerns that may be wide-ranging across various industries as well as some specific to the securities industry. Over the past few years, there have been numerous incidents reported about AI applications that may have been fraudulent, nefarious, discriminatory, or unfair, highlighting the issue of ethics in AI applications.''); FINRA AI Report, *supra* note 9, at 13 (''Depending on the use case, data scarcity may limit the model's analysis and outcomes, and could produce results that may be narrow and irrelevant. On the other hand, incorporating data from many different sources may introduce newer risks if the data is not tested and validated, particularly if new data points fall outside of the dataset used to train the model.'').

[56] *See, e.g.,* FINRA AI Report, *supra* note 9, at 5 (''The use of AI-based applications is proliferating in the securities industry[.]''); Sophia Duffy and Steve Parrish, *You Say Fiduciary, I Say Binary: A Review and Recommendation of Robo-Advisors and the Fiduciary and Best Interest Standards,* 17 Hastings Bus. L.J. 3, at 26 (2021) (''robo-advisors can be, and often are, intentionally programmed to favor the institution by making recommendations that favor the institution's products, rebalance client portfolios in ways which will allow the institution to earn more fees, and otherwise make recommendations that benefit the firm'').

[57] *See supra* section I.B.2.

[58] *See infra* note 114.

[59] Any person operating as a ''broker'' or ''dealer'' in the U.S. securities markets must register with the Commission, absent an exception or exemption. *See* Exchange Act section 15(a), 15 U.S.C. 78*o*(a); *see also* Exchange Act sections 3(a)(4) and 3(a)(5), 15 U.S.C. 78c(a)(4) and 78c(a)(5) (definitions of ''broker'' and ''dealer,'' respectively). Generally, all registered broker-dealers that deal with the public must become members of FINRA, a registered national securities association, unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. *See* Exchange Act section 15(b)(8), 15 U.S.C. 78o(b)(8); *see also* 17 CFR 240.15b9–1 (providing an exemption from Section 15(b)(8)). FINRA is the sole national securities association registered with the SEC under Section 15A of the Exchange Act. Because this release is focused on broker-dealers that deal with

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designed to promote conduct that, among other things, protects investors, including protecting investors from conflicts of interest.[60] To the extent PDA-like technologies are used in investor interactions that are subject to existing obligations, those obligations apply. These obligations include, but are not limited to, obligations related to investment advice and recommendations;[61] general and specific requirements aimed at addressing certain conflicts of interest, including requirements to eliminate, mitigate, or disclose certain conflicts of interest; disclosure of firms' services, fees, and costs; disclosure of certain business practices, advertising, communications with the public (including the use of ''investment analysis tools''); supervision; and obligations related to policies and procedures.[62] In addition to these obligations, Federal securities laws and regulations broadly prohibit fraud by broker-dealers and investment advisers as well as fraud by any person in the offer, purchase, or sale of securities, or in connection with the purchase or sale of securities.

The Commission has long acted to protect investors against the harm that can come when a firm acts on its conflicts of interest.[63] For example, the Commission has brought enforcement actions regarding an investment adviser's fiduciary duty to its clients with respect to conflicts of interest.[64] Similarly, the Commission has reinforced fraud protection for investors in pooled investment vehicles against conflicts of interest through rule 206(4)–8.[65] The Commission regulates investment adviser advertising and marketing practices to protect against, among others, adviser conflicts of interest that may taint such marketing, including through recent amendments adapting those protections in light of the evolution of practices and technologies.[66]

Likewise, broker-dealers have long been subject to Commission and SRO regulations and rules that govern their business conduct, including general and specific obligations to address conflicts of interest.[67] For example, under existing antifraud provisions of the Exchange Act, a broker-dealer has a duty to disclose material adverse information to its customers.[68] Indeed, the Commission has enforced a broker-dealer's duty to disclose material conflicts of interest under the antifraud provisions.[69] Broker-dealers are subject to specific FINRA rules aimed at addressing certain conflicts of interest.[70] Moreover, in 2019 the Commission adopted Regulation Best Interest (''Reg BI''), which was designed to enhance the quality of broker-dealer recommendations to retail customers and reduce the potential harm to retail customers that may be caused by conflicts of interest,[71] by requiring broker-dealers that make recommendations to retail customers to, among other things, establish, maintain, and enforce policies and procedures reasonably designed to identify and

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the public and are FINRA member firms (unless an exception applies), we refer to FINRA rules as broadly applying to ''broker-dealers,'' rather than to ''FINRA member firms.''

[60] *See infra* section III.C.3; Fiduciary Interpretation, *supra* note 8, at section II.C. (''The duty of loyalty requires that an adviser not subordinate its clients' interests to its own.''); *see also* Reg BI Adopting Release, *supra* note 8, at section II.A.1. (The ''without placing the financial or other interest . . . ahead of the interest of the retail customer'' phrasing recognizes that while a broker-dealer will inevitably have some financial interest in a recommendation—the nature and magnitude of which will vary—the broker-dealer's interests cannot be placed ahead of the retail customer's interest''). Additionally, broker-dealers often provide a range of services that do not involve a recommendation to a retail customer—which is required in order for Reg BI to apply—and those services are subject to general and specific requirements to address associated conflicts of interest under the Exchange Act, Securities Act of 1933, and relevant self-regulatory organization (''SRO'') rules as applicable. *See also* FINRA Report on Conflicts of Interest (Oct. 2013), at Appendix I (Conflicts Regulation in the United States and Selected International Jurisdictions) (''FINRA Conflict Report''), *https://www.finra.org/sites/default/files/Industry/p359971.pdf* (describing broad obligations under SEC and FINRA rules as well as specific conflicts-related disclosure requirements under FINRA rules).

[61] *See, e.g.,* 17 CFR 240.15l–1(a)(1) (''Exchange Act rule 15l–1(a)(1)'') (requiring broker-dealers and their associated persons to act in the best interest of retail customers when making recommendations, without placing the financial or other interest of the broker-dealer or its associated person ahead of the interest of the retail customer).

[62] Compliance with the proposed conflicts rules would not alter a broker-dealer's or investment adviser's existing obligations under the Federal securities laws. The proposed conflicts rules would apply in addition to any other obligations under the Exchange Act and Advisers Act, along with any rules the Commission may adopt thereunder, and any other applicable provisions of the Federal securities laws and related rules and regulations.

[63] *See infra* section III.C.

[64] *See, e.g.,* SEC Press Release, SEC Share Class Initiative Returning More Than $125 Million to Investors: Reflecting SEC's Commitment to Retail Investors, 79 Investment Advisers Who Self-Reported Advisers Act Violations Agree to Compensate Investors Promptly, Ensure Adequate Fee Disclosures (Mar. 11, 2019), *https://www.sec.gov/news/press-release/2019-28* (describing settled orders against 79 investment advisers finding that the settling investment advisers placed their clients in mutual fund share classes that charged 12b–1 fees when lower-cost share classes of the same fund were available to their clients without adequately disclosing that the higher cost share class would be selected; according to the SEC's orders, the 12b–1 fees were routinely paid to the investment advisers in their capacity as brokers, to their broker-dealer affiliates, or to their personnel who were also registered representatives, creating a conflict of interest with their clients, as the investment advisers stood to benefit from the clients' paying higher fees); *SEC* v. *Sergei Polevikov, et al.,* Litigation Release No. 25475 (Aug. 17, 2022) (settled order) (final judgment against employee working as a quantitative analyst at two asset management firms ''for perpetrating a front-running scheme that generated profits of approximately $8.5 million''); SEC Brings Settled Actions Charging Cherry-Picking and Compliance Failures, Adm. Proc. File No. 3–20955 (Aug 10, 2022) (settled order) (alleged multi-year cherry-picking scheme of former investment adviser representative of registered investment adviser preferentially allocating profitable trades or failing to allocate unprofitable trades to a adviser's personal accounts at the expense of the advisers client accounts).

[65] 17 CFR 275.206(4)–8; *see, e.g.,* In re. Virtua Capital Management, LLC, et al., Advisers Act Release No. 6033 (May 23, 2022) (allegedly failing to disclose conflicts of interest and associated fees, and breaching fiduciary duty to multiple private investment funds) (settled order).

[66] *See* Investment Adviser Marketing Release, *supra* note 19, at section I (''The concerns that motivated the Commission to adopt the advertising and solicitation rules [in 1961 and 1979, respectively] still exist today, but investment adviser marketing has evolved with advances in technology. In the decades since the adoption of both the advertising and solicitation rules, the use of the internet, mobile applications, and social media has become an integral part of business communications. Consumers today often rely on these forms of communication to obtain information, including reviews and referrals, when considering buying goods and services. Advisers and third parties also rely on these same types of outlets to attract and refer potential customers.'').

[67] *See infra* section III.C.3

[68] A broker-dealer may be liable if it does not disclose ''material adverse facts of which it is aware.'' *See, e.g., Chasins* v. *Smith, Barney & Co.,* 438 F.2d 1167, 1172 (2nd Cir. 1970); *SEC* v. *Hasho,* 784 F. Supp. 1059, 1110 (S.D.N.Y. 1992); In the Matter of RichMark Capital Corp., Exchange Act Release No. 48758 (Nov. 7, 2003) (Commission Opinion) (''When a securities dealer recommends stock to a customer, it is not only obligated to avoid affirmative misstatements, but also must disclose material adverse facts of which it is aware. That includes disclosure of 'adverse interests' such as 'economic self-interest' that could have influenced its recommendation.'') (citations omitted).

[69] *See, e.g.,* In re. Edward D. Jones & Co, Securities Act Release No. 8520 (Dec. 22, 2004) (settled order) (broker-dealer violated antifraud provisions of Securities Act and Exchange Act by failing to disclose conflicts of interest arising from receipt of revenue sharing, directed brokerage payments and other payments from ''preferred'' families that were exclusively promoted by broker-dealer); In re. Morgan Stanley DW Inc., Securities Act Release No. 8339 (Nov. 17, 2003) (settled order) (broker-dealer violated antifraud provisions of Securities Act by failing to disclose special promotion of funds from families that paid revenue sharing and portfolio brokerage).

[70] FINRA rules establish restrictions on the use of non-cash compensation in connection with the sale and distribution of mutual funds, variable annuities, direct participation program securities, public offerings of debt and equity securities, investment company securities, real estate investment trust programs, and the use of non-cash compensation to influence or reward employees of others. *See* FINRA Rules 2310, 2320, 2331, 2341, 5110, and 3220. These rules generally limit the manner in which members can pay or accept non-cash compensation and detail the types of non-cash compensation that are permissible.

[71] *See* Reg BI Adopting Release *supra* note 8, at text accompanying n.21.

disclose, mitigate, or eliminate, conflicts associated with a recommendation, including conflicts of interest that may result through the use of PDA-like technology to make recommendations (Reg BI's ''Conflict of Interest Obligation'').[72]

The Commission has and will continue to bring enforcement actions for violations of the Federal securities laws that entail the use of PDA-like technologies. However, the rapid acceleration of PDA-like technologies and their adoption in the investment industry,[73] the additional challenges associated with identifying and addressing conflicts of interest resulting from the use of these new technologies, and the concerns relating to scalability, discussed above, reinforce the importance of ensuring our regulatory regime specifically addresses these issues. In particular, disclosure may be ineffective in light of, as discussed above, the rate of investor interactions, the size of the datasets, the complexity of the algorithms on which the PDA-like technology is based, and the ability of the technology to learn investor preferences or behavior, which could entail providing disclosure that is lengthy, highly technical, and variable, which could cause investors difficulty in understanding the disclosure.

In light of these concerns, and the harm to investors that can result when firms act on conflicts of interest, we are proposing rules to address conflicts of interest associated with a firm's use of PDA-like technologies when interacting with investors that are contrary to the public interest and the protection of investors. In particular, the recent and rapid expansion of PDA-like technologies in the context of investment-related activities, without specific oversight obligations tailored to the specific risks involved in their use, can lead to outcomes that financially benefit firms at the expense of investors. Such a harm to investors might include the use of PDA-like technologies that prompt investors to enroll in products or services that financially benefit the firm but may not be consistent with their investment goals or risk tolerance, encourage investors to enter into more frequent trades or employ riskier trading strategies (*e.g.,* margin trading) that will increase the firm's profit at the investors' expense, or inappropriately steer investors toward complex and risky securities products inconsistent with investors' investment objectives or risk profiles that result in harm to investors but that financially benefit the firm. Due to the inherent complexity and opacity of these technologies as well as their potential for scaling, we are proposing that such conflicts of interest should be eliminated or their effects should be neutralized, rather than handled by other methods of addressing the conflicts, such as through disclosure and consent. Moreover, many of these technologies provide means—for example, A/B testing[74]—to empirically assess the conflicts' impact and thus to neutralize the effect of a conflict on investors. Further, reliance on scalable, complex, and opaque PDA-like technologies can result in operational challenges or shortcomings. For example, failure to identify and address conflicts that may be present in the PDA-like technology used to steer investors toward a product or service could result in a firm's failure to identify the risks to investors of certain investing behaviors that place the firm's interest ahead of investors' interest as well as inadequate compliance policies and procedures that would assist the firm in curbing these practices. As a consequence, this could result in the failure to take sufficient steps to address the potentially harmful effect of those conflicts.[75] For these additional reasons, we are proposing that such conflicts of interest be eliminated or their effects be neutralized, rather than handled by other methods of addressing the conflicts, such as through disclosure and consent.

4. Use of Predictive Data Technologies in Investor Interactions

Firms may use PDA-like technologies to transform user interfaces and the interactions that investors have on digital platforms.[76] For example, firms may collect data from a variety of internal sources (*e.g.,* trading desks, customer account histories, and communications) and external sources (*e.g.,* public filings, social media platforms, and satellite images) in both structured and unstructured formats,[77] enabling them to develop an understanding of investor preferences and adapt the interface and related prompts to appeal to those preferences. Firms may use these tools to increase the quantity of information used to support investment ideas,[78] leverage investor data to send targeted questionnaires to investors regarding evolving investment goals, identify which investors might be open to a new investment product, or identify which investors are most likely to stop using a firm's services.[79] We are concerned, however, that a firm's use of PDA-like technologies when engaging or communicating with—including by providing information to, providing recommendations or advice to, or soliciting—a prospective or current investor could take into consideration the firm's interest in a manner that places its interests ahead of investors' interests and thus harm investors.[80] For example, some members of the public have expressed concern that firms' use of these PDA-like technologies encourages practices that are profitable for the firm but may increase investors' costs, undermine investors' performance, or expose investors to

[72] 17 CFR 240.15l–1(a)(2)(iii) (''Exchange Act rule 15l–1(a)(2)(iii)'').

[73] *See, e.g.,* Amy Caiazza, Rob Rosenblum, and Danielle Sartain, *Investment Advisers' Fiduciary Duties: The Use of Artificial Intelligence,* Harvard Law School Forum on Corporate Governance (June 11, 2020), *https://corpgov.law.harvard.edu/2020/06/11/investment-advisers-fiduciary-duties-the-use-of-artificial-intelligence/* (''Artificial intelligence (AI) is an increasingly important technology within the investment management industry.''); FINRA AI Report, *supra* note 9, at 5 (''The use of AI-based applications is proliferating in the securities industry and transforming various functions within broker-dealers.'').

[74] A/B testing refers to running a learning model on two different datasets with a single change between the two, which can help identify causal relationships and, through understanding how changes affect outcomes, gain a better understanding of the functionality of a model. *See* Seldon, A/B Testing for Machine Learning (July 7, 2021) (''Seldon''), *https://www.seldon.io/a-b-testing-for-machine-learning.*

[75] *See, e.g.,* William Shaw and Aisha S. Gani, *Wall Street Banks Seizing AI to Rewire the World of Finance,* Financial Review (June 1, 2023) (in discussing fiduciary duty obligation when using AI in finance quoting a law firm partner as saying: ''How do you demonstrate to investors and regulators that you've done your duty when you've used an output without really knowing what the inputs are?'').

[76] *See, e.g.,* FSB AI Report, *supra* note 9, at 14–15 (chatbots are being introduced by a range of financial services firms, often in mobile apps or social media, and chatbots are ''increasingly moving toward giving advice and prompting customers to act'').

[77] *See* FINRA AI Report, *supra* note 9, at 4.

[78] *See* Deloitte, *Artificial intelligence: The next frontier for investment management firms* (Feb. 5, 2019), *https://www.deloitte.com/global/en/Industries/financial-services/perspectives/ai-next-frontier-in-investment-management.html.*

[79] *See* Ryan W. Neal, *Three Firms Where Artificial Intelligence is Helping with Financial Planning* (Jan. 17, 2020), *https://www.investmentnews.com/artificial-intelligence-advisers-176541* (describing current uses of AI and their potential application to broker-dealers and investment advisers).

[80] While the proposed rules apply more broadly to the use of covered technology in investor interactions, as discussed below, firms using covered technology to provide advice or make recommendations are subject to standards of conduct, among other regulatory obligations, that already apply to such advice or recommendations. *See infra* section III.C.3. The proposed conflicts rules would apply in addition to these standards of conduct and other regulatory obligations.

unnecessary risks based on their individual investment profile, such as: (i) excessive trading,[81] (ii) using trading strategies that carry additional risk (*e.g.,* options trading and trading on margin), and (iii) trading in complex securities products that are more remunerative to the firm but pose undue risk to the investor.[82]

In some cases, the use of PDA-like technologies to place a firm's interests ahead of investors' interests could reflect an intentional design choice.[83] In other cases, however, the actions that place a firm's interests ahead of the interest of investors may instead reflect the firm's failure to fully understand the effects of its use of PDA-like technologies or to provide appropriate oversight of its use of such technologies.[84] For example, AI and other similar technology are only as good as the data upon which it is based. Corrupted or mislabeled data, biased data, or data from unknown sources, can undermine data quality, leading to skewed outcomes with opaque biases as well as unintended failures.[85]

While the risk of poor data quality or skewed data is not unique to AI, the ability of PDA-like technologies used in investor interactions to process data more quickly than humans, and the potential for technology to disseminate the resulting communications to a mass market, can quickly magnify conflicts of interest and any resulting negative effects on investors. Moreover, erroneous data considered by a firm's algorithm could have the effect of optimizing for the firm's interest over investors' interest by, for example, relying on outdated, previously higher cost information of investment options sponsored by other firms but relying on updated, lower cost information of identical investment options sponsored by the firm. This could result in a recommendation, advice, or other investor interaction that favors the firm's sponsored products and creates a conflict, regardless of whether the firm intentionally developed the algorithm to optimize for its interest.[86] Poor data quality or skewed data could not only limit the learning capability of an AI or machine learning system but could also potentially negatively impact how it makes inferences and decisions in the future,[87] giving rise to erroneous or poor predictions, resulting in a failure to achieve the system's intended objectives,[88] and benefiting the firm over investors (whether intentionally or unintentionally).

We have observed instances where conflicts of interest associated with a firm's use of PDA-like technologies have resulted in harm to investors. A recent enforcement action involved allegations that an adviser marketed that its ''no fee'' robo-adviser portfolios were determined through a ''disciplined portfolio construction methodology'' when they allegedly were pre-set to hold a certain percent of assets in cash because the adviser's affiliate was guaranteed a certain amount of revenue at these levels. The adviser allegedly did not disclose its conflict of interest in setting the cash allocations; that this conflict resulted in higher cash allocations, which could negatively impact performance in a rising market; and that the cash allocations were higher than other services because clients did not pay a fee.[89] While the focus of that action was on the alleged disclosure failure, it also highlights the potential for PDA-like technologies to be used in ways that advance a firm's interests at the expense of its investors' interests. The proposed conflicts rules would require a firm to analyze its investor interactions that use PDA-like technology for the types of conflicts of interest that were at issue in that action in order to determine whether the investor interaction places the firm's interests ahead of its investors' interests and, if so, eliminate, or neutralize the effect of, the conflicts of interest on investors. In addition, the Commission's 2021 Request for Information and Comments on Broker-Dealer and

[81] *See, e.g.,* Comment Letter from Pace Investor Rights Clinic (Oct. 1, 2021) (''Pace University Letter'') (''DEPs can lead investors to trade more frequently and more often than is in their best interest. For example, the push notification feature provides investors with live price updates. This intentionally prompts investors to check their portfolios after receiving the notification, which can lead them to make additional trades or spend more time on the platform than they would have otherwise. Traditionally, the goal of investing for most retail investors is to save for the long term. Frequently checking their portfolio may cause investors to make decisions not in line with the goal of long-term saving and generational wealth building.''). *See also, e.g.,* Feedback Flyer Response of Lincoln Li on S7–10–21 (Aug. 27, 2021) (''I started half a decade ago following value investing practices. However, [online investment and trading apps], that I used for a short time got me into day trading and speculation more frequently. I ended up stopping using these apps because they took up so much time with little gain. I spent more time long term trading based off of proper market factors and evaluation. There's a big concern to me, especially as a professional game designer, as to how gamification in life impacting subjects can have negative impact on society, culture and personal finances. I have friends who got into technical trading and day trading due to these apps, who talk more like gamblers than actual investors. It sets a very poor precedent for this industry and behavior.''); Feedback Flyer Response of Richard Green on S7–10–21 (Sept. 25, 2021) (responding to a question about online trading and investment platforms: ''[m]y broker rewards referrals by offering free stocks for each referral. I think this pulls new investors into trading, which makes a lot of money for the broker, as newer investors are more likely to trade too frequently or make mistakes.''); Feedback Flyer Response of Joseph on S7–10–21 (Aug. 28, 2021) (''[A trading app's] user interface is set up in a way to subconsciously influence retail traders to trade more frequently and engage in riskier investment products (options) than the average amount.'').

[82] In Congressional hearings related to market events in January 2021, investor protection concerns were identified relating to the use of certain types of DEPs, including advertisements targeted towards specific groups of investors on digital platforms and game-like features on mobile apps. *See* Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide: Hearing Before the H. Comm. on Fin. Servs., 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407107;* Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II: Hearing Before the H. Comm. on Fin. Servs., 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=406268,* Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III: Hearing Before the H. Comm. on Fin. Servs., 113th Cong. (2021), *https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407748;* Who Wins on Wall Street? GameStop, Robinhood, and the State of Retail Investing: Hearing Before the S. Comm. On Banking, Hous., & Urban Affairs, 113th Cong. (2021), *https://www.banking.senate.gov/hearings/who-wins-on-wall-street-gamestop-robinhoodand-the-state-of-retail-investing.*

[83] *See, e.g.,* Megan Ji, Note, *Are Robots Good Fiduciaries? Regulating Robo-Advisors Under the Investment Advisers Act of 1940,* 117 Colum. L. Rev. 1543, 1580 (Oct. 2017) (recommending that the Commission adopt regulations in which ''robo-advisors, in their disclosures, clearly delineate between conflicts that are programmed into their algorithms and conflicts that may affect the design of algorithms.'').

[84] *See* Catherine Thorbecke, *Plagued with errors: A news outlet's decision to write stories with AI backfires,* CNN (Jan. 23, 2023), *https://www.cnn.com/2023/01/25/tech/cnet-ai-tool-news-stories/index.html.*

[85] *See, e.g.,* Regulation Systems Compliance and Integrity, Release No. 34–97143 (Mar. 15, 2023) [88 FR 23146 (Apr. 14, 2023)] (describing the potential market impact of a corrupted data security-based swap data repository). *See also* National Institute of Science and Technology Special Publication 1270, *Towards a Standard for Identifying and Managing Bias in Artificial Intelligence* (Mar. 2022), at section 3.1 (describing dataset challenges resulting in AI bias, discrimination, and systematic gaps in performance); Thor Olavsrud, *7 famous analytics and AI disasters* (Apr. 15, 2022), *https://www.cio.com/article/190888/5-famous-analytics-and-ai-disasters.html.*

[86] In this example, it is also possible that erroneous data could result in the reverse effect, generating a recommendation in favor of a non-sponsored product when the firm's sponsored product may be more cost-effective. This would not result in a conflict under the proposed rules but would nonetheless be subject to firms' obligations under their respective regulatory regimes, including the applicable standard of conduct.

[87] *See* Artificial Intelligence/Machine Learning Risk & Security Working Group (AIRS), *Artificial Intelligence Risk & Governance,* at 2.1.1 (accessed Apr. 18, 2023) (''AIRS White Paper''), *https://aiab.wharton.upenn.edu/research/artificial-intelligence-risk-governance/.*

[88] *Id.*

[89] In re. Charles Schwab & Co., Inc., et al., Exchange Act Release No. 95087 (June 13, 2022) (settled order).

Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches (''Request'') [90] solicited comments related to conflicts of interest, among other areas.[91] In response, the Commission received comments reflecting perceived conflicts of interest related to the use of online investing and trading applications, which some commenters indicated undermine their faith in the fairness of the markets.[92]

Failures to appropriately oversee these PDA-like technologies compound the risk that conflicts of interest may not be appropriately identified or managed. Due to the complexity and opacity of certain technologies, firms should have robust practices to appropriately oversee and understand their use and take steps to identify and appropriately address any associated conflicts of interest. For example, without appropriate personnel, a firm may not have the ability to modify the software or may lack the expertise to understand, monitor, or appropriately update code, limiting the firm's ability to identify and appropriately address associated conflicts of interest. Furthermore, if the firm does not understand how the technology operates—including whether it takes into consideration the firm's interest and how it can influence investor conduct—the firm may not fully understand whether, how, or the extent to which it is placing the firm's interests ahead of investors' interests. As a result of the complexity and opacity of PDA-like technologies, a firm needs different and specific practices to evaluate its use of the technology and recognize the risk of conflicts presented by that use compared to other practices. Without appropriate oversight and understanding of the conflicts of interest that could be amplified when the technology is incorporated into investor-facing interactions, such as design elements, features, or communications that nudge or prompt certain or more immediate action by an investor, investor harm can result.

5. Request for Information and Comment

In August 2021, the Commission issued a request for information and public comment on the use of DEPs by broker-dealers and investment advisers, as well as the analytical and technological tools and methods used in connection with these DEPs.[93] For purposes of the Request, the Commission defined DEPs broadly to include behavioral prompts, differential marketing, game-like features, and other design elements or features designed to engage retail investors.[94] The Commission stated that DEPs may be designed to encourage account opening, account funding and trading, or may be designed solely to increase investor engagement with investing apps, as there may be value in the number of investors interacting with the platform, how often they visit, and how long they stay.[95] The Request was issued in part to assist the Commission and its staff in better understanding the market practices associated with the use of DEPs by firms, facilitate an assessment of existing regulations and consideration of whether regulatory action may be needed to further the Commission's mission in connection with firms' use of DEPs, as well as to provide a forum for market participants (including investors), and other interested parties to share their perspectives on the use of DEPs and the related tools and methods, including potential benefits that DEPs provide to retail investors, as well as potential investor protection concerns.[96]

The Commission received over 2,300 public comments, including submissions provided through an online ''feedback flyer'' that accompanied the Request and was provided to better facilitate responses from retail investors.[97] Commenters offered a wide range of perspectives on broker-dealers' and investment advisers' use of DEPs, addressing their purpose, providing information on how investors interact with them, and offering broad reflections on potential regulatory action. Commenters also provided views on benefits and risks related to firms' use of DEPs, as well as the AI/machine learning and behavioral psychology that firms use to develop and deploy DEPs.[98]

A number of commenters also provided detailed feedback regarding the potential need for additional action to address the issues presented by DEPs and their underlying technology. For example, multiple commenters raised concerns over the risks of harm to investors if the Commission did not act, and requested that the Commission interpret existing regulations in a way

[90] *See* Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches, Exchange Act Release No. 92766 (Aug. 27, 2021) [86 FR 49067 (Sept. 1, 2021)].

[91] *See id.,* questions 1.26, 2.6, 3.5, 3.16, and 4.15. For additional discussion regarding the Request, *see infra* section I.B.5

[92] *See, e.g.,* Feedback Flyer Response of Tomas Liutvinas on S7–10–21 (Aug. 28, 2021) (''It seems like there is no conflict of interest regulations in the US financial system. This makes me uneasy. Until the rights are fully explained, reported, and undone I will recommend to anyone I know to stay away from US markets. For myself, I've invested in a certain position with plans to leave the investment for the future generations of my family, to hold on hopefully up to a point when markets will be made transparent and fair.''); Feedback Flyer Response of Jasper Pummell on S7–10–21 (Aug. 28, 2021) (''I believe that online brokerages have a conflict of interest and financial regulation is needed to ensure that the markets are a safe place for retail traders.''); Feedback Flyer Response of Robert on S7–10–21 (Aug. 27, 2021) (''Retail needs a fair and transparent market. There are blantant [sic] conflicts of interest in the market which should be rectified immediately. Failure to do so will have a mass exodus of investors from the US stock market.''). *See also* FINRA AI Report, *supra* note 9, at 11 (''However, use of AI also raises several concerns that may be wide-ranging across various industries as well as some specific to the securities industry. Over the past few years, there have been numerous incidents reported about AI applications that may have been fraudulent, nefarious, discriminatory, or unfair, highlighting the issue of ethics in AI applications.''). *But see, e.g.,* Comment Letter from David Dusseault, President, Robinhood Financial, LLC (Oct. 1, 2021) (''Robinhood Letter'') (stating that conflicts of interest are not new to the financial industry and that the regulatory frameworks established by the SEC, such as Reg BI and the disclosure requirements of the Investment Advisers Act of 1940, rest on the principle that conflicts of interest exist, but investors are able to navigate them when they are adequately disclosed); Comment Letter from Investment Adviser Association (Oct. 1, 2021) (''IAA Letter''); Comment Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (Oct. 1, 2021) (''SIFMA Letter'') (generally opposing new rules, guidance, or interpretations to address the use of digital engagement practices). These comments are all available in the comment file at *https://www.sec.gov/comments/s7-10-21/s71021.htm.*

[93] *See* Request, *supra* note 90.

[94] *See id.* at 49067.

[95] *See id.* at 49069.

[96] As noted in the Request, the market practices explored included: (i) the extent to which firms use DEPs; (ii) the types of DEPs most frequently used; (iii) the tools and methods used to develop and implement DEPs; and (iv) information pertaining to retail investor engagement with DEPs, including any data related to investor demographics, trading behaviors, and investment performance. *See id.* at 49068.

[97] The ''Feedback Flyer'' was attached as Appendix A to the Request and asked individual investors to provide their comments with regard to online trading or investment platforms, such as websites and mobile applications, to provide the Commission with a better understanding of retail investors' experiences on these platforms. The Feedback Flyer provided 11 different question prompts, with an array of both multiple choice, and free text response options whereby respondents could submit relevant comments. Comments received in response to the Request are available at *https://www.sec.gov/comments/s7-10-21/s71021.htm.*

[98] *See, e.g.,* Comment Letter from American Securities Association (Sept. 30, 2021); Comment Letter from Securities Arbitration Clinic and Professor of Clinical Legal Education, St. John's University School of Law Securities Arbitration Clinic, (Oct. 1, 2021) (''St. John's Letter''); Comment Letter from Morningstar, Inc. and Morningstar Investment Management, LLC (Oct. 1, 2021) (''Morningstar Letter''); Comment Letter from James F. Tierney, Assistant Professor of Law, University of Nebraska College of Law (Oct. 1, 2021) (''Tierney Letter''); Pace University Letter; Comment Letter from Law Office of Simon Kogan, (Oct. 17, 2021) (''Kogan Letter'').

that would apply to most DEPs and/or adopt additional regulations to address those risks.[99] Many of these commenters suggested a need to address the standards of conduct applicable to broker-dealers and investment advisers when interacting with retail investors through digital platforms.[100] Some of these commenters noted that Reg BI does not apply to firms with a self-directed brokerage business model, including those that use DEPs [101] and provided additional suggestions that the Commission could take to address firms' use of DEPs.[102] Others provided detailed opinions as to the application of an investment adviser's fiduciary duty to DEPs.[103] A significant number of commenters also addressed other laws and regulations and their sufficiency, or lack thereof, in their application to DEPs, including discussion addressing (i) antifraud and general standards of conduct; [104] (ii) regulation of advertising, marketing, and communications with the public; [105] (iii) compliance and supervision obligations; [106] (iv) data privacy and cybersecurity concerns; [107] (v) customer onboarding obligations; [108] (vi) Commission Staff's 2017 Robo-Adviser Guidance; [109] and (vii) the Advisers Act recordkeeping rule.[110]

[99] *See, e.g.,* Comment Letter from Scopus Financial Group (Sept. 20, 2021); Comment Letter from Better Markets, Inc. (Oct. 1, 2021) (''Better Markets Letter''); Comment Letter from Public Investors Advocate Bar Association (Oct. 1, 2021) (''PIABA Letter''); Comment Letter from University of Miami School of Law Investor Rights Clinic et al. (Oct 1, 2021) (''University of Miami Letter''); Comment Letter from Fidelity Investments (Oct. 1, 2021); St. John's Letter; Morningstar Letter. We also considered views received from the SEC's Investor Advisory Committee on ethical guidelines for artificial intelligence and algorithmic models used by investment advisers. *See* Investor Advisory Committee, Establishment of an Ethical Artificial Intelligence Framework for Investment Advisors (Apr. 6, 2023), *https://www.sec.gov/files/20230406-iac-letter-ethical-ai.pdf*.

[100] *See, e.g.,* Pace University Letter (''We believe that retail investors, particularly novice investors, believe that they are receiving advice or recommendations from DEPs. This includes the top mover list, analyst ratings, push notifications, and other DEPs that encourage investment activity. Many of our survey participants stated that they believe that these DEPs influenced their decision-making. At the same time, DEPs may also influence investor decision-making without investors being conscious of it.''); Comment Letter from North American Securities Administrators Association (Oct. 1, 2021) (''NASAA Letter'') (''To assist with compliance and to protect investors, the Commission should provide further guidance as to when DEP-based communications constitute recommendations. However, given the speed of technology, NASAA suggests that guidance should not be limited to any particular DEP, but rather should be focused on the effects of technologies on investor behavior generally.''); Comment Letter from Fiduciary Insights and Practice Growth Partners (Sept. 30, 2021) (''Aikin/Mindicino Letter'') (''[A]s the complexity and heterogeneity of wants, needs, and capabilities of the clientele rises, the sophistication and artificial intelligence and machine learning (AI/ML) of the DEPs must increase dramatically. Commensurately, the internal oversight and regulatory guardrails to assure that customer/client best interests are served must also increase.''); *see also* Comment Letter from Morgan Stanley Wealth Management (Oct. 1, 2021) (''Morgan Stanley Letter'') (while noting existing protections, stating that ''[s]hould the Commission believe additional guidance is necessary, we suggest the adoption of principles-based, technology neutral adjustments to the existing regulatory regime to address the fast evolving technological landscape''); Better Markets Letter; University of Miami Letter (''As the SEC continues its review of standards applicable to financial professional[s], it is critical to enhance investor protection in the fast-growing and increasingly harmful digital platform environment.'').

[101] *See, e.g.,* Robinhood Letter (''The SEC acknowledged the benefits of a self-directed model such as Robinhood's in adopting Reg BI, explicitly stating that Reg BI does not apply to this model.'').

[102] *See, e.g.,* Pace University Letter (''DEPs and online platforms have expanded access to the market to new investors, while at the same time influencing the decision-making of those investors—particularly novice investors—in ways that are often in conflict with their bests interest.''); *see also* Tierney Letter; Better Markets Letter; SIFMA Letter; Morningstar Letter; Morgan Stanley Letter; University of Miami Letter (''Due to the influential nature of DEPs, the SEC should enhance the Regulation Best Interest disclosure obligation and conflict of interest obligation by requiring firms to flag investor trades and/or positions where there is a likelihood that the firm will act in a manner adverse to the investor's position and to notify investors of these potential actions.'').

[103] *See, e.g.,* IAA Letter (''Some advisers also use various analytical and technological tools to develop and provide investment advice, including through online platforms or as part of enhancing their in-person investment advisory services. Investment advisers may also engage in DEPs to develop and provide investor education and related tools.''); *see also* Comment Letter from Envestnet Asset Management, Inc. (Oct. 1, 2021) (''Envestnet Letter''); Comment Letter from Julius Leiman-Carbia, Chief Legal Officer, Wealthfront Corporation (Oct. 8, 2021) (''Wealthfront Letter''); NASAA Letter; Aikin/Mindicino Letter; Better Markets Letter; SIFMA Letter; University of Miami Letter; Morgan Stanley Letter.

[104] *See, e.g.,* Comment Letter from Jennifer Schulp, Director of Financial Regulation Studies, Center for Monetary and Financial Alternatives, CATO Institute (Oct. 1, 2021) (''CATO Institute Letter''); Comment Letter from Brandon Krieg, CEO, Stash Financial, Inc. and Stash Investments LLC (Oct. 1, 2021) (''Stash Letter''); Wealthfront Letter; IAA Letter; Robinhood Letter; SIFMA Letter; Tierney Letter.

[105] *See, e.g.,* PIABA Letter; CATO Institute Letter; IAA Letter.

[106] *See, e.g.,* Comment Letter from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University (Sept. 30, 2021); IAA Letter; Stash Letter; Aikin/Mindicino Letter; PIABA Letter; CATO Institute Letter.

[107] *See, e.g.,* NASAA Letter; Envestnet Letter; Kogan Letter.

[108] *See, e.g.,* University of Miami Letter.

[109] *See, e.g.,* Comment Letter from Penny Lee, CEO, Financial Technology Association (Oct. 1, 2021); IAA Letter.

[110] *See, e.g.,* Comment Letter from Pamela Lewis Marlborough, Managing Director and Associate General Counsel, Teachers Insurance and Annuity Association of America (Oct. 1, 2021); SIFMA Letter; University of Miami Letter.

C. Overview of the Proposal

In view of Commission staff observations, our experience administering our existing rules, the discussion in section 1.B. above on the development of PDA-like technologies in firm investor interactions and the unique risks they raise regarding conflicts of interest, and comments received in response to the Request, we are proposing to update the regulatory framework to help ensure that firms are appropriately addressing conflicts of interest associated with the use of PDA-like technologies. Specifically, we propose that firms should be required to identify and eliminate, or neutralize the effect of, certain conflicts of interest associated with their use of PDA-like technologies because the effects of these conflicts of interest are contrary to the public interest and the protection of investors.[111]

Proposed rules 15l–2 under the Exchange Act (17 CFR 240.15l–2) and 211(h)(2)–4 under the Advisers Act (17 CFR 275.211(h)(2)–4) (collectively, the ''proposed conflicts rules'') are designed to address the conflicts of interest associated with firms' use of PDA-like technology when engaging in certain investor interactions, and the proposed rules would do so in a way that aligns with (and in some respects may satisfy) firms' existing regulatory obligations.[112] Except as specifically noted, the texts of proposed conflicts rule applicable to brokers and dealers (17 CFR 240.15l–2) and the proposed conflicts rule applicable to investment advisers (17 CFR 275.211(h)(2)–4) would be substantially identical.[113] The proposed conflicts rules would only apply where the firm uses defined covered technology—more specifically, an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes in an investor interaction.

The proposal is designed to be sufficiently broad and principles-based to continue to be applicable as technology develops and to provide firms with flexibility to develop approaches to their use of technology consistent with their business model, subject to the over-arching requirement

[111] *See infra* section II.A.2.e.

[112] *See id.*

[113] Citations herein to the ''proposed conflicts rules'' reference each of the proposed conflicts rules as they would be codified in each location. Citations to a particular section of the CFR reference only the proposed conflicts rule that would apply to broker-dealers or to investment advisers, as applicable.

that they need to be sufficient to prevent the firm from placing its interests ahead of investor interests. The proposal is also designed to be consistent with the Commission's prior actions regarding technological innovation.[114] We note that the staff has also provided their views on the industry's expanding use of technology in the context of robo-advisers[115] and shared examination findings and risks associated with the use of robo-advisory products,[116] among other areas.

The proposal draws upon our authority under section 211(h) of the Advisers Act and section 15(l) of the Exchange Act. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') added section 211(h)(2) to the Advisers Act and section 15(l)(2) to the Exchange Act, each of which, among other things, authorizes the Commission to ''promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.'' [117]

The proposal is intended to be technology neutral. We are not seeking to identify which technologies a firm should or should not use. Rather, the proposal builds off existing legal standards and, as discussed throughout the release, is designed to address certain risks to investors associated with firms' use of certain technology in their interactions with investors, regardless of which such technology is used.[118] The proposal also is designed to permit firms the ability to employ tools that they believe would address these risks that are specific to the particular technology they use consistent with the proposal. The Commission has long acted to protect investors from the harms arising from conflicts of interests and will continually assess the harms and revise those protections in light of the evolution of practices, including with regard to firms' use of technologies. As discussed in further detail below, conflicts associated with the use of PDA-like technologies should be eliminated or their effects neutralized to protect investors from conflicts of interest associated with firms' use of PDA-like technologies that results in investor interactions that place the interests of the firm and its associated persons ahead of investors' interests.

In particular, the proposed conflicts rules would generally require the following:

• *Elimination, or neutralization of effect of, conflicts of interest.* The proposed conflicts rules would require a firm to (i) evaluate any use or reasonably foreseeable potential use by the firm or its associated person[119] of a covered technology in any investor interaction to identify any conflict of interest associated with that use or potential use; [120] (ii) determine whether any such conflict of interest places or results in placing the firm's or its associated person's interest ahead of the interest of investors; and (iii) eliminate, or neutralize the effect of, those conflicts of interest that place the firm's or its associated person's interest ahead of the interest of investors.

• *Policies and procedures.* The proposed conflicts rules would require a firm that has any investor interaction using covered technology to adopt, implement, and, in the case of broker-dealers, maintain, written policies and procedures reasonably designed to achieve compliance with the proposed conflicts rules, including (i) a written description of the process for evaluating any use (or reasonably foreseeable potential use) of a covered technology in any investor interaction; (ii) a written description of any material features of any covered technology used in any investor interaction and of any conflicts of interest associated with that use; (iii) a written description of the process for determining whether any conflict of interest identified pursuant to the proposed conflicts rules results in an investor interaction that places the interest of the firm or person associated with the firm ahead of the interests of the investor; (iv) a written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to the proposed conflicts rules to result in an investor interaction that

[114] Historically, the Commission has reviewed the changing technology landscape, provided guidance, and if necessary amended its regulatory framework to protect investors while still allowing firms' use of technology to innovate and benefit investors. *See, e.g.,* Use of Electronic Media for Delivery Purposes, Release No. 7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 10, 1995] (providing Commission views with respect to the use of electronic media for information delivery under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)] (''1996 Release'') (providing Commission views on electronic delivery of required information by broker-dealers, transfer agents and investment advisers); and Use of Electronic Media, Exchange Act Release No. 42728 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''2000 Release'') (providing interpretive guidance on the use of electronic media to deliver documents on matters such as telephonic and global consent; issuer liability for website content; and legal principles that should be considered in conducting online offerings). In addition, the Commission has amended regulations to accommodate evolving technologies and changes in the way investors consume information. *See, e.g.,* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) (87 FR 72758 [Nov. 25, 2022]) (requiring layered disclosure for funds' shareholder reports and graphical representations of fund holdings); Investment Adviser Marketing, Investment Advisers Act Release No. 5653 (Dec. 22, 2020) [86 FR 13024 (Mar. 5, 2021)] (adopting ''principles-based provisions designed to accommodate the continual evolution and interplay of technology and advice,'' and providing specific guidance regarding, among others, the use of social media). Further, the Commission has amended regulations to expand the use of electronic filing options by investment advisers and institutional investment managers and updated recordkeeping requirements to make them adaptable to new technologies in electronic recordkeeping. *See, e.g.,* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Advisers Act Release No. 6056 (June 23, 2022) [87 FR 38943 (June 30, 2022)]; *see also* Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants, Exchange Act Release No. 96034 (Oct. 12, 2022) [87 FR 66412 (Nov. 3, 2022)] (''Electronic Recordkeeping Release'').

[115] *See* Robo-Advisers, Division of Investment Management Guidance Update No. 2017–02 (Feb. 2017) (''2017 IM Guidance''), *https://www.sec.gov/investment/im-guidance-2017-02.pdf* (addressing among other things, presentation of disclosures, provision of suitable advice, and effective compliance programs).

[116] *See* Observations from Examinations of Advisers that Provide Electronic Investment Advice, Division of Examinations Risk Alert (Nov. 9, 2021) (''2021 Risk Alert''), *https://www.sec.gov/files/exams-eia-risk-alert.pdf* (noting, ''[n]early all of the examined advisers received a deficiency letter, with observations most often noted in the areas of: (1) compliance programs, including policies, procedures, and testing.'').

[117] *See* Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). As noted in note 8 to subsection (l), another subsection (l) is set out after the first subsection (k) of the Exchange Act.

[118] Firms' use of PDA-like technology may also be subject to other potential legal and contractual restrictions on the ability for advisers and brokers to collect and use customer information. *See, e.g.,* 17 CFR part 248, subpart A (Regulation S–P), requiring, among other things, brokers, dealers, investment companies, and registered investment advisers to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information.

[119] As used in this release, the term ''associated person'' means, for investment advisers, a natural person who is a ''person associated with an investment adviser'' as defined in section 202(a)(17) of the Advisers Act and, for broker-dealers, a natural person who is an ''associated person of a broker or dealer'' as defined in section 3(a)(18) of the Exchange Act.

[120] Covered technology, conflict of interest, investor interaction are each defined terms under the proposed rules. *See* proposed rules 211(h)(2)–4(a) and 15l–2(a); *see also infra* sections II.A.1 and II.A.2.c.

places the interest of the firm or associated person ahead of the interests of the investor; and (v) a review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established pursuant to the proposed conflicts rules and the effectiveness of their implementation as well as a review of the written descriptions established pursuant to the proposed conflicts rules.

Proposed amendments to applicable recordkeeping rules, rules 17a–3 and 17a–4 under the Exchange Act and rule 204–2 under the Advisers Act, would require firms to make and keep books and records related to the requirements of the proposed conflicts rules. These proposed amendments are designed to help facilitate the Commission's examination and enforcement capabilities, including assessing compliance with the requirements of the proposed conflicts rules.

The proposal is designed to prevent firms' conflicts of interest from harming investors while allowing continued technological innovation in the industry.

II. Discussion

A. Proposed Conflicts Rules

1. Scope

The proposed conflicts rules would apply only when a firm uses covered technology in an investor interaction. The proposed definitions are designed to identify those conflicts of interest that firms must evaluate to determine whether they result in investor interactions that place the firm's interest ahead of investors' interest and must therefore be eliminated or their effect neutralized.[121] The proposed conflicts rules would apply to all broker-dealers and to all investment advisers registered, or required to be registered, with the Commission.

a. Covered Technology

The proposed conflicts rules would define covered technology as an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes.[122] The proposed definition is designed to capture PDA-like technologies, such as AI, machine learning, or deep learning algorithms, neural networks, NLP, or large language models (including generative pre-trained transformers), as well as other technologies that make use of historical or real-time data, lookup tables, or correlation matrices among others.

The rate at which these technologies evolve has increased in recent years and may continue to increase.[123] Accordingly, the proposed definition of covered technology is also designed to capture the variety of technologies and methods that firms currently use as well as those technologies and methods that may develop over time. The proposed definition would include widely used and bespoke technologies, future and existing technologies, sophisticated and relatively simple technologies, and ones that are both developed or maintained at a firm or licensed from third parties.[124]

The proposed definition, however, would be limited to those technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes. The use of these terms in the proposed conflicts rules is designed to capture a broad range of actions. This could include providing investment advice or recommendations, but it also encompasses design elements, features, or communications that nudge, prompt, cue, solicit, or influence investment-related behaviors or outcomes from investors. Investment-related behavior or outcomes can manifest themselves in many forms in addition to buying, selling, and holding securities, such as an investor making referrals or increasing trading volume and/or frequency. This broad proposed definition is designed to help ensure that, as innovation and technology evolve and firms expand their reliance on technologies to provide services to, and to interact with, investors, our rules remain effective in protecting investors from the harmful impacts of conflicts of interest.

The proposed definition would apply to the use of PDA-like technologies that analyze investors' behaviors (*e.g.,* spending patterns, browsing history on the firm's website, updates on social media) to proactively provide curated research reports on particular investment products, because the use of such technology has been shown to guide or influence investment-related behaviors or outcomes. Similarly, using algorithmic-based tools, such as investment analysis tools, to provide tailored investment recommendations to investors would fall under the proposed definition of covered technology because the use of such tools is directly intended to guide investment-related behavior. As an additional example, a firm's use of a conditional auto-encoder model to predict stock returns would be a covered technology.[125] Similarly, if a firm utilizes a spreadsheet that implements financial modeling tools or calculations, such as correlation matrices, algorithms, or other computational functions, to reflect historical correlations between economic business cycles and the market returns of certain asset classes in order to optimize asset allocation recommendations to investors, the model contained in that spreadsheet would be a covered technology because the use of such financial modeling tool is directly intended to guide investment-related behavior. Likewise, covered technology would include a commercial off-the-shelf NLP technology that a firm may license to draft or revise advertisements guiding or directing investors or prospective investors to use its services.

The proposed definition, however, would not include technologies that are designed purely to inform investors, such as a website that describes the investor's current account balance and past performance but does not, for example, optimize for or predict future results, or otherwise guide or direct any investment-related action. Similarly, the proposed definition also would not include a technology that predicts whether an investor would be approved for a particular credit card issued by the firm's affiliate based on other

[121] *See supra* section I.B.4 (describing existing technologies that may involve conflicts of interest) and *infra* section II.A.2.c (discussing the proposed definition of a conflict of interest).

[122] Proposed conflicts rules at (a).

[123] *See e.g.,* Deloitte, *Artificial intelligence: The next frontier for investment management firms* (Feb. 5, 2019), *https://www.deloitte.com/global/en/Industries/financial-services/perspectives/ai-next-frontier-in-investment-management.html* (stating, for example, that ''[f]irms have recognized a new opportunity to gain direct distribution to investors, benefit from enhanced efficiencies in servicing small accounts, and offer value-added services for advisors. This has translated into a wave of investment activity, with asset managers and intermediaries acquiring or investing in robo-advice technology.'') *See also* Bob Veres and Joel Bruckstein, *T3/Inside Information Advisor Software Survey* (Mar. 14, 2023), *https://t3technologyhub.com/wp-content/uploads/2023/03/2023-T3-and-Inside-Information-Software-Survey.pdf.*

[124] The SEC has proposed a new rule under the Advisers Act to prohibit registered investment advisers from outsourcing certain services or functions without first meeting minimum requirements. *See* Outsourcing by Investment Advisers, Investment Advisers Act Release No. 6176; File No. S7–25–22 (Oct. 26, 2022) [87 FR 68816 (Nov. 16, 2022)] (''Proposed Outsourcing Rule''). We encourage commenters to review that proposal to determine whether it might affect comments on this proposal.

[125] An autoencoder return model is an unsupervised learning method that attempts to model a full panel of asset returns using only the returns themselves as inputs. *See generally* S. Gu, B. Kelly, and D. Xiu, *Autoencoder Asset Pricing Models* (Sept. 30, 2019), *https://www.aqr.com/Insights/Research/Working-Paper/Autoencoder-Asset-Pricing-Models.*

information the firm knows about the investor because the use of such technology does not, and is not intended to, affect an investment-related behavior or outcome. For the same reason, the use of a firm's chatbot that employs PDA-like technology to assist investors with basic customer service support (*e.g.,* password resets or disputing fraudulent account activity) would not qualify as covered technology under the proposed definition.

We request comment on all aspects of the definition of covered technology, including the following items:

1. Is the scope of the proposed definition of a covered technology sufficiently clear? We intend for the proposed definition to cover PDA-like technologies; are there ways we could revise the proposed definition in order to better accomplish this? Are there any technologies covered by the proposed definition that go beyond PDA-like technologies and should be excluded? For instance, should the proposed definition distinguish between different categories of machine learning algorithms, such as deep learning, supervised learning, unsupervised learning, and reinforcement learning processes? Do one or more of these categories present more investor protection concerns related to conflicts of interest relative to other categories? Would firms be able to identify what would and would not be a covered technology for purposes of the proposed rules? If not, what additional clarity would be beneficial? We have described examples of technologies to which the definition would or would not apply. Should the definition be revised to include or specifically exclude such examples?

2. Would the definition adequately include the technology used by firms that would present the conflicts of interest and resulting risks to investors that these proposed rules are designed to address? If not, how should this definition be changed to further the objective of the proposed conflicts rules? Please explain your answer, including the extent to which these technologies do or do not present conflicts of interest risks to investors. Alternatively, do the technologies included in the proposed definition include technology that does not typically result in risks to investors that these proposed rules are designed to address?

3. Is the proposed definition of covered technology appropriately calibrated to allow for future technological developments? What adjustments, if any, should the Commission make to help ensure that the definition of covered technology will remain evergreen despite future technological advancements? Conversely, what adjustments to the definition of covered technology, if any, are necessary to avoid covering those future technological advancements that do not possess characteristics that the proposed rules are intended to address?

4. The proposed definition of covered technology only applies to technologies that are used to optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes. Do the terms ''optimize for,'' ''predict,'' ''guide,'' ''forecast,'' and ''direct'' appropriately scope the definition? Is it clear what these terms are intended to capture or would further explanation be helpful? Are there certain technologies that would fit within one or more of those terms but which should be outside the scope of the proposed definition? Alternatively, are there certain technologies that would fall outside those terms but which should be within the scope of the proposed definition? If so, should we use additional or different words to clarify the meaning? For instance, should we include the term ''influence'' in the definition? If so, how would ''influence'' differ from the terms ''guide'' or ''direct'' in the definition? Should we use ''nudge'' or ''prompt'' in the definition? Alternatively, should we remove any of the terms in the proposed definition? For instance, are the terms ''guide'' and ''direct'' redundant or do they express distinct meanings within the context of the definition? Does ''guide'' capture broader activity than ''direct'' and cause the rule to capture technologies that should not be in scope? Should the definition be limited to technologies that direct or influence an investor?

5. Should the proposed definition of covered technology apply to technologies that are used to optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes, *directly or indirectly?* Are there certain PDA-like technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes *indirectly* that should be covered by this definition? If so, what are they and why? If the definition did include the term ''indirectly,'' would it include technologies that should not be covered by the proposed conflicts rules?

6. Should the definition of covered technology not include technology that is solely meant to inform investors, as proposed?

7. Does the term ''covered technology'' adequately reflect the definition? Should some other defined term be used, such as ''covered processes'' or ''covered methods''? Are there any other terms that should be used?

8. Does the phrase ''investment-related behaviors or outcomes'' sufficiently clarify the intended scope of the rule and which technologies would not be within the definition? Is it clear what the phrase ''investment-related behaviors or outcomes'' would capture or would further explanation be helpful? Are there certain behaviors or outcomes that may not be ''investment related'' but should nonetheless be covered by the proposed definition? For instance, should PDA-like technologies used for back office or administrative functions, such as trade settlement, the routing of customers' orders, accounting, or document review and processing, be included in the covered technology definition? Are commenters aware of any PDA-like technology that is used for back office functions, such as the routing of customer orders, that is also used to engage or communicate with investors (*i.e.,* that involve an investor interaction)? Are there certain investment-related activities that may not be ''behaviors or outcomes'' that should be covered by the definition? Is either ''behavior'' or ''outcome'' overbroad, capturing activities beyond those intended by the definition? Should a different term, such as ''investment-related covered technology'' be used?

9. Are there aspects of this definition that should be broadened, narrowed, revised, removed, or added? For instance, should the definition be limited to the use of predictive data analytics and/or artificial intelligence that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes? Alternatively, should we limit the scope of the definition to technologies that are used to provide investment advice or recommendations? Should we otherwise limit the scope to technologies that are used directly by investors? Should we expressly exclude technologies that are not used by investors but instead are used by individuals who are associated with a firm and use the technologies in communicating with investors?

b. Investor Interaction

The proposed conflicts rules include definitions for both ''investor'' and ''investor interaction.'' [126] For brokers or dealers, the definition of investor would include a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or

[126] *See* proposed conflict rules at (a).

household purposes. The definition is designed to capture both prospective and current retail investors.[127] For investment advisers, the definition of investor would include a client or prospective client, and any current or prospective investor in a pooled investment vehicle advised by the investment adviser.[128] The use of PDA-like technology by investment advisers of pooled investment vehicles, such as algorithmically targeted advertisements that are designed to solicit investors in a pooled investment vehicle or algorithmically designed investment strategies in pooled investment vehicles, present the same investor protection concerns as advisers that use the same or similar technology to target or advise their advisory clients. Accordingly, we are proposing to define ''investor'' so that the proposed conflicts rules would broadly apply both to clients that receive investment advisory services from an investment adviser and to investors in a pooled investment vehicle advised by the investment adviser.[129]

The proposed conflicts rules would generally define investor interaction as engaging or communicating with an investor, including by exercising discretion with respect to an investor's account; providing information to an investor; or soliciting an investor.[130] This definition would capture a firm's correspondence, dissemination, or conveyance of information to or solicitation of investors, in any form, including communications that take place in-person, on websites; via smartphones, computer applications, chatbots, email messages, and text messages; and other online or digital tools or platforms. This definition would include engagement between a firm and an investor's account, on a discretionary or non-discretionary basis. This definition would also capture any advertisements, disseminated by or on behalf of a firm, that offer or promote services or that seek to obtain or retain one or more investors. The proposed definition is intended to be sufficiently broad to encompass the wide variety of methods, using current and future technologies, that firms could use to interact with investors.[131]

The proposed definition is generally designed to limit the proposed conflicts rules' scope to a firm's use of covered technology in interactions with investors. This aspect of the proposed conflicts rules recognizes that the conflicts associated with the use of covered technology in investor interactions present a higher risk of harm to investors than conflicts associated with technologies that are not used in such interactions. For instance, a firm could utilize covered technology to analyze historical data and current market data to identify trends and make predictions related to the firm's intra-day liquidity needs, peak liquidity demands, and working capital requirements. A firm could likewise use covered technology to make investment decisions about its own assets. Similarly, a firm could implement covered technology for automation of, for example, ''back office'' processes like the routing of customers' orders [132] and accounting and trade settlement. In each of these examples, the use of covered technology for these processes does not involve an investor interaction, and therefore would not be subject to the proposed conflicts rules.

In contrast, when a firm's use or potential use of a covered technology in any investor interaction could involve a conflict of interest, a firm would be subject to the framework of the proposed conflicts rules. The proposed definition of investor interaction does not make any distinctions based on the manner in which an investor or the investor's account interacts with the covered technology or on the manner in which the firm uses the technology in the interaction. Meaning, ''use'' of covered technology in an investor interaction can occur directly through the use of a covered technology itself (*e.g.,* a behavioral feature on an online or digital platform that is meant to prompt, or has the effect of prompting, investors' investment-related behaviors) or indirectly by firm personnel using the covered technology and communicating the resulting information gleaned to an investor (*e.g.,* an email from a broker recommending an investment product when the broker used PDA-like technology to generate the recommendation).[133]

Unlike a purely ministerial or back office function, these examples involve an investment-related communication with an investor and would be considered an investor interaction under the proposed definition. Similarly, a firm may use covered technology to provide individual brokers or advisers with customized insights into an investor's needs and interests and the broker or adviser may use this information to supplement their existing knowledge and expertise when making a suggestion to the investor during an in-person meeting. Such a scenario would result in the firm using a covered technology in an investor interaction under the proposed rules. An investor interaction would also include firms' use of game-like prompts or marketing that ''nudge'' investors to take particular investment-related actions on digital platforms. In addition, the investor interaction definition covers solicitations, for example, a firm utilizing covered technology that scrapes public data, which the firm in turn uses to solicit clients through broadcast emails.[134]

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[127] *See supra* note 6. Broker-dealers are subject to regulation under the Exchange Act and SRO rules, including a number of obligations that attach when a broker-dealer offers services to a retail customer, including making recommendations, as well as general and specific requirements aimed at addressing certain conflicts of interest. The application of these obligations can vary depending on a broker-dealer's business lines and activities, as well as the level of customer sophistication. *See* Regulation Best Interest, Exchange Act Release No. 83062 (May 9, 2018) [83 FR 21574 (May 9, 2018)], at 21575 (''Reg BI Proposing Release''); *see, e.g.,* FINRA Rule 2210 (applying broker-dealer obligations related to communications with the public differently to communications directed to retail versus institutional investors). Here, the focus of the proposed rules for broker-dealers is on retail investors.

[128] *See* proposed rule 211(h)(2)–4(a) (specifying that ''pooled investment vehicle'' has the same meaning as in 17 CFR 275.206(4)–8, meaning any investment company as defined in section 3(a) of the Investment Company Act of 1940 or any company that would be an investment company under section 3(a) of that Investment Company Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of the Investment Company Act).

[129] *See* proposed conflict rules at (a) (defining ''Investor'').

[130] *See* proposed conflict rules at (a).

[131] *See generally* Investment Adviser Marketing Release, *supra* note 19 (a recent Commission rule designed to accommodate the continual evolution of the use of technology in the investment adviser industry as it relates to advisers marketing their services to clients and investors).

[132] Although routing of customers' orders is not covered by this proposal, broker-dealers owe their customers a duty of ''best execution.'' Best execution requires that a broker-dealer seek to obtain for its customer orders the most favorable terms reasonably available in the market under the circumstances. *See, e.g., Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith,* 135 F.3d 266, 270 (3d Cir. 1998). *See also Kurz* v. *Fidelity Management & Research Co.,* 556 F.3d 639, 640 (7th Cir. 2009); *Geman* v. *SEC,* 334 F.3d 1183, 1186 (10th Cir. 2003); *see also* FINRA Rule 5310 (Best Execution and Interpositioning). The Commission recently proposed a rule that, if adopted, would establish through Commission rule a best execution standard for broker-dealers. *See* Regulation Best Execution, Exchange Act Release No. 96496 (Dec. 14, 2022) [88 FR 5440 (Jan. 27, 2023)].

[133] To the extent a broker-dealer uses PDA-like technology to make a recommendation to a retail customer, the broker-dealer would also be subject to Reg BI and its attendant obligations, including the Conflict of Interest Obligation, as to the recommendation. Similarly, an investment adviser making a recommendation to its client would also be subject to fiduciary obligations that include a duty of loyalty under which an adviser must eliminate or make full and fair disclosure of all conflicts of interest. *See* Fiduciary Interpretation, *supra* note 8.

[134] *See infra* section II.A.2.e (acknowledging that although a firm's use of covered technology to solicit investors to open an account falls under the

The proposed definition of investor interaction would include interactions that have generally been viewed as outside the scope of ''recommendations'' for broker-dealers.[135] For example, under the proposed definition, an investor interaction could include: firms' use of research pages or ''electronic libraries'' to provide investors with the ability to obtain or request research reports, news, quotes, and charts from a firm-created website; or firm's use of technologies to generate emails to investors as part of a firm-run email communication subscription that investors can sign up for and customize, and which alerts investors to items such as news affecting the securities in the investor's portfolio or on the investor's ''watch list.'' [136] Accordingly, the proposed definition would capture firm communications that may not rise to the level of a recommendation, yet are nonetheless designed to, or have the effect of, guiding or directing investors to take an investment-related action.

The proposed definition would exclude from the investor interaction definition interactions solely for purposes of meeting legal or regulatory obligations.[137] These interactions are subject to existing regulatory oversight and/or do not involve the type of conflicts the proposed rules seek to address. This exclusion would apply to interactions with an investor for purposes of obligations under any statute or regulation under Federal or State law, including rules promulgated by regulatory agencies. For example, the proposed definition would exclude interactions with investors solely for anti-money laundering purposes, such as using PDA-like technologies to identify and track investor activity for the purposes of flagging suspected fraudulent transactions and requesting identification and verification of the transaction from an investor (*e.g.,* sending two-factor authentication messages).[138] If a firm, however, includes as part of such an interaction actions that are not reasonably designed to satisfy its obligations under applicable law (*e.g.,* circulating a link to a digital platform that includes features designed to prompt investors to trade along with the annual delivery of Form ADV), and such additional actions are otherwise within the definition of an investor interaction, then such action would be considered an investor interaction for purposes of the proposed conflicts rules.

In addition, the proposed definition would also exclude interactions solely for purposes of providing clerical, ministerial, or general administrative support. For example, the proposed definition would exclude basic chatbots or phone trees that firms use to direct customers to the appropriate customer service representative. This aspect of the exclusion is only intended to cover basic or first-level customer support designed to efficiently answer simple questions like providing the business hours of a branch office or the balance in the investor's account, or to guide the investor to a human representative in the appropriate department of the firm who is trained to address the investor's question. On the other hand, if a firm sought to employ a more advanced chatbot designed to answer complex investment-related questions, such as when or whether to invest in a particular investment product or security, this would no longer fit within the exclusion for clerical, ministerial, or general administrative support, and would constitute an investor interaction under the proposed definition.

In either case, the exclusions would be limited to interactions that are ''solely for the purpose'' of the relevant category (or categories) of conduct in order to help ensure that interactions that serve several purposes, including purposes that are not excluded, will be within the scope of the definition of investor interaction.[139] The ''solely for the purpose'' language is designed to help ensure that all the functions of a dual-use technology like a chatbot would be considered when evaluating conflicts of interest associated with use of the chatbot.

We request comment on all aspects of the proposed definitions of investor interaction and investor, including the following items:

10. For broker-dealers, the proposed definition of investor means a natural person, or the legal representative of such natural person, who seeks to receive or receives services from the broker-dealer primarily for personal, family or household purposes. Should we narrow the definition of investor as applied to broker-dealers to only cover retail customers, as defined under Reg BI? Should we expand the definition of investor for brokers or dealers to cover all current and prospective investors and not just retail investors? We have stated that investors may not be able to understand the complexities of covered technologies and any conflicts associated with their use. Should we expand the definition of investor for broker-dealers to cover a certain subset of non-retail investors? The proposed definition of investor for investment advisers is not limited to services ''primarily for personal, family or household purposes.'' Should we add such limitation in the investment adviser conflicts rule?

11. Should we narrow the definition of investor for investment advisers? For example, should we only apply it to retail investors, as defined in Form CRS? If so, please explain why in comparison to other rules under the Advisers Act.

12. For investment advisers, the proposed definition of investor also includes investors or prospective investors in a pooled investment vehicle that is a client or prospective client of the investment adviser; should we retain this in the final rules? Are there special considerations for investors in a pooled investment vehicle that cause them to need less protection from conflicts of interest associated with a firm's use of covered technology? If the definition of ''investor'' continues to include investors in pooled investment vehicles, as proposed, are there certain structures or types of pooled investment vehicles that should not be included? For example, should investors in collateralized loan obligation vehicles be excluded? Are there unique characteristics of such vehicles,

definition of an investor interaction, it may not involve a conflict of interest that would require elimination or neutralization under the proposed conflicts rules). On the other hand, a conflict of interest may appear if a firm's chatbot is programmed to solicit only investors that scraped data show are heavy gamblers, and thus perceived as being more profitable to the firm as investors that might invest in risky, high-profit investments that earn the firm more money relative to other investments.

[135] *See* NASD Notice to Members 01–23 (Apr. 2001) (Online Suitability—Suitability Rules and Online Communications) (discussing the types of online communications may constitute ''recommendations'' under the NASD suitability rule); Reg BI Adopting Release, *supra* note 8, at section II.B.2 (discussing factors to consider when determining whether a ''recommendation'' has been made by a broker-dealer).

[136] *See* NASD Notice to Members 01–23, *id.*

[137] *See* proposed conflicts rules at (a).

[138] The activities covered under this legal and regulatory obligation exception would qualify as an investor interaction that uses covered technology absent this exception. However, as a practical matter, many of these activities would not involve a firm's use of covered technology under the proposed definition, because such activities would not involve an analytical, technological, or computation function, algorithm, model, correlation matrix, or similar method or process (*e.g.,* delivery of Form ADV or summary prospectus pursuant to legal obligations).

[139] Interactions that are for the purpose of both categories of conduct would also fit within the exclusion. For example, an algorithm whose purpose was both to comply with legal or regulatory obligations *and* to conduct other clerical, ministerial, or general administrative support functions would fit within the exclusion so long as the algorithm did not also have a third purpose that was not excluded from the definition.

investors, or investors in other pooled investment vehicles, which make the additional protections that would be provided by the proposed conflicts rules unnecessary? The proposed definition of ''investor'' would incorporate the definition of ''pooled investment vehicle'' in rule 206(4)–8. Should we define the term ''pooled investment vehicle'' (or use another term)? Should we define the term more broadly for purposes of this rule to include other vehicles to which an investment adviser may provide investment advice that rely on other exclusions from the definition of investment company, such as companies primarily engaged in holding mortgages that are excluded pursuant to section 3(c)(5)(C) of the Investment Company Act, or collective investment trust funds or separate accounts excluded under section 3(c)(11) of the Investment Company Act?

13. Will the proposed definition of investors present challenges for firms that are dually registered as investment advisers and broker dealers?

14. Should we define ''prospective investor'' in the proposed rules? If so, how should we define this term and why? For example, should we define ''prospective investor'' as any person or entity that engages in some way with a firm's services (*e.g.,* downloads the firm's mobile app, visits the firm's website, or creates a log-in)? If not, should we provide guidance regarding how firms can identify prospective investors?

15. Is the proposed definition of investor interaction sufficiently clear? Would firms be able to identify what would be an investor interaction for purposes of the proposed conflicts rules? Are there activities that are not covered by the proposed definition of investor interaction that should be? Are there activities that are covered by the proposed definition that should not be? For instance, should a firm soliciting prospective investors be included within the definition? Should the proposed definition be limited to interactions in which investors directly interact with, or otherwise directly use, covered technology? Do situations in which investors do not directly interact with covered technology raise the same concerns of scalability as those in which investors do interact directly?

16. Do commenters agree that investor interactions, as proposed, may entail conflicts of interest that are particularly likely to result in investor harm or to take additional effort to discern? Are there types of activities we should specifically include or exclude within the definition?

17. Do commenters agree that the definition of investor interaction should exclude interactions solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support? Should we remove any or all aspects of these exclusions from the definition in the final conflicts rules? In the case of interactions solely for the purpose of meeting legal or regulatory obligations, should we broaden or narrow the exclusion? For example, should we take into account legal or regulatory obligations as a result of compliance with foreign law, or with policies, rules, or directives of SROs (including securities exchanges) or other bodies? Generally, would investor interactions that fall under the proposed exclusions employ covered technology (*e.g.,* technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes)? If so, how? If not, is the exception for legal or regulatory obligations additive? Is the exclusion for providing clerical, ministerial, or general administrative support sufficiently clear? For instance, is it clear this phrasing would capture trade settlement and the routing of customers' orders or would further explanation be helpful?

18. Do the proposed conflicts rules adequately address how a firm would treat a single covered technology that features functions that are both included and excluded from the investor interaction definition? For instance, a chatbot that is used for both general customer support help (*e.g.,* password resets) and to provide more advanced functions, such as guiding an investor as to when and whether to invest in a particular investment product. Should the proposed conflicts rules treat these dual-purpose covered technologies differently than covered technology used solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support?

19. To the extent we retain or expand the exclusions, are there any conditions we should add in order for a firm to be able to rely on particular exclusions? For example, should we require that a firm create and maintain a written record if it relies on an exclusion? Are there other activities that should be excluded? For example, should we provide a more principles-based exclusion for certain activities that the firm affirmatively identifies in writing as low-risk and that are already part of existing compliance programs or subject to other laws, rules, regulations, or policies?

20. As specified in the proposed definition of investor interaction, the definition would include discretionary management of accounts where the engagement is with the investor's account, even if there is no communication or other interaction with investors themselves at the time of trades in their accounts. Should the discretionary management of accounts be included within the definition of investor interaction? Should it be excluded? Do commenters agree that a firm's discretionary management of accounts using covered technologies may entail conflicts of interest that are particularly likely to result in investor harm and are not sufficiently addressed under the current applicable legal framework? Why or why not?

2. *Identification, Determination, and Elimination, or Neutralization of the Effect of, a Conflict of Interest*

The proposed conflicts rules would require a firm to eliminate, or neutralize the effect of, certain conflicts of interest associated with the use of a covered technology in investor interactions.[140] The proposed conflicts rules would also require firms to take affirmative steps as a precursor to eliminating or neutralizing the effect of these conflicts. First, a firm would be required to evaluate any use or reasonably foreseeable potential use of a covered technology in any investor interaction to identify whether it involves a conflict of interest, including through testing the technology. Second, a firm would be required to determine if any such conflict of interest results in an investor interaction that places the interest of the firm or an associated person ahead of investors' interests. Third, the proposed conflicts rules would require a firm to take a particular action—elimination or neutralization—to address any conflict of interest the firm determines in step two results in an investor interaction that places its or an associated person's interest ahead of investors' interests.[141] The proposed conflicts rules thus supplement, rather than supplant, existing regulatory obligations related to conflicts of interest, laying out particular steps a firm must take to address conflicts of interest arising specifically from the use of covered technologies in investor interactions.[142]

[140] *See infra* section II.A.2.e.

[141] On the application to interests of associated persons, *see infra* sections II.A.2.c, II.A.2.d, and II.A.2.e, and proposed conflicts rules at (b)(2) and (3).

[142] The elimination or neutralization requirement of the proposed rules applies only to a narrower, defined subset of the broader universe of conflicts—those conflicts that a firm determines *actually* place

This is because the nature of these technologies (for example due to their inherent complexity and ability to rapidly scale transmission of conflicted actions across a firm's investor base) requires additional steps to address conflicts associated with their use in investor interactions, compared to conflicts of interest more generally.

a. Evaluation and Identification

The proposed conflicts rules would require a firm to evaluate any use or reasonably foreseeable potential use by the firm or its associated persons of a covered technology in any investor interaction to identify any conflict of interest associated with that use or potential use.[143] This requirement of the proposal, in connection with the requirement to test and periodically retest any covered technology, is designed to help ensure that a firm has a reasonable understanding of whether its use or reasonably foreseeable potential use of the covered technology in investor interactions would be associated with a conflict of interest.

The proposed conflicts rules do not mandate a particular means by which a firm is required to evaluate its particular use or potential use of a covered technology or identify a conflict of interest associated with that use or potential use. Instead, the firm may adopt an approach that is appropriate for its particular use of covered technology, provided that its evaluation approach is sufficient for the firm to identify the conflicts of interest that are associated with how the technology has operated in the past (for example, based on the firm's experience in testing or based on research the firm conducts into other firms' experience deploying the technology) and how it could operate once deployed by the firm. If a technology could be used in a variety of different scenarios, the firm should consider those scenarios in which it intends that the technology be used (and for which it is conducting the identification and evaluation process). It should also consider other scenarios that are reasonably foreseeable unless the firm has taken reasonable steps to prevent use of the technology in scenarios it has not approved (for example, by limiting the personnel who are able to access the technology).

A firm could adopt different approaches for different covered technologies.[144] Such approaches could vary depending on the nature of the covered technologies employed by the firm at the time they are implemented, how the technologies are used, and the firm's plans for future use of those technologies. For example, a firm that only uses simpler covered technologies in investor interactions, such as basic financial models contained in spreadsheets or simple investment algorithms, could take simpler steps to evaluate the technology and identify any conflicts of interest, such as requiring a review of the covered technology to confirm whether it weights outcomes based on factors that are favorable for the adviser or broker-dealer, such as the revenue generated by a particular course of action.[145] Even when a firm identifies a conflict of interest associated with a simple covered technology, depending on the facts and circumstances, it may determine that such conflict of interest does not actually result in the firm's or an associated person's interests being placed ahead of those of investors, and that the conflict of interest does not need to be eliminated or its effects to be neutralized.

Firms that use more advanced covered technologies may need to take additional steps to evaluate technology adequately and identify associated conflicts adequately.[146] For example, a firm might instruct firm personnel with sufficient knowledge of both the applicable programming language and the firm's regulatory obligations to review the source code of the technology, review documentation regarding how the technology works, and review the data considered by the covered technology (as well as how it is weighted).[147] A firm seeking to evaluate an especially complex covered technology and identify conflicts of interest associated with its use may consider other methods as well. For example, if a firm is concerned that it may not be possible to determine the specific data points that a covered technology relied on when it reached a particular conclusion, and how it weighted the information, the firm could build ''explainability'' features into the technology in order to give the model the capacity to explain why it reached a particular outcome, recommendation, or prediction.[148] By reviewing the output of the explainability features, the firm may be able to identify whether use of the covered technology is associated with a conflict of interest.[149] Developing this capability would require an understanding of how the model operates and the types of data used to train it.

Not all of these steps would be necessary (or possible) in all circumstances. So long as the firm has taken steps that are sufficient under the circumstances to evaluate its use or reasonably foreseeable potential use of the covered technology in investor interactions and identify any conflicts of interest associated with that use or potential use, this aspect of the proposed conflicts rules would be satisfied. To the extent a technology is customizable, we anticipate a firm will be able to evaluate the technology and identify the conflicts associated with its use through the choices it makes when customizing the technology. For

the interests of the firm or certain associated persons ahead of the interests of investors. This is in contrast to, for example, an investment adviser's fiduciary duty, which encompasses any interest that *might* incline the adviser, consciously or subconsciously, to provide advice that is not disinterested., or similarly in contrast to the broader universe of conflicts covered by Reg BI. Other conflicts of interest that only *might* affect the firm's investor interactions would continue to be subject to these other obligations, as applicable.

[143] *See* proposed conflicts rules at (b)(1).

[144] *Cf.* U.S Chamber of Commerce Technology Engagement Center, Report of the Commission on Artificial Intelligence Competitiveness, Inclusion, and Innovation (Mar. 9, 2023), at 82 (''Chamber of Commerce AI Report''), *https://www.uschamber.com/assets/documents/CTEC_AICommission2023_Report_v6.pdf* (calling for ''impact assessments'' to help categorize potentially harmful uses of certain technologies in a risk-based framework).

[145] *See infra* section II.A.2.d, discussing financial models.

[146] These steps could be included in the policies that the firm would be required to adopt under the proposed conflicts rules, and may also be necessary to satisfy the proposed recordkeeping amendments. *See infra* section II.A.3 and II.B. A written description of a covered technology prepared in accordance with policies and procedures that are reasonably designed to prevent violation by the firm of the proposed conflicts rules generally should include a written evaluation of the technology and identify any conflicts of interest presented by the technology. This would also assist the firm in preparing records that would comply with the proposed recordkeeping amendments. *See infra* section II.B.

[147] When evaluating the data considered by a covered technology used by a firm, both the data itself and the weighting of the data may inform a firm's determination of whether or not any conflict of interest it identifies and evaluates would result in an investor interaction that places the interest of the firm ahead of the interests of investors. *See infra* section II.A.2.d.

[148] *See supra* section I.B.4 (describing complex or opaque technologies, sometimes referred to as ''black boxes'').

[149] Testing (such as A/B testing) that is designed to determine the influence of a particular factor may also be helpful and is discussed *infra*. If the output of the explainability features is not sufficient for the firm to identify whether a conflict of interest exists at all, the firm may still be able to use the output to determine that any conflict of interest that may exist still does not result in its interests being placed ahead of investors' interests, or alternatively that any conflicts of interest that may exist have been eliminated or their effect has been neutralized due to controls the firm placed on its use of the technology. *See infra* section II.A.2.d (discussing using explainability features for determination) and *infra* section II.A.2.e (discussing using explainability features for elimination or neutralization).

technologies that are not customizable, we anticipate a firm will be able to evaluate the technology and identify conflicts via other means.

For example, a firm that licenses a covered technology from a third party may have no access, or limited access, to the underlying source code of the technology. In such circumstances, provided that the other documentation regarding how the technology functions is sufficiently detailed as to how the technology works, the identification and evaluation could be satisfied through review of such documentation. Firms without access to the underlying source code could review, for example, documentation about how the technology can be tailored to its investors' requirements (such as how to tailor it to eliminate, or neutralize the effect of, conflicts of interest). In circumstances where the firm is relying only on the technology's documentation, its testing methodology would be of special importance to help the firm discover whether there is any undocumented functionality that could be associated with a conflict of interest.

When evaluating a covered technology and identifying conflicts of interest, a firm should consider the circumstances in which a covered technology would be deployed in investor interactions. Firms that use a covered technology in investor interactions that operates autonomously or with limited involvement by firm personnel should consider subjecting it to more scrutiny because the firm's personnel may not immediately notice if the conflicts become apparent once the technology is deployed, or if its outputs change over time.[150] On the other hand, if a covered technology is only used to provide first drafts of marketing materials, or is only used to provide investment ideas that will be more fully considered by firm personnel who are trained on the firm's compliance policies, and the drafts or ideas are subjected to scrutiny throughout the review process before the output is ultimately used in an investor interaction, the covered technology generally may need comparatively less scrutiny.

In certain cases, it may be difficult or impossible to evaluate a particular covered technology or identify any conflict of interest associated with its use or potential use within the meaning of the proposed rules. For example, many large language models may consider millions of different data points, which could make it difficult for a firm to determine whether certain of those data points implicate the firm's interest. In some cases, it may be difficult for the firm to understand exactly what is in the data set that the model is considering, for example, if it was trained on a data set from the entire internet. Likewise, there may be situations where a firm does not have full visibility into all aspects of how a covered technology functions, such as if the firm licensed it from a third party.[151] However, a firm's lack of visibility would not absolve it of the responsibility to use a covered technology in investor interactions in compliance with the proposed conflicts rules.

The Commission is aware that some more complex covered technologies lack explainability as to how the technology functions in practice, and how it reaches its conclusions (*e.g.,* a ''black box'' algorithm where it is unclear exactly what inputs the technology is relying on and how it weights them). The proposed conflicts rules would apply to these covered technologies, and firms would only be able to continue using them where all requirements of the proposed conflicts rules are met, including the requirements of the evaluation, identification, testing, determination, and elimination or neutralization sections. For example, as a practical matter, firms that use such covered technologies likely may not meet the requirements of paragraph (b) of the proposed conflicts rules where they are unable to identify all conflicts of interest associated with the use of such covered technology. However, in such cases, firms may be able to modify these technologies, for example by embedding explainability features into their models and adopting back-end controls (such as limiting the personnel who can use a technology or the use cases in which it could be employed) in a manner that will enable firms to satisfy these requirements.

We request comment on all aspects of the proposed conflict rules' identification and evaluation requirement, including the following items:

21. Do the proposed conflicts rules' identification and evaluation requirements complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

22. Is the proposed requirement that a firm evaluate any use or reasonably foreseeable potential use of a covered technology to identify any conflict of interest associated with that use or potential use sufficient for a firm to understand how it should comply with the proposed conflicts rules? Should firms only be required to evaluate a technology used in investor interactions and identify associated conflicts of interest if they reasonably believe their use (or potential use) of the technology could be associated with a conflict of interest that results in their interest being placed ahead of investors' interests? Absent the evaluation and identification required under the proposed rule, how would firms form such a reasonable belief? Should we use some other standard, such as a good faith, recklessness, or actual knowledge standard, or some other option? Would such a standard be sufficient to protect investors from the potential harmful impact of conflicts of interest? Is the requirement sufficiently general that it would continue to apply to future technologies with features we may not currently anticipate? If we were to provide additional clarity (whether through guidance or by changing the regulatory text), how should we ensure that the rule's requirement to identify and evaluate these conflicts is sufficiently general that it would continue to apply to future technologies with features or functionality that we may not currently anticipate? Should we define the terms ''identify'' or ''evaluate'' in the regulatory text and, if so, how should they be defined? Should we use different terms to address this concept and, if so, which terms and how should they be defined?

23. The identification and evaluation requirement would also require firms to identify and evaluate conflicts of interest associated with use or potential use of a covered technology by an associated person; what challenges, if

[150] This tendency would also mean that the technology would need to be tested on a more frequent basis. *See infra* section II.A.2.b (discussing proposed testing requirement as it would apply to technologies that ''drift'' or that operate autonomously).

[151] FINRA has stated that outsourcing an activity or function to a third-party vendor does not relieve broker-dealers of their supervisory obligations, which must be reasonably designed to achieve compliance with Federal securities laws and regulations, as well as FINRA rules. *See* Vendor Management and Outsourcing, FINRA Regulatory Notice 21–29 (Aug. 13, 2021), *https://www.finra.org/sites/default/files/2021-08/Regulatory-Notice-21-29.pdf*. We also recently proposed a rule that, if adopted, would govern outsourcing by investment advisers of certain covered functions, and would in certain cases require investment advisers to obtain reasonable assurances that third parties could meet certain standards required by the Advisers Act and the rules thereunder. *See* Proposed Outsourcing Rule, *supra* note 124.

any, would firms face due to this aspect of the proposed conflicts rules? Should we make any changes as a result? For example, should we limit the scope of the requirement to conflicts of interest of which the firm is aware or reasonably should be aware or should we limit the scope to any conflict that is reasonably foreseeable? Instead of or in addition to covering conflicts of interest associated with firms' associated persons' use of covered technologies, should we prescribe any additional requirements, such as additional diligence or policies and procedures, relating to conflicts of interest associated with firms' associated persons' use of covered technologies? The proposed conflicts rules would consider conflicts of associated persons only for associated persons that are individuals, and not of entities that control, are controlled by, or are under common control with a firm, but many of the Commission's enforcement actions relating to undisclosed conflicts have involved conflicts of firms' affiliated entities, and not of individuals.[152] In addition to natural persons, should we broaden the requirement to cover entities controlling, controlled by, or under common control with firms?

24. Do the proposed conflicts rules provide appropriate clarity around when a firm uses covered technology in an investor interaction? For instance, is the guidance included in this release clear that the proposed conflicts rules would not distinguish between a firm directly using a covered technology in an investor interaction, such as when an investor interfaces with the covered technology without an intermediary of the firm, and when a firm uses covered technology indirectly in an investor interaction, such as where staff of the firm receives the output and communicates it to the investor? Do commenters agree with this scope? Should we instead exclude ''indirect'' use in investor interactions? Alternatively, should we include indirect uses in investor interactions but apply the rule differently? If so, what safeguards, if any, would be necessary or appropriate for indirect uses in investor interactions? As an example, should the rule make a distinction between an investor interaction using a covered technology itself (*e.g.,* a behavioral feature on a digital platform) and an investor interaction in which the firm uses covered technology indirectly (*e.g.,* a broker emailing a recommendation that it generated using AI-tools)? Should we revise the rule text to explicitly include ''indirect'' investor interactions, for example by adding the phrase ''directly or indirectly''? Alternatively, should the rule text include a definition of ''use'' within the context of a firm's *use* of a covered technology in an investor interaction?

25. How can scalability rapidly exacerbate the magnitude and potential effect of the conflict in a way that could make full and fair disclosure and informed consent unachievable or more difficult? Does this depend on who the investors are (*e.g.,* individuals versus entities)? Is it possible to disclose conflicts that are associated with the use of certain covered technologies in a manner that would enable investors to understand and provide consent? What are the characteristics of such technologies, and how do they differ from PDA-like technologies? How should the final conflicts rules account for such technologies? For instance, should certain uses of covered technologies by firms not be subject to the identification, determination, and elimination or neutralization requirements in the proposed conflicts rules? Should we permit firms to provide disclosure regarding their use of such technologies as an alternative method of complying with the proposed conflicts rules? If so, should the final rules contain principles pursuant to which firms would decide whether and how they are able to disclose the conflicts? Should the Commission instead adopt disclosure standards or criteria? What would those disclosure standards or criteria entail? For example, should one such standard be that the technology is easily understandable to laypersons? What would constitute ''easily understandable to laypersons''? Alternatively, should the Commission set out different classes of conflicts of interest or different classes of covered technologies and prescribe different ways to address each such conflicts or technologies?

26. Are there particular methods that firms use to identify and evaluate conflicts of interest that we should discuss in the proposed conflicts rules? Should we describe particular methods of identification and evaluation that would comply with the rules? If we were to address such methods specifically, how would we ensure that the rule continues to apply to new technologies and new types of investor interactions as they develop?

27. How widespread is the use of ''black box''-type models currently? Under existing law, do firms believe that it is possible to use black box technologies in compliance with the applicable standard of conduct and, if so, what steps do they take to comply with the applicable standard of conduct? How will firms using black box technologies meet the requirements of the proposed conflicts rules? Will this require significant changes in firms' practices? What challenges would firms face when identifying and evaluating conflicts of interest associated with black box technologies, where the outputs do not always make clear which inputs were relied on, and how those inputs were weighted? Are there situations where firms are not able conclusively to identify and evaluate all potential conflicts of interest associated with a covered technology, including because it is a black box? How prevalent are these situations? Will they be able to identify and evaluate whether a firm interest is being considered, or to determine whether such interest is being placed ahead of the interests of investors? Instead of or in addition to the proposed requirements, should we explicitly require that any technologies used by firms be explainable? Is our understanding correct that firms could build ''explainability'' features into the technology in order to give the model the capacity to explain why it reached a particular outcome, recommendation, or prediction?

28. How will firms conduct conflict of interest identification and evaluation using personnel who are well-trained on both the inner workings of covered technologies used in investor interactions and how to identify common conflicts of interest under the applicable standard of conduct? Are there other methods firms may use, such as third-party consultants and, if so, should we explicitly address these other methods? For example, should we explicitly permit or require a firm to rely on an analysis prepared by a third party identifying and evaluating the conflicts of interest that could be associated with a particular covered technology? If we were to explicitly address third-party analyses, are there particular situations we should address? For example, should we permit firms to rely on analyses by developers of covered technologies that are licensed to firms? What standards would be necessary in order for a firm to reasonably rely on a third-party analysis? For example, should a third-party analyst be required to demonstrate a particular level of expertise, possess a particular credential, certification, or license, or be independent from the developer of the technology or the firm relying on the analysis? How should firms address situations where the underlying source code is not available

[152] *See, e.g.,* In re. Charles Schwab & Co, *supra* note 89.

or is incomplete, or where it is very complex?

29. When firms license covered technologies used in investor interactions, is the available documentation sufficient for them to determine whether such technologies present conflicts of interest? Is review of such documentation sufficient for a firm to identify and evaluate conflicts of interest?

b. Testing

As part of the identification and evaluation requirement, the proposed conflicts rules would include a requirement to test each covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest.[153] This obligation would help ensure that conflicts of interest that may harm investors are identified in light of how the covered technology actually operates. For example, such testing may surface additional information that would not be apparent simply from reviewing the source code or documentation for the covered technology or the underlying data it uses. It may also surface pre-existing business practices of a firm where the firm considers firm-favorable information in its interactions with investors, and the firm's use of covered technology that replicates such business practices is associated with a conflict of interest by causing the technology to consider such firm-favorable information.

Although the proposed rules would not specify any particular method of testing or frequency of retesting that the firm must conduct, there are two specific times testing is required. A firm would be required to conduct testing prior to the covered technology being implemented.[154] A firm also would be required to conduct testing before deploying any ''material modification'' of the technology, such as a modification to add new functionality like expanding the asset classes covered by the technology. We would not generally view minor modifications, such as standard software updates, security or other patches, bug fixes, or minor performance improvements to be a ''material modification.'' During the time that the material modifications are being tested, a firm could continue to use an older version of the covered technology if the firm's use of such previous version of the technology complies with the proposed conflicts rules.

The proposed requirement to retest a covered technology periodically does not specify how often retesting would be required. As a result, a firm also would need to determine how often, and the manner in which, to retest covered technologies used in investor interactions.[155] As with the proposed identification and evaluation requirement, a firm's testing methodologies and frequencies may vary depending on the nature and complexity of the covered technologies it deploys. Relatively simple or easy-to-understand covered technologies where the risk of a conflict of interest is low could be subject to similarly simple testing protocols, and such testing could even take place concurrently with the firm's efforts to identify and evaluate any conflicts of interest associated with the covered technology. For example, firms that use relatively straightforward technology may determine that it is appropriate to expend the majority of their testing efforts when technology is first implemented (*i.e.,* first deployed) or when it is substantially modified, and any periodic testing may focus only on a sampling of the firm's covered technologies.

On the other hand, firms that use complex covered technologies generally should use testing methodologies and frequencies that are tailored to this complexity and that are based on a review of the particular features that make the technologies more or less likely to involve a conflict of interest. For example, a firm may determine that it is necessary to use specific testing methodologies for certain complex covered technologies. Some covered technologies may need to be tested using A/B testing to determine what factors are being optimized, to determine whether any of those factors are the firm's interests (or act as proxies for the firm's interests), or to estimate the effect of the methodology with and without the factors that involve the firm's interests.[156] Firms may also choose to review data about a technology's historical performance to monitor signs that it may be optimizing for firm-favorable factors.

Likewise, certain learning models are prone to ''drift'' or ''decay,'' which can occur when the data the models were trained on differs from the data that they encounter once deployed, and their outputs differ from what would be expected because the training data did not account for such difference. When models are constantly optimized, this can result in a feedback loop that, over time, magnifies small biases and causes the outputs to differ from what would be expected.[157] If a model has experienced drift, the drift, on its own, would not constitute a material modification. But if a firm is aware that a model is prone to drift (*e.g.,* due to information developed during the evaluation and identification stage, or through review of the technology's documentation), the firm would need to take this into account as it complied with other aspects of the proposed conflicts rules in order to help ensure that the steps it took to comply with the proposed rules were effective. A firm that uses covered technologies that exhibit this phenomenon may determine that it is necessary to test the technology more frequently to determine if it continues to function in accordance with the proposed conflict rules, even if the covered technology has not been modified by the firm. The same may be true for covered technologies that function with limited involvement from firm personnel, since otherwise firm personnel may not immediately notice any changes in how the technology functions.

As firms consider appropriate timing and manner of retesting, they should consider the nature and complexity of the technology. For example, a firm may determine to test relatively uncomplicated technology or technology used only for interactions that are subject to numerous other compliance controls less frequently than it would test a very complex technology that interacts directly with investors

[153] Proposed conflicts rules at (b)(1). Testing would only be required by the proposed conflicts rules as part of the identification and evaluation prong of the rules. As a practical matter, some firms that believe they have eliminated, or neutralized the effect of, conflicts of interest associated with their use of a covered technology may wish to confirm this through testing. *See infra* section II.A.2.e (describing elimination and neutralization).

[154] *See infra* section II.A.2.e for additional information regarding drift.

[155] Though the policies and procedures requirement of the proposed conflicts rules would not explicitly require a firm to specify how often it would retest its covered technologies, as a practical matter, many firms may find it easier to comply with the requirement to retest their covered technologies periodically by implementing a policy to guide firm personnel.

[156] *See* Seldon, *supra* note 74. Though the testing requirement is contained in section (b)(1) of the proposed conflicts rules, testing could also be used to aid compliance with other aspects of the proposed conflicts rules. For example, as discussed *infra,* testing may assist a firm in the determination process in section (b)(2) of the proposed conflicts rules or the elimination and neutralization process in section (b)(3) of the proposed conflicts rules.

[157] *See* AI Infrastructure Alliance, *Everything You Need to Know about Drift in Machine Learning* (May 25, 2022), *https://ai-infrastructure.org/everything-you-need-to-know-about-drift-in-machine-learning/.*

without any other human interaction. A firm should also consider whether covered technology continues to be used as intended and as originally tested. For example, if a firm originally develops a technology only for a limited purpose, but then begins to use the technology in additional investor interactions that differ substantially from the original use case, the firm may determine it is necessary to retest the technology with respect to this new use case in order to determine whether any unforeseen conflicts arise as a result.

We request comment on all aspects of the proposed conflicts rules' testing requirement, including the following items:

30. Is the proposed requirement to test covered technologies used in investor interactions prior to implementation sufficiently clear? For example, are there circumstances where it would not be apparent when a technology has been ''implemented'' for purposes of the proposed conflicts rules? Should we specifically define the term ''implementation,'' for example by defining it to mean the first time the technology is used in investor interactions? If a firm deploys a covered technology on a ''pilot'' basis to a limited group of users, should this not be considered to be an ''implementation'' for purposes of the proposed conflicts rules, even if the technology is used in investor interactions? If we were to provide such an exclusion, what additional safeguards should be required? For example, should firms seeking to rely on this exclusion be required to subject the covered technology to enhanced oversight, such as requiring regular reports on how the technology is being used, requiring members of the pilot group to determine independently whether their use of the technology is resulting in interactions that place the firm's interests ahead of investors' interests, or only permitting certain firm personnel to use the technology? Should the exclusion be time-limited, such as a limitation of 30, 60, or 90 days? Who would be eligible to be in the pilot group? Should investors be required to be notified, or to affirmatively consent before interactions with such investors are made part of such a pilot program? Would such a limitation create incentives not to test covered technologies thoroughly enough?

31. Is the proposed requirement to test covered technologies prior to material modification sufficiently clear? For example, are there circumstances where it would not be apparent when a technology has been ''materially modified'' for purposes of the proposed conflicts rules? We expressed our view that normal-course software updates, bug fixes, and security and other patches are not ''material modifications'' triggering retesting. Should we require testing of such updates, fixes, and patches? Should we modify the rule text to specify that such updates and patches are not material modifications? Should we provide additional guidance on what constitutes a material modification, such as basing it on ''major'' version numbers (*e.g.,* 1.XXX, 2.XXX, 3.XXX, etc.) vs. ''minor'' version numbers (*e.g.,* X.01, X.02, X.03, etc.)? Alternatively, are there situations where reference to version numbers would be inappropriate, such as when a material change for purposes of this rule would be assigned a minor version number? Should we make any special accommodation for technologies that are updated on a regular schedule, regardless of whether such modifications are material? Should firms be required to consider the cumulative impact of several modifications, each of which may not be material on its own, when considering whether a technology has been materially modified? If an algorithm itself has not been modified, but the data considered has been materially modified, should this be treated as a ''material modification'' for purposes of the proposed conflicts rules? If we were to do so, should we provide additional guidance on how firms should decide when a dataset has been materially modified?

32. Is the proposed requirement to test covered technologies periodically sufficiently clear? Should firms be able to test different covered technologies on different timeframes depending on the specific risks of the covered technologies, as proposed? Should we require that covered technologies at least be tested on an annual basis or other specified frequency? Should we require some or all covered technologies, such as technologies whose outcomes may be difficult to explain or technologies that operate with limited human interaction, to be tested more frequently, such as every 30, 60, or 90 days?

33. Should we specify any particular testing methodologies firms would be required to use, such as A/B testing? If we were to do so, should we only require such methodologies to be used on certain types of technologies and, if so, which ones? For example, should we require only PDA-like technologies (as opposed to all covered technologies) to be tested using certain methodologies such as A/B testing? Are there certain testing methodologies that are only applicable to certain types of technologies? Are there other methods firms may use to test compliance with the proposed conflicts rules, such as third-party consultants and, if so, should we explicitly address these other methods? For example, should we explicitly permit or require a firm to rely on an analysis prepared by a third party? If we were to explicitly address third-party analyses, are there particular situations we should address? For example, should we permit firms to rely on analyses by developers of covered technologies that are licensed to firms? What standards would be necessary in order for a firm to reasonably rely on a third-party analysis? For example, should a third-party analyst be required to demonstrate a particular level of expertise, possess a particular credential, certification, or license, or be independent from the developer of the technology or the firm relying on the analysis?

34. Should we provide an exception from the testing requirement? For example, for urgent changes that are necessary to protect against immediate investor harm, for regulatory reasons, or to correct unexpected developments, such as major bugs, security issues, or conflicts of interest that had not previously been identified (or that developed between periodic testing intervals). Should we require firms to create or maintain any documentation in connection with relying on such an exception? Should reliance on such an exception be subject to any conditions, such as conducting testing as soon as practicable or only for a limited, specified period of time (for example, a few days, a week, or a month)?

35. Should we provide a temporary exception from the testing requirement for technologies that are already in use by firms and, if so, when should that exception expire? If we were to provide a temporary exception for technologies that are already in use, should the temporary exception also apply to other aspects of the proposed conflicts rules, such as the identification and evaluation, determination, or elimination or neutralization prongs, the policies and procedures requirement, or the proposed recordkeeping amendments?

c. Conflict of Interest

Under the proposed conflicts rules, a conflict of interest would exist when a firm uses a covered technology that takes into consideration an interest of the firm or its associated persons. The proposed conflicts rules would cover use of a covered technology by both a firm and associated persons of the firm

and would address technologies that take into account both interests of the firm and the interests of its associated persons.[158] The proposed conflicts rules would define ''conflict of interest'' broadly and make clear that, if a covered technology considers *any* firm-favorable information in an investor interaction or information favorable to a firm's associated persons, the firm should evaluate the conflict and determine whether such consideration involves a conflict of interest that places the interest of the firm or its associated persons ahead of investors' interests and, if so, how to eliminate, or neutralize the effect of, that conflict of interest.

We recognize that the proposed conflicts rules—including the broad definition of conflict of interest—means that some conflicts will be identified that do not place the interests of the firm or its associated persons ahead of those of investors, and thus would not need to be eliminated or their effect neutralized. However, a covered technology may consider many factors (*e.g.,* as part of an algorithm or data input). One factor among three under consideration by the technology may be highly likely to cause the technology to place the interests of the firm ahead of investors, and the effect of considering that factor may be readily apparent. On the other hand, one conflicted factor among thousands in the algorithm or data set upon which a technology is based may, or may not, cause the covered technology to produce a result that places the interests of the firm ahead of the interests of investors, and the effect of considering that factor may not be immediately apparent without testing (as discussed above). Without a broad definition and resulting evaluation, this differentiation among factors that do, and do not, result in investor interactions that place the firm's interests ahead of investors' interests may be impossible.

There are many ways in which a use of covered technology in investor interactions can be associated with a conflict of interest. For example, when covered technology takes into account the profits or revenues of the firm, that would be a conflict of interest under the proposal regardless of whether the firm places its interests ahead of investors' interests. Revenue or profits can be taken into account directly, such as if a firm populates an asset allocation algorithm on its website to prioritize investments that it is trying to promote because it benefits the firm (*e.g.,* by over-weighting funds that make revenue sharing payments or proprietary funds).[159] Likewise, if a firm deploys a covered technology to interact with an investor, such as by displaying selected or ranked options for retirement accounts that takes into account the amount of revenue the firm would receive, the firm's use of the covered technology would involve a conflict of interest regardless of whether the firm places its interests ahead of investors' interests.

Revenue or profits to the firm can also be indirectly taken into consideration and trigger the proposed conflicts rules, such as through incentivizing increased trading activity or opening of options or margin accounts, if increased trading or opening of such accounts would cause the firm to experience higher profits, such as through increased commissions or revenue sharing from the wholesaler that executes the trade or through increased profits for the firm.[160] For example, if a firm uses a neural network to provide investment advice or generate general investment ideas to populate an investment allocation tool, the network may be caused to ingest vast amounts of historical or real-time data, then repeatedly be optimized or trained to determine which outcome(s) to generate.[161] If one of the pieces of data that the neural network considers is the effect on the firm's interests, such as the firm's profitability or revenue, it involves a conflict that should be examined to determine whether it could produce outcomes, including changing outcomes over time (*e.g.,* through drift), that place the interest of the firm ahead of the interest of the investor.

The specific interest that is taken into account, and the degree to which it is weighted in the covered technology, would not affect the determination of whether a conflict of interest exists, as the presence of any firm interest in any degree, for the reasons discussed above, would constitute a conflict of interest. Such considerations would be relevant, however, when considering whether the conflict of interest places the interest of the firm ahead of those of investors and therefore whether it is necessary to eliminate, or neutralize the effect of, the conflict of interest, as discussed further below, and, if so, what steps could be taken to do so.[162]

We request comment on all aspects of the proposed definition of conflict of interest, including the following items:

36. Do commenters agree that a firm would have a conflict of interest with an investor if the firm takes into consideration its profits and revenues in its investor interactions using covered technology? Why or why not? Are there additional circumstances that should trigger the rule if the firm takes these circumstances into account in its investor interactions, such as considering any factor which is not directly in the interest of the investor? Should we narrow the proposed definition and, if so, are there particular activities that should be excluded, such as when a technology considers a very large dataset where the firm has no reason to believe that the data considers the interests of the firm, like a technology trained on all books in the English language? Are there other datasets that should be excluded and, if so, how broad should a dataset be required to be in order to qualify for the exclusion? If we were to provide an exclusion, should we do so by excluding particular activities or types of datasets by name, or through a more principles-based approach?

37. Is the description of when a conflict of interest exists sufficiently clear? Would firms be able to identify what would and would not be a conflict of interest for purposes of the rules? Advisers already have a fiduciary duty to eliminate, or at least to expose, all conflicts of interest which might incline them—consciously or unconsciously—to render advice that is not disinterested, and broker-dealers already have a duty to identify and at a minimum disclose or eliminate all conflicts of interest associated with a recommendation and mitigate certain conflicts of interest under Reg BI. How

[158] *See* paragraph (a) of the proposed conflicts rules. As discussed previously, while the use of covered technology that takes into consideration an interest of the firm or an associated person could present a conflict of interest, the proposed conflicts rules would provide an exception for situations where the covered technology is used in investor interactions solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support. *See* proposed conflicts rules at paragraph (a) and discussion *supra* section II.A.1.b.

[159] A conflict could exist irrespective of whether investment in such funds is in the best interest of the investor.

[160] These conflicts are distinct from the limited exception for conflicts of interest associated with more generally attracting investors to open new accounts, discussed in section II.A.2.e, *infra,* because generally attracting new investors is essential to the business of any firm. On the other hand, incentivizing specific types of activity (such as margin or options trading privileges, as opposed to opening a general account, or investing in a particular type of investment, as opposed to just opening an account to invest) that is particularly profitable to a firm (and is not always in investors' interest), is intentionally addressed by the proposed conflicts rules.

[161] *See, e.g.,* Alexey Dosovitskiy, Google Research, *Optimizing Multiple Loss Functions with Loss-Conditional Training* (Apr. 27, 2020), *https://ai.googleblog.com/2020/04/optimizing-multiple-loss-functions-with.html.*

[162] *See infra* section II.A.2.e.

do firms currently identify conflicts of interest associated with their use of what the proposed conflicts rules would define as covered technologies in order to ensure that such use complies with existing standards? Will it be confusing to firms that the proposed conflicts rules also use the term ''conflict of interest'' to describe a distinct, but related, concept? If so, should we use a different term other than ''conflict of interest,'' such as a ''technology conflict'' or a ''potential conflict of interest?''

38. The proposed definition of ''conflict of interest'' would also include interests of firms' associated persons. What challenges, if any, would firms face due to this aspect of the proposed conflicts rules? Should we make any changes as a result? For example, should we limit the scope of the definition to conflicts of interest of which the firm is aware or reasonably should be aware? Instead of or in addition to covering conflicts of interest that arise due to the interests of firms' associated persons, should we prescribe any additional requirements, such as additional diligence or policies and procedures, relating to conflicts of interest of firms' associated persons? In addition to natural persons, should we explicitly adopt a definition of ''conflict of interest'' that would cover interests of entities controlling, controlled by, or under common control with firms, or other affiliates (or modify the rule provisions requiring the consideration of conflicts of associated persons to remove the limitations to associated persons that are natural persons)?

39. If we were to provide an exclusion for technologies that consider large datasets where firms have no reason to believe the dataset favors the interests of the firm, should we require such datasets to meet minimum standards? For example, should we require firms to conduct diligence regarding how the data was collected in order to support their determination that the dataset does not incorporate the firm's interests? Should there be different standards for data that is itself generated in part by a technology that may meet the definition of covered technology (and thus may incorporate its own conflicts of interest), such as subjecting that technology to all or part of the proposed rules?

40. Should we incorporate other minimum standards into data considered by covered technologies that are not directly related to interests of the firm but may implicate other Commission priorities, or have public policy implications? For example, should we require firms to take steps to understand whether the data does or could involve material nonpublic information? Should firms be required to consider whether the data is sensitive data that could be subject to cybersecurity or privacy rules?

41. Do firms ever provide firm-favorable information to their covered technologies for the purpose of explicitly instructing the covered technology *not* to consider such information? Are there other circumstances in which covered technologies consider firm-favorable information that do not raise conflict of interest concerns? If so, should we make any changes to the definition of conflict of interest as a result? How could firms determine that no conflict of interest concerns are associated with their use of a covered technology without conducting the steps that would be required under the proposed conflicts rules?

42. Is it clear that the proposed definition of conflict of interest includes when the covered technology has the potential to take into account the firm's (or its associated persons') interests, including the firm's revenue or profits, directly or indirectly? Are there steps we could take to clarify, for example by providing additional examples of factors that, if considered, would constitute a conflict of interest?

43. Do commenters agree that, as proposed, a conflict of interest would exist even if a covered technology factors in a single firm- or associated person-favorable interest among many other factors that do not favor the firm or its associated person, regardless of which interest is favored and the degree to which it is weighted? Should the specific interest of the firm or associated person that is taken into account, such as the firm's revenues or profits, or the degree to which it is weighted in the covered technology, affect the determination of whether a conflict of interest exists at all? How would this differ in practice from determining that a conflict of interest does exist but does not place the firm's interests ahead of investors' interests?

44. Should we exclude certain categories of conflicts?

d. Determination

The proposed conflicts rules would require a firm, after evaluating any use or reasonably foreseeable potential use of a covered technology by a firm or its associated person in any investor interaction to identify any conflict of interest associated with that use or potential use, to determine whether such conflict of interest places or results in placing the firm's or its associated person's interest ahead of investors' interests, subject to certain exceptions.[163] Determining whether an investor interaction involving such a conflict of interest would place or results in placing the firm's or its associated person's interests ahead of investors' interests is a facts and circumstances analysis, and would depend on a consideration of a variety of factors, such as the covered technology, its anticipated use, the conflicts of interest involved, the methodologies used and outcomes generated, and the interests of the investor. Based on this analysis, a firm must reasonably believe that the covered technology either does not place the interests of the firm or its associated persons ahead of investors' interests, or the firm would need to take additional steps to eliminate, or neutralize the effect of, the conflict.[164] Applicable law already limits firms' use of technologies whose outputs are based in part on data points favorable to a firm in certain circumstances. Investment advisers using such technologies to provide investment advice are already required to consider whether they could cause the adviser ''consciously or unconsciously to render advice which is not disinterested.'' [165] Similarly, broker-dealers that use technology to make certain recommendations to a retail customer must establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI, including its Conflict of Interest Obligation.[166]

In the case of many covered technologies, it may be readily apparent that, while the technology may take into account an interest of the firm, it does not result in the firm's interests being placed ahead of investors' interests. For example, many investment advisers create financial models of a portfolio company's three financial statements (*i.e.,* the company's balance sheet, income statement, and statement of cashflows) to help evaluate whether to advise their clients to invest in a particular portfolio company. It is not uncommon for a financial model to show the potential returns of the investment for the client, along with a potential performance-based fee that would be received by the adviser, if the portfolio company achieved certain levels of growth. An adviser's consideration of metrics that are favorable to it, such as a potential

[163] Proposed conflicts rules at (b)(2).

[164] The proposed conflicts rules do not prescribe strict numerical weights. Instead, determination of the relative level of benefits to the firm and to the investor should take into account all applicable facts and circumstances.

[165] *See* Fiduciary Interpretation, *supra* note 8.

[166] *See* Exchange Act rule 15–1(a)(2)(iii) and (iv).

performance-based fee it could receive, would constitute a conflict of interest under the proposed conflicts rules. Under the determination requirement, however, the adviser could, based on the applicable facts and circumstances, determine that such conflict of interest does not result in its own interests being placed ahead of investors' interests if the outcome is equally (or more) favorable to the investor regardless of whether the factor is considered.[167]

On the other hand, if the model is designed to screen out an investment if it would not result in a sufficient performance-based fee for the adviser despite acceptable returns for investors, this would be an example of the adviser's interests being placed ahead of investors' interests because the investors are being deprived of an investment due to the adviser's consideration of its own interest. Covered technologies like the model in this example, which explicitly and intentionally consider a firm's interests as an integral part of its outputs, are highly likely to result in investor interactions that place the interests of the firm ahead of investors' interests. Firms should consider carefully reviewing the outputs of such technologies to determine whether the firm's or its associated persons' interests are being placed ahead of the interests of the investor (*e.g.,* by reviewing how the outputs vary if the firm's or associated persons' interests are not considered).

Similarly, a broker-dealer may bring general investment ideas to the attention of retail investors, using an algorithm for selection, where some of the investments that may be selected provide revenue to the firm if the investor places an order to purchase. If the firm determines that in selecting the investment ideas, the algorithm used for selecting the investment ideas does not place the firm's interests ahead of investors' interests—because, for example, it does not give more prominence to the investments that provide revenue to the firm than those that do not and no one investment is being recommended—it could reasonably determine that the conflict of interest created by the algorithm considering the revenue does not require elimination or neutralization under the proposed conflicts rules.[168]

If, on the other hand, the firm determined that the algorithm was more likely to give greater prominence to those investments that are more profitable for the firm over other options of equal or better quality, then it could not reasonably determine that the conflict does not result in investor interactions that place its interests ahead of investors' interest and thus, would be required to eliminate, or neutralize the effect of, the conflict by the proposed conflicts rules. As another example, the covered technology a firm uses to decide when to communicate with investors may send an automatic message to investors encouraging them to ''hold steady'' during a period of high volatility in the market. If the technology is programmed to send out such a message during a period of high volatility but only after a certain threshold of fee-earning assets are withdrawn from the firm, the use of that technology would involve a conflict of interest because it would consider a proxy for the firm's revenues. However, if the primary purpose of the automatic message is to keep investors from over-reacting to short-term market moves, that could be beneficial for such investors. Even though the firm would be required to identify and evaluate the conflict of interest in order to comply with the proposed conflicts rules, the firm could reasonably determine that its interests were not placed ahead of investors' interests, and thus it did not need to eliminate, or neutralize the effect of, the conflict of interest.

A firm generally should tailor the methods by which it determines whether its use of covered technologies in investor interactions places its interests ahead of investors based on the circumstances and the complexity of the underlying covered technology as well as the complexity of the conflict of interest. To the extent a firm has difficulty identifying whether a use of a covered technology in an investor interaction presents a conflict of interest within the meaning of the proposed conflicts rules, it also would have difficulty determining whether the technology could place the interests of the firm ahead of the interests of investors.[169] In such circumstances, the firm may need to use additional tools to comply with the proposed determination requirement. For example, if a firm built ''explainability'' functionality into the covered technology that gives the model the capacity to explain why it reached a particular outcome, recommendation, or prediction, this functionality could assist with the identification and determination elements of the proposed conflicts rules.[170] A firm using explainability features could review the output to determine whether the firm's interests were being placed ahead of those of investors and, in any circumstance where it was not clear whether the firm's interests were being placed ahead of investors, the firm could comply with the proposed conflicts rules for example, by ceasing to use the technology or by prophylactically treating such an ambiguity as a conflict of interest that must be eliminated or its effect neutralized.[171]

Even when explainability features are built into a covered technology, a firm might still be unable to determine whether the covered technology places its own interests ahead of investors' interests. If a firm cannot determine that its use of a covered technology in investor interactions does not result in a conflict of interest that places its interests ahead of those of investors, the firm generally should consider any conflict of interest associated with such use as one that must be eliminated or its effect neutralized, and take steps necessary to do so.[172] For example, as

[167] Even though the proposed conflicts rules would not require the conflict of interest to be eliminated or its effect to be neutralized, this would remain a conflict of interest under the proposed conflicts rules (and under existing law). *See* Performance-Based Investment Advisory Fees, Investment Advisers Act Release No. 5904 (Nov. 4, 2021) [86 FR 62473 (Nov. 10, 2021)], at n.3 and accompanying text (noting the incentive ''to engage in speculative trading practices while managing client funds in order to realize or increase [contingent] advisory fees'' such as incentive allocations). An adviser would still be required to disclose the conflict with sufficient specificity that a client could provide informed consent. *See* Fiduciary Interpretation, *supra* note 8, at nn.67–70 and accompanying text.

[168] While the proposed conflicts rules may not require elimination or neutralization, to the extent a broker-dealer uses such technology to make a recommendation to a retail customer, other existing regulatory obligations, such as Reg BI and Form CRS, would apply. *See supra* section I.B.

[169] *See supra* note 151 and surrounding text (discussing building explainability features into ''black box'' algorithms). We believe that the ''should have identified'' standard in paragraph (b)(3) of the proposed conflicts rules addresses situations where a firm's determination that a conflict of interest does not place its interests ahead of investors' turns out to be unreasonable because it would still hold a firm accountable for the unreasonable determination. *See infra* section II.A.2.e.

[170] *See id.*

[171] *See infra* section II.A.2.e.

[172] *See infra* section II.A.2.e (discussing the ''should have'' identified standard). Firms that are unable to determine whether their own interests are placed ahead of investors' for purposes of the proposed conflicts rules should consider whether full and fair disclosure to facilitate informed consent are feasible in such circumstances. *See, e.g., infra* note 316 and accompanying text (discussing informed consent in the context of highly complex algorithms). In such circumstances, when informed consent is impossible, existing law requires an investment adviser to mitigate the conflict, which could include steps similar to those we outline in the discussion of elimination and neutralization. Similarly, where a broker-dealer that makes a recommendation to a retail customer using covered technology cannot provide ''full and fair'' disclosure of a conflict of interest, the broker-dealer

explained more fully in the following section, the firm could apply a ''counterweight'' to a conflict (that is, it could give more weight to certain investor-favorable information in order to make up for the consideration of firm-favorable information) that would be sufficient to neutralize the effect of conflicts that the firm reasonably foresees could result from the use of the covered technology.[173] We acknowledge determinations for covered technologies that consider a multitude of different data points may render it more challenging to isolate the effect of any particular data point on the outcome and, thus, to determine whether it causes a conflict of interest that places the interest of the firm ahead of investors. These cases, in particular, may benefit from the testing methods outlined above. For example, A/B testing may reveal that there is no difference in outcomes in cases where the covered technology includes or excludes certain data points or groups of data points.

We request comment on all aspects of the proposed conflict rules' determination requirement, including the following items:

45. Does the proposed conflicts rules' determination requirement complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

46. Is the proposed requirement that a firm determine whether any conflict of interest that it has identified places or results in placing its or its associated persons' interests ahead of investors' interests sufficiently clear? Is the requirement sufficiently general that it would continue to apply to future technologies with features we may not currently anticipate? If not, why not? Do commenters agree that a conflict of interest that *places* a firm's or its associated persons' interests ahead of investors' interests also *results in placing* its or its associated persons' interests ahead of investors' interests? If so, is the rule clearer by including both phrases or should the proposed requirement eliminate the phrase ''results in placing''?

47. How do firms currently determine whether their use of technology in investor interactions results in a conflict of interest that places the interests of the firm ahead of investors' interests? Are there particular processes or strategies that should be required in the proposed determination requirement? For example, should we specifically require the use of ''explainability'' features when the relationship between the outputs of a model and the inputs may be unclear (and it thus may be difficult to identify whether the interests of the firm are being placed ahead of investors' interests)? Do firms use A/B testing to determine the effects of conflicts of interest? What other types of testing do firms use to determine the effects of conflicts of interest, if any?

48. What challenges will firms face when determining whether conflicts of interest associated with ''black box'' technologies (where the outputs do not always make clear which inputs were relied on, and how those inputs were weighted), result in their interests being placed ahead of those of investors? How prevalent are these situations? How do firms using ''black box'' technologies to aid in making recommendations or providing advice determine whether they are complying with existing conflicts obligations under the investment adviser fiduciary standard and Reg BI, as applicable? If a firm is not able to determine whether its use of such a technology results in a conflict of interest that places its interests ahead of those of investors, what additional steps will a firm need to take in order to eliminate, or neutralize the effect of, such conflicts and be able to continue to use the covered technology?

49. The determination requirement would also require firms to determine whether the interests of an associated person of a firm are placed ahead of investors' interest. What challenges, if any, would firms face due to this aspect of the proposed conflicts rules? Should we make any changes as a result? For example, should we limit the scope of the requirement to conflicts of interest of which the firm is aware or reasonably should be aware? Instead of or in addition to covering firms' associated persons' interests, should we prescribe any additional requirements, such as additional diligence or policies and procedures, relating to conflicts of interest associated with firms' associated persons? In addition to natural persons, should the determination requirement apply in the context of entities that control, are controlled by, or are under common control with firms?

50. Should we expand the determination requirement to cover other situations that would not be a ''conflict of interest'' as defined under the proposed conflicts rules, but would implicate other Federal securities laws, or other laws? For example, should firms be required to identify and evaluate whether their covered technologies use or consider any information that could be material nonpublic information?

51. Are there other methods firms may use to determine whether a conflict of interest results in placing the interest of the firm or an associated person of the firm ahead of the investor, such as third-party consultants and, if so, should we explicitly address these other methods? For example, should we explicitly permit or require a firm to rely on an analysis prepared by a third party? If we were to explicitly address third-party analyses, are there particular situations we should address? For example, should we permit firms to rely on analysis by developers of covered technologies that are licensed to firms? What standards would be necessary in order for a firm to reasonably rely on a third-party analysis? For example, should a third-party analyst be required to demonstrate a particular level of expertise, possess a particular certification or license, or be independent from the developer of the technology or the firm relying on the analysis?

e. Elimination or Neutralization of Effect

The proposed conflicts rules would require a firm to eliminate, or neutralize the effect of, any conflict of interest it determines results in an investor interaction that places the firm's (or its associated persons') interest ahead of the interests of its investors.[174] Consideration of *any* firm interest would be sufficient for a conflict of interest to exist under the proposed conflicts rules, but the consideration of a firm's interest, on its own, would not necessarily require that the firm eliminate, or neutralize the effect of, the conflict of interest.[175] After identifying that a conflict of interest exists, the firm would then determine whether the conflict of interest results in the interest of the firm or an associated person being placed ahead of investors' interests. Only where the firm makes (or reasonably should make) such a

may need to take additional steps to mitigate or eliminate the conflict under the existing standard of conduct. *See* Reg BI Adopting Release, *supra* note 8, at section I and text accompanying nn.735–36 (''[B]roker-dealers are most capable of identifying and addressing the conflicts that may affect the obligations of their associated persons with respect to the recommendations they make, and are therefore in the best position, to affirmatively reduce the potential effect of these conflicts of interest such that they do not taint the recommendation.'').

[173] This is due to the ''should have identified'' standard. *See infra* section II.A.2.e.

[174] Proposed conflicts rules at (b)(3).

[175] *See infra* section II.A.2.d.

determination would the firm be required to eliminate, or neutralize the effect of, the conflict of interest.[176] The proposed conflicts rules would require the firm to eliminate, or neutralize the effect of, any such conflict promptly after the firm determines, or reasonably should have determined, the conflict placed the interests of the firm or associated person ahead of the interests of investors. This requirement is designed to require a firm to take steps that are in addition to, but not in conflict with, the standard of conduct that applies when it is providing advice or making recommendations, as discussed below.[177]

The test for whether a firm has successfully eliminated or neutralized the effect of a conflict of interest is whether the interaction no longer places the interests of the firm ahead of the interests of investors.[178] Under the proposed conflicts rules, a firm could ''eliminate'' a conflict of interest, for example, by completely eliminating the practice (whether through changes to the algorithm, technology, or otherwise) that results in a conflict of interest or removing the firm's interest from the information considered by the covered technology. For example, a firm that determined covered technology used in investor interactions favored investments where its receipt of revenue sharing payments placed the firm's interests ahead of investors' interests could eliminate the conflict, among other methods, by ending revenue sharing arrangements or by ensuring that its covered technologies do not consider investments that pay it revenue sharing payments.

However, a firm does not have to eliminate such conflicts. A firm instead could ''neutralize the effect of'' a conflict of interest by taking steps to address the conflict. In this regard, whether through elimination or neutralization, the proposed conflicts rules would require that any conflicts of interest not place the firm's interest ahead of investors' interests. In a neutralization scenario, the covered technology could continue to use the data or algorithm that includes the firm's or associated person's interest as a factor, but the firm would be required to take steps to prevent it from biasing the output towards the interest of the firm or its associated persons. The measure of whether the effect of the conflict has been neutralized would be if the investor interaction does not place the firm's or associated person's interest ahead of the investor. We are including neutralization as an additional method of addressing conflicts of interest under the proposed conflicts rules because of the unique ways that technology can be modified or counterweighted to eliminate the harmful effects of a conflict, as well as the ways it can be tested to confirm the modification or counterweighting was successful.

Neutralization, for example, also could include rendering the consideration of the firm-favorable information subordinate to investors' interests, and thus making the conflict harmless, either by applying a ''counterweight'' (such as considering additional investor-favorable information that would not have otherwise been considered in order to counteract consideration of a firm-favorable factor) or by changing how the information is analyzed or weighted such that the technology always holistically weights other factors as more important so that biased data cannot affect the outcome.

The proposed conflicts rules do not prescribe a specific way in which a firm must eliminate, or neutralize the effect of, its conflicts of interest. For example, if a firm that is a robo-adviser determines that it uses covered technology to direct or steer investors to invest in funds the firm itself sponsors and advises when more suitable or less expensive options for the investor are available through the robo-adviser, and thereby prioritizes the firm's own profit over investors' interests, the firm could eliminate this conflict of interest by removing any data that would allow the robo-adviser to determine which funds are sponsored or advised by the firm, thus eliminating any bias in favor of the firm's interest.[179] The firm, alternatively, may choose to neutralize the effect of the conflict.[180] For instance, the firm could neutralize the effect of the conflict of interest by sufficiently increasing the weights given to factors, such as cost to the investor or risk-adjusted returns (including, in each case, comparisons to funds sponsored or advised by other firms), to provide a counterweight that prevents any consideration of the firm's own interests from resulting in an investor interaction that places the firm's interests ahead of investors' interests. The proposed conflicts rules permit firms discretion on how to address the conflict—whether by eliminating it altogether or neutralizing its effect—after considering the applicable facts and circumstances, provided that the method used prevents the firm from placing its interests or an associated person's ahead of investors' interest.

The proposed conflicts rules do not prescribe a particular manner by which a firm must eliminate, or neutralize the effect of, any conflict of interest because of the breadth and variations of firms' business models as well as their use of covered technology. Because of the complexity of many covered technologies, as well as the ways in which conflicts of interest may be associated with their use, we are concerned that prescribing particular means to neutralize the effect of a conflict of interest could be inapplicable or otherwise ineffective with respect to certain covered technologies (or certain conflicts of interest, the nature and extent of which may vary substantially across firms depending on their particular business models and investor base).[181] The proposed approach is intended to promote flexibility and innovation by allowing the firms that use covered technologies the freedom to determine the appropriate ways to operate them, within the guardrails provided by the proposed conflicts rules, rather than requiring the technologies to be designed in a

[176] For the avoidance of doubt, the discussion concerns consideration *by a technology* of the interests of a firm, including situations where the firm creates technology that considers the firm's or an associated person's interests. Firms of course will consider their own interests (such as whether the cost of the technology is worth the benefit) when determining whether to deploy a technology. Such consideration, on its own, would not be within the scope of the proposed conflicts rules.

[177] *See infra* section III.C.3. (describing the applicable standards of conduct).

[178] For the avoidance of doubt, if a firm substitutes one firm-favorable factor with a different factor that is a proxy for the firm-favorable factor, the firm has not eliminated, or neutralized the effect of, the conflict.

[179] As discussed *supra* section II.A.1.b, this includes a discretionary adviser where the investor does not need to approve each trade; the investor interaction in this case would be in the form of engagement through directing trades in the investor's account.

[180] As discussed above, this is also consistent with an adviser's fiduciary duty. An adviser ''must, at all times, serve the best interest of its client and not subordinate its client's interest to its own'' and, unless neutralized, a conflict of interest would have the effect of subordinating a client's interest to that of the firm. *See* Fiduciary Interpretation, *supra* note 8. Similarly, under Reg BI, broker-dealers must mitigate (*i.e.,* reduce) or eliminate conflicts of interest that would otherwise cause the broker-dealer or its associated person to make a recommendation that is not in the best interest of the retail customer. *See* Exchange Act rule 15l–1(a)(2)(iii); Reg BI Adopting Release, *supra* note 8, at section II.C.3.g (''Elimination of Certain Conflicts of Interest'').

[181] This same recognition of the complexity of many covered technologies is why disclosure alone could be insufficient to adequately address the conflicts of interest associated with their use. *Cf. infra* section III.D.1 (disclosure alone may not necessarily address negative outcomes when ''the issue lies in human psychological factors, rather than a lack of information.'').

particular way solely to meet a regulatory requirement.

We recognize that reasonable steps a firm could take to eliminate, or neutralize the effect of, a conflict of interest that results in an investor interaction that places the firm's interest ahead of investors, are likely to vary and would depend on the nature of the conflict, the nature of the covered technology, the circumstances in which the covered technology is used, and the potential harm to investors. For example, if the firm's evaluation of the conflict indicates that the technology would only result in investor interactions that place the firm's or an associated person's interests ahead of investors' interests in certain limited circumstances, a firm could eliminate the conflict of interest by taking steps to prevent the technology from being used in such circumstances, or by choosing to eliminate the business practice that is associated with the conflict in the first place. Similarly, if a technology only involves a conflict of interest due to its consideration of certain data or the weights ascribed to certain data points, the firm could either prevent the technology from accessing such data (eliminating the conflict), or the firm could take steps to prevent its consideration of the data from having an effect on the outcome of the technology (neutralizing the effect of the conflict), either through consideration of additional, investor-favorable data designed to provide a countervailing signal to the technology, or through weighting the data the covered technology considers so that the firm- or associated person-favorable data would not be determinative to the outputs.[182] A firm could also neutralize the effect of a conflict by requiring that firm personnel who are trained on the nature of the conflict of interest (*e.g.,* personnel responsible for supervising the implementation of the firm's compliance program) operate the technology and only pass along information to investors after they deem, based on their training, that the information does not involve a conflict that results in an investor interaction that places the interests of the firm or an associated person ahead of investors' interests.[183]

The proposed conflicts rules would require a firm to eliminate, or neutralize the effect of, a conflict of interest that it determines results in an investor interaction that places its interests ahead of investors' interests ''promptly'' after the firm determines, or reasonably should have determined, that the conflict results in its own (or an associated person's) interests being placed ahead of investors' interests.[184] Determining what constitutes ''promptly'' in any given situation under the proposed conflicts rules would depend on the facts and circumstances. If eliminating, or neutralizing, the effect of, the conflict is straightforward, as would be the case if a firm simply had to update the settings of an application or restrict access using tools it already possessed, elimination or neutralization could happen soon after the identification of the conflict of interest.

But if elimination, or neutralization of the effect of, a conflict of interest would require substantial amounts of new coding by firm personnel, we recognize that such modifications may take longer to implement, including because they may constitute material modifications that would need to be tested to determine whether any modifications eliminated, or neutralized the effect of, the conflict as expected, as well as to consider any new conflicts of interest that the modifications could cause. Though we recognize that modifications would not happen immediately in all circumstances, an extended period of implementation may raise questions about whether the firm acted promptly and may raise questions as to whether they are acting in accordance with their standard of care. If a firm has determined that it needs additional time to eliminate, or neutralize the effect of, a conflict of interest in accordance with the proposed conflicts rules, it would also need to consider whether continuing to use such covered technology before the conflict is eliminated or neutralized would violate any applicable standard of conduct (*e.g.,* fiduciary duty for investment advisers or Reg BI for broker-dealers). In certain cases, it may be impossible to comply with the applicable standard of conduct without stopping use of the covered technology before the conflict of interest can be adequately addressed. As it develops a schedule for eliminating, or neutralizing the effect of, the conflict, a firm should consider the nature of the covered technology, including how it is being used in investor interactions, and the complexity of any elimination or neutralization measures. The firm should also consider and seek to minimize potential risks posed to investors as a result of the continued use of the covered technology. This might include implementing heightened review of investor interactions to help ensure that the harm is relatively limited and weighing the risks of continued exposure to the conflict of interest during remediation against the risk of making the covered technology unavailable during remediation. If a firm has a reasonable basis to believe that pulling a covered technology out of service due to a conflict of interest would be a greater risk to investors than the conflict itself, a firm generally should consider closely surveilling and monitoring the investor interactions associated with its continued use of the technology to evaluate whether its expectation is accurate, or whether it should cease using the covered technology.

The requirement for a firm to eliminate, or neutralize the effect of, conflicts of interest that place the firm's or an associated person's interest ahead of investors' interests covers such conflicts the firm identifies, as well as those it reasonably *should have* identified. That is, in order to comply with the proposed conflicts rules, a firm would be required to use reasonable care to determine whether these conflicts could arise as a result of its use of covered technologies and how they could affect investor interactions, and to address such conflicts rather than assuming that its covered technologies do not result in its own (or its associated persons') interests being placed ahead of investors' interests. The ''reasonably should have identified'' standard is designed to require firms to understand the covered technology they are deploying sufficiently well to consider all the material features of the technology both when evaluating the technology and identifying conflicts, and later when determining whether those conflicts place their own (or their associated persons') interests ahead of investors' interests.

Because firms' use of covered technology is likely to be continuously changing, firms generally should consider how they will proactively

[182] Whether the firm-favorable data is determinative of the technology's outputs could be verified through A/B testing. *See supra* section II.A.2.b. The specific data or weights that would be necessary to neutralize a particular conflict would depend on factors such as the conflict itself as well as the design of the applicable technology.

[183] This example assumes the investor interaction is indirect; we anticipate that firm personnel would not have the ability to intervene when a technology directly interacts with investors.

[184] If it is determined before technology is first deployed that a conflict of interest exists that places the firm's or an associated person's interests ahead of investors' interests, ''prompt'' elimination or neutralization of the conflict could occur any time before the technology is initially deployed. That is, we do not believe it would be consistent with the proposed conflicts rules for a firm to initially deploy a technology that a firm has already determined (or should have determined) is subject to conflicts of interest that place the firm's or an associated person's interests ahead of its investors' interests, then eliminate, or neutralize the effect of, those conflicts after the fact.

address reasonably foreseeable uses (which would include potential misuses) of the covered technology. Firms should identify future and evolving conflicts when evaluating their potential use of covered technology to make sure that they have eliminated, or neutralized the effect of, all conflicts they *should have* determined place their interests ahead of investors' interests, including as their use of technology evolves. One way to address potential misuses of a technology could be to limit access to particular technology to personnel who have been trained on the technology and how to use it in compliance with the proposed conflicts rules. This could prevent the technology from being used in investor interactions that place the firm's interests ahead of investors' interests.

The proposed requirement is also designed to be consistent with a firm's applicable standard of conduct. Investment advisers, as fiduciaries, are prohibited from subordinating their clients' interests to their own (*i.e.,* they may not place their interests ahead of their clients' interests).[185] In addition, investment advisers must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.[186] Where an adviser uses covered technology in an investor interaction, compliance with the proposed conflicts rules' requirement that conflicts of interest be eliminated or their effect neutralized could also help the adviser satisfy its fiduciary duty. Likewise, in satisfying its fiduciary duty, an adviser may also satisfy the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, certain conflicts of interest. However, due to our concerns that scalability could rapidly exacerbate the magnitude and potential effect of conflicts,[187] an adviser would not satisfy the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, certain conflicts solely by providing disclosure to investors. As the Commission has previously stated, in cases where an investment adviser cannot fully and fairly disclose a conflict of interest to a client such that the client can provide informed consent, the adviser must take other steps such that full and fair disclosure and informed consent to the adviser's other business practices are possible.[188] Moreover, as the Commission has previously stated, investment advisers must act in the best interests of their clients at all times and must not subordinate their clients' interests to their own.[189] The standard in the proposed conflicts rules is thus consistent with that over-arching fiduciary obligation.

Similarly, when making recommendations, broker-dealers must act in the best interest of a retail customer at the time the recommendation is made, without placing the firm's financial or other interest ahead of the retail customer's interests. This would include, under Reg BI's Conflict of Interest Obligation, a requirement to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and at a minimum disclose, or eliminate, all conflicts of interest associated with a recommendation; identify and mitigate (*i.e.,* modify practices to reduce) conflicts of interest at the associated person level; prevent any limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and associated conflicts of interest from causing the broker-dealer, or a natural person who is an associated person of the broker-dealer, to make recommendations that place the interest of the broker-dealer or such natural person ahead of the interest of the retail customer; and eliminate sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.[190] Accordingly, where a broker-dealer uses covered technology to make a recommendation, compliance with the proposed conflicts rules' requirement that conflicts of interest be eliminated or their effect neutralized could also help a broker-dealer comply with similar aspects of Reg BI's Conflict of Interest Obligation.

For example, if a broker-dealer uses covered technology to make a recommendation to a retail customer, and the broker-dealer eliminates, or neutralizes the effect of, any firm- and associated person-level conflicts of interest under the proposed conflicts rule, it could help address compliance with certain aspects of Reg BI's Conflict of Interest Obligation. Conversely, compliance with Reg BI's Conflict of Interest Obligation could help a broker-dealer comply with the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, certain conflicts of interest. However, because the proposed conflicts rules apply more broadly to the use of covered technology in investor interactions as noted earlier,[191] and not just to recommendations, broker-dealers would be subject to both the proposed conflicts rules' requirements and, separately when making a recommendation, Reg BI, depending on the facts and circumstances of the investor interaction and the use of the covered technology.[192]

Depending on the facts and circumstances, the proposed requirement may apply in addition to existing requirements for addressing conflicts of interest. While existing requirements often address conflicts of interest through disclosure, certain obligations require more than disclosure to adequately address conflicts. For instance, under both the fiduciary standard and Reg BI, disclosure of conflicts alone does not necessarily satisfy the applicable standard of conduct. As noted above, under these standards, certain conflicts should (and in some cases, must) be addressed through elimination or mitigation.[193] Similarly, when a firm uses covered technology in an investor interaction involving a conflict of interest, scalability can make disclosure of the conflict unachievable in many circumstances such that disclosure alone would be insufficient to adequately address the conflicts of interest. This is because a conflict can replicate to a much greater magnitude and at a much greater speed than would be possible to address through timely disclosure.

We recognize that many investor interactions could have the sole goal of encouraging investors to open a new account, and that firms may use covered technologies for this purpose. The proposed conflicts rules would not require conflicts of interest that exist

[185] *See* Fiduciary Interpretation, *supra* note 8, at section II.

[186] *See* Fiduciary Interpretation, *supra* note 8, at n.57 and accompanying text.

[187] *See supra* section I.A. for a discussion about scalability concerns.

[188] *See* Fiduciary Interpretation, *supra* note 8, at text following n.67.

[189] *See generally id.*

[190] *See* Exchange Act rule 151–1(a)(2)(iii).

[191] *See supra* note 80.

[192] Moreover, while compliance with the proposed rule's requirements could help address compliance with Reg BI's Conflict of Interest Obligation, a broker-dealer that makes a recommendation to retail customers would still be subject to Reg BI's other component obligations.

[193] *See, e.g.,* Fiduciary Interpretation, *supra* note 8, at nn.67–70 (discussing informed consent); Reg BI Adopting Release, *supra* note 8, at text accompanying nn.17–19 (discussing the Conflict of Interest Obligation's requirement for broker-dealers to identify and disclose, eliminate or mitigate conflicts associated with recommendations to retail customers).

solely due to a firm seeking to open a new investor account to be eliminated or their effect neutralized. Even though opening an account would likely be in the interest of the firm, the proposed conflicts rules are not designed to limit firms' abilities to attract clients and customers. However, as noted above, incentivizing specific types of activity (such as margin or options trading privileges, as opposed to opening a general account, or investing in a particular type of investment, as opposed to just opening an account to invest) that is particularly profitable to a firm (and is not always in investors' interest), is intentionally addressed by the proposed conflicts rules.

We request comment on all aspects of the proposed conflicts rules' elimination or neutralization requirement, including the following items:

52. Considering that the proposed conflicts rules' elimination or neutralization evaluation requirement may overlap with existing regulatory requirements for broker-dealers and investment advisers, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa? If so, in what ways?

53. Are our concerns correct that scalability could rapidly exacerbate the magnitude and potential effect of the conflict in a way that could make full and fair disclosure and informed consent unachievable? Are there some conflicts that are more appropriately addressed by disclosure than others? Does this depend on the kind of investor interaction or kind of technology? For example, is scalability more problematic when an investor directly uses a covered technology than when an associated person communicates recommendations or advice that the associated person has generated using covered technology?

54. The elimination or neutralization requirement would also require firms to eliminate, or neutralize the effect of, conflicts of interest associated with use or potential use of a covered technology by an associated person of a firm. What challenges, if any, would firms face due to this aspect of the proposed conflicts rules? Should we make any changes as a result? Instead of or in addition to covering conflicts of interest associated with associated persons' use of covered technologies, should we prescribe any additional requirements, such as additional diligence or policies and procedures, relating to conflicts of interest associated with associated persons? In addition to natural persons, should the elimination or neutralization requirement apply in the context of entities controlling, controlled by, or under common control with firms?

55. Should firms be required to eliminate, or neutralize the effect of, conflicts of interest that place the firm's interests ahead of investors' interests as required under the proposed rules? Instead, should the elimination or neutralization obligation (or the requirements of sections (b)(1) or (b)(2) of the proposed conflicts rules) be limited to investor interactions involving, as applicable, investment advice or recommendations by a firm or its associated persons (or by a covered technology employed by a firm or its associated persons)? Should that obligation or requirements be limited to investor interactions directly with covered technologies? What other ways could we address the risks that conflicts of interest associated with firms' use of covered technologies will result in investor interactions that place the firm's interest ahead of the investor interest?

56. Is the requirement to eliminate, or neutralize the effect of, certain conflicts of interest sufficiently clear? Should we provide any additional guidance on what we mean by ''neutralize the effect of''? If so, how? Instead of, or in addition to, elimination and neutralization, should the proposed conflicts rules require mitigation of some or all of the effects of conflicts of interest determined to place a firm's interests ahead of investors' interests under section (b)(2) of the proposed conflicts rules? If so, which conflicts? Is there additional guidance we should provide, or changes we should make to the text of the proposed conflicts rules, to clarify the distinction between elimination or neutralization, on the one hand, and mitigation, on the other hand?

57. Are there particular methods that firms currently use to eliminate, or neutralize the effect of, conflicts of interest in investor interactions using covered technology? Should we indicate that certain methods (including limiting access to the technology, providing policies and procedures for ''safe'' use of the technology, limiting the data the technology considers, providing ''counterweights,'' or training the algorithm to ignore certain information) are methods we believe are generally appropriate to eliminate, or neutralize the effect of, conflicts of interest under the proposed conflicts rules or that certain methods are not appropriate for compliance with the proposed conflicts rules? If we were to provide additional guidance, how should we ensure that the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, conflicts is sufficiently general that it would continue to apply to future technologies or future conflicts we may not currently anticipate as such technologies develop? Is using a ''counter-signal'' to train a learning model a useful way to eliminate, or neutralize the effect of, conflicts associated with the model? In addition to the testing requirement in section (b)(1) of the proposed conflicts rules, should we also require that firms that are eliminating, or neutralizing the effect of, conflicts of interest test the covered technology after such elimination or neutralization to determine whether it was successful?

58. Is our understanding correct that the proposed conflicts rules, including the proposed elimination or neutralization requirement, are consistent with the applicable standards of conduct? To what extent will firms be able to utilize existing methods of addressing conflicts of interest and existing policies and procedures in order to comply with the proposed conflicts rules? For example, do firms expect to utilize their existing methods of addressing conflicts of interest under Reg BI or the fiduciary standard, as applicable, in order to comply with the proposed conflicts rules?

59. The proposed investment adviser conflict prohibition would only apply to investment advisers registered or required to be registered under section 203 of the Advisers Act, meaning certain firms, including exempt reporting advisers and state-registered advisers, would not be covered. Should the prohibition be expanded to cover these entities? If the investment adviser conflict prohibition is widened to capture these entities, should the policies and procedures requirement in paragraph (c) of the proposed conflicts rules be similarly widened? Would certain types of advisers, such as those that primarily provide advice through an interactive website, be disproportionately affected by this proposal? Would any such advisers seek to restructure their operations to avoid this result? We are separately proposing updates to the internet adviser exemption, 17 CFR 275.203A–2. Should we modify any aspect of the proposed conflicts rules in order to coordinate with the proposed updates to the internet adviser exemption? [194]

60. How do firms currently ensure their use of what the proposal would define as covered technologies complies

[194] *See* Exemption for Certain Investment Advisers Operating Through the internet, Investment Advisers Act Release No. 6354 (July 26, 2023).

with applicable existing rules and regulations or other legal obligations, including standards of conduct? Do firms using ''black box'' algorithms currently rely on disclosure instead of or in addition to affirmative design steps to address the actual and potential conflicts of interest associated with such algorithms? If so, what disclosure do firms provide and what form of informed consent do investors provide regarding firms' use of such algorithms? How do firms comply with the applicable standard of conduct, including the duty to act in the investor's best interest, particularly where they have been unable to determine whether their interests are being placed ahead of their investors?

61. Is the exclusion for the use of covered technologies in investor interactions that have the sole goal of encouraging investors to open a new account sufficiently clear? Should this exclusion be narrowed or broadened, and, if so, how? For example, should we provide that the exclusion is only available if a firm does not differentially market to investors in order to guide them to open a particular type of account that is especially profitable for the firm, such as an options or margin account?

3. Policies and Procedures Requirement

The proposed investment adviser conflicts rule would require every investment adviser that is subject to paragraph (b) of the rule and uses covered technology in any investor interaction to adopt and implement written policies and procedures reasonably designed to prevent violations of paragraph (b) of that rule.[195] Likewise, the proposed broker-dealer conflicts rule would require every broker-dealer that is subject to paragraph (b) of that rule and that uses covered technology in any investor interaction to adopt, implement, and maintain written policies and procedures reasonably designed to achieve compliance with paragraph (b) of that rule.[196] For all firms, these policies and procedures would need to include: (i) a written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b)(1) of the proposed conflicts rules and a written description of any material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered technology's implementation or material modification, which must be updated periodically; [197] (ii) a written description of the process for determining whether any conflict of interest identified pursuant to paragraph (b)(1) of the proposed conflicts rules results in an investor interaction that places the interest of the firm or its associated persons ahead of the interests of the investor; [198] (iii) a written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to paragraph (b)(2) of the proposed conflicts rules to result in the interest of the investment adviser, broker-dealer, or the firm's associated persons being placed ahead of the interests of the investor; [199] and (iv) a review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures and written descriptions established pursuant to this policies and procedures requirement and the effectiveness of their implementation. Although it is possible that some firms that use covered technology in investor interactions may not identify any conflicts of interest in carrying out the requirements of paragraph (b)(1) of the proposed conflicts rules, such firms would still be required to adopt, implement, and, in the case of broker-dealers, maintain these written policies and procedures, so as to be prepared to address any instance where such a conflict of interest is later identified by the firm in the course of its ongoing operations.

These proposed policies and procedures requirements are designed to help ensure that a firm understands how its covered technologies work when engaging in any investor interaction using covered technologies, the conflicts of interest those covered technologies present, and the potential effects of those conflicts on investors.[200] Further, these proposed requirements are designed to help ensure that firms will not place their own interests ahead of the interests of investors where such conflicts of interest are associated with the firm's use of covered technology. A firm's failure to adopt and implement (and, in the case of broker-dealers, maintain) these policies and procedures would constitute a violation of the proposed conflicts rules independent of any other securities law violation. As a result, the proposed conflicts rules would address the failure of a firm to adequately describe how a covered technology works and the actual or potential conflicts the technology's use could create with the interests of investors before any such conflicts cause actual harm to investors.

We are proposing minimum standards for the written descriptions and annual review that a firm's policies and procedures would need to include. However, the proposed conflicts rules would provide firms with flexibility to determine the specific means by which they address each element, and the degree of prescriptiveness the firm includes in their policies and procedures. To satisfy the proposed conflicts rules' requirement to have policies and procedures including the specified written descriptions and annual review, firms generally should take into consideration the nature of their operations, and account for the covered technologies in use or to be used. Further, in satisfying the proposed conflicts rules, a firm should account for any use or reasonably foreseeable potential use of a covered technology that does or could result in conflicts of

[195] *See* proposed rule 211(h)(2)–4(c)(3). *See also* discussion of proposed conflicts rules at paragraphs (b)(1) through (3) *supra* section II.A.2. As noted above, the definition of ''investor interaction'' ''does not apply to interactions solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support.'' *See* proposed conflicts rules at paragraph (a) and discussion *supra* section II.A.1.b.

[196] *See* proposed rule 15l–2(c). Under the Commission's rules, investment advisers historically have been required to ''adopt and implement'' policies and procedures that are ''reasonably designed to prevent violation'' of the Advisers Act or rules adopted thereunder, while broker-dealers have been required to ''establish, maintain, and enforce'' policies and procedures that are ''reasonably designed to achieve compliance with'' the particular rule. *Compare* 17 CFR 206(4)–7(a) (investment advisers required to ''adopt and implement written policies and procedures reasonably designed to prevent violation'') *with* 17 CFR 240.15l–1(a)(2)(iv) (broker dealers required to ''establish[ ], maintain[ ], and enforce[ ] written policies and procedures reasonably designed to achieve compliance with''). In order to assist firms with compliance with the proposed conflicts rules' policies and procedures requirements, we have used language that is consistent with these respective rules. Accordingly, the wording of the proposed policies and procedures requirements varies between investment advisers and broker-dealers. We do not believe, however, that there is a substantive difference between how firms would need to comply with each proposed rule. *See, e.g.,* Reg BI Adopting Release, *supra* note 8, at text accompanying n.810 (discussing policies and procedures requirements for investment advisers and broker-dealers without noting any difference despite the differing language).

[197] Proposed conflicts rules at (c)(1).

[198] Proposed conflicts rules at (c)(2).

[199] Proposed conflicts rules at (c)(3).

[200] The policies and procedures requirements complement the elimination and neutralization requirement, and are intended to encourage development of risk-based best practices by firms, rather than to impose a one-size-fits-all solution. *Cf.* Chamber of Commerce AI Report, *supra* note 144, at 89 (discussing necessity of firms deploying certain technologies ''having sufficient understanding of the system to provide effective human oversight'').

interest in light of the firm's particular operations. For example, under the proposed conflicts rules, the level of detail firms would need to include when producing a written description of any material features of any covered technology used in any investor interaction, and the conflicts of interest associated with the use of that technology, will generally be less for those firms that either engage in a very limited use of covered technology, or that only use covered technologies that are relatively simple.

On the other hand, for a firm that makes extensive use of more complex covered technology, such as machine learning technologies that function automatically without direct interaction with firm personnel, or a firm whose conflicts of interest are more complex or extensive, the policies and procedures would need to be substantially more robust. This could include consideration of all aspects of the covered technologies the firm uses, including the data used to train the technologies, ''explainability'' requirements, specific training for technical staff, and maintaining (and regularly reviewing) logs sufficient to identify any risks the firm's use of a covered technology presents of non-compliance with the proposed conflicts rules.

In addition to the requirements outlined in paragraphs (c)(1)–(4) of the proposed conflicts rules, firms designing policies and procedures reasonably designed to achieve compliance with paragraph (b) of the proposed conflicts rules generally should consider including other elements, as appropriate, such as: (i) compliance review and monitoring systems and controls; (ii) procedures that clearly designate responsibility to appropriate personnel for supervision of functions and persons; (iii) processes to escalate identified instances of noncompliance to appropriate personnel for remediation; and (iv) training of relevant personnel on the policies and procedures, as well as the forms of covered technology used by the firm.

We request comment on all aspects of the scope of the proposed conflicts rules' policies and procedures requirement, including the following items:

62. Does the proposed conflicts rules' policies and procedures requirement complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

63. Are all aspects of these proposed policies and procedures requirements, as well as the particular written descriptions and review to be required by a firm's policies and procedures, necessary and appropriate for achieving compliance with paragraph (b) of the proposed conflicts rules? If not, what elements should be added, deleted, or modified to better ensure firms' compliance with paragraph (b) of the proposed conflicts rules?

64. Several aspects of the proposed conflicts rules address conflicts of interest associated with use or potential use of a covered technology by an associated person of a firm; should any aspect of the proposed policies and procedures requirement be changed as a result? For example, instead of, or in addition to, maintaining an explicit reference to a firm's associated persons in paragraph (b) of the proposed conflicts rules, should we prescribe any additional requirements, such as additional diligence or policies and procedures, relating to conflicts of interest of firms' associated persons?

65. Is the scope of firms covered by the proposed policies and procedures requirement appropriate in light of the requirements of paragraph (b) of this proposed rule? Should the proposed rule be modified to only require these policies and procedures of those firms that have identified at least one conflict of interest in their evaluation of any covered technology that is used or that it is reasonably foreseeable that the firm could potentially use in any investor interaction?

66. Should the proposed rule require that senior firm personnel and/or specific technology subject-matter experts participate in the process of adopting and implementing these policies and procedures? If so, which parties, and what should be their required scope of responsibilities? Further, should any senior firm personnel and/or specific technology subject-matter experts be required to certify that such policies and procedures that the firm adopts and implements are in compliance with the requirements of this paragraph (c) of the proposed conflicts rules? Would there be costs associated with such participation or certification? If so, what are they? When designing their policies and procedures, should firms be required to include some or all of the following: (i) compliance review and monitoring systems and controls; (ii) procedures that clearly designate responsibility to appropriate personnel for supervision of functions and persons; (iii) processes to escalate identified instances of noncompliance to appropriate personnel for remediation; and (iv) training of relevant personnel on the policies and procedures, as well as the forms of covered technology used by the firm?

a. Written Description of Evaluation Process To Identify Conflicts of Interest and Written Description of Material Features

Under the proposed policies and procedures requirement, firms would need to adopt and implement (and, in the case of broker-dealers, maintain) written policies and procedures reasonably designed to achieve compliance with paragraph (b) that include a written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b)(1), and a written description of the material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction.[201]

The proposed requirement to include a written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction within the firm's written policies and procedures is designed to help ensure the firms establish and follow a defined process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction and consequently identifying any conflict of interest associated with that use or potential use, as required by paragraph (b)(1). Although the scope of any individual evaluation may depend on a variety of factors, including the specific covered technology in question, the manner in which that covered technology would interact with investors, and how the technology may be used, this process generally should be designed to provide firms with a consistent approach to satisfying the requirements of paragraph (b)(1) of the proposed conflicts rules. This written description would assist firms in performing the vital initial step of identifying all relevant conflicts of interest, which is necessary to ultimately complying with the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, those conflicts of interest that place or result in placing the interest of the firm or its associated persons ahead of the interests of the investor. In addition to assisting the firm's internal staff, this

[201] Proposed conflicts rules at (c)(1).

written description of the process that firms will use would assist the Commission's examinations staff in assessing the firm's compliance with the entirety of the proposed conflicts rules.

This written description must articulate a process for the firm to use in evaluating any use or reasonably foreseeable potential use of a covered technology by the firm or its associated persons in any investor interaction to identify any conflict of interest associated with that use or potential use. Further, this process must address how the firm will conduct the required testing of each such covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest. Although we recognize that this process must be flexible enough to account for different types of covered technologies and investor interactions that those technologies might be used in, the firm's written description generally should be specific enough to ensure the consistent identification of any associated conflicts of interest. The process described by the firm generally should detail those steps it will take in conducting this evaluation, as well as the means it will use in identifying each relevant conflict of interest.

To further promote compliance with the evaluation and identification required under paragraph (b)(1), a firm's policies and procedures would be required to include a written description of the material features of any covered technology used in any investor interaction, including any conflicts of interest associated with the use of the covered technology, and would need to be prepared prior to its implementation or material modification, and updated periodically. As discussed above, we are concerned that some firms currently lack a holistic understanding of the covered technologies they employ, and that this could result in investor interactions that are based on unknown conflicts of interest that are harmful to the investor.[202] These concerns are heightened when firm personnel who are responsible for ensuring the covered technology complies with applicable laws and regulations, including SRO rules, do not fully understand how the covered technology would work in interactions with investors, and, thus, the risks the covered technology might present to those investors.

The proposed written description element is designed to address these risks in a manner that helps ensure that the firm has identified and developed an understanding of those conflicts of interest that might impact the firm's investor interactions through the use of covered technology. The material features of a covered technology generally would include how the technology works, including how it optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes, in a manner that would enable the appropriate personnel at a firm to understand the potential conflicts of interest associated with the technology. Further, firms generally should include within this written description detail on when and how the firm intends to use, or could reasonably foresee using, the covered technology in investor interactions.

To the extent that the outcomes of the technology are difficult or impossible to explain (*e.g.,* in the case of a ''black box''), the description of how any associated conflicts arise would be critical to informing the application of the firm's elimination or neutralization procedures. As discussed above, the Commission is aware that some more complex covered technologies lack explainability as to how they function in practice, and how they reach their conclusions.[203] The proposed conflicts rules would apply equally to these covered technologies, and firms would only be able to continue using them where all requirements of the proposed conflicts rules are met, including the requirements of paragraph (c). As discussed above, as a practical matter, it would be impossible for firms to use such covered technologies and meet the requirements of paragraph (b) of the proposed conflicts rules where they are unable to identify all conflicts of interest associated with the use of such covered technology.[204] For similar reasons, if a firm is incapable of preparing this written description of all such conflicts of interest associated with the use of the covered technology in any investor interaction as a result of the lack of explainability of the analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process comprising the covered technology, as well as its resulting outcomes, it would not be possible for the firm to satisfy the requirements paragraph (c) of the proposed conflicts rules. However, similar to the discussion above, where firms are not able to satisfy the requirements of paragraph (c) of the proposed conflicts rules with a particular covered technology in its current form, firms may be able to modify these technologies, for example by embedding explainability features into their models and adopting back-end controls in a manner that will enable firms to satisfy these requirements.[205]

A high degree of specificity may not be necessary when creating the written description of every material feature of any covered technology used by the firm in any investor interaction. For example, if a material feature could not reasonably be expected to be associated with a conflict of interest (*e.g.,* a financial model that is used to compute whether risks are sufficiently diversified in a portfolio containing various asset classes), a firm could reasonably determine that a simple description of that feature would be sufficient. However, at a minimum, it would need to describe the material features of the covered technology used by the firm at a level of detail sufficient for the appropriate personnel at the firm to understand whether its use would be associated with any conflicts of interest.

A firm would be required to update this written description periodically. This requirement is designed to help ensure that firms are appropriately monitoring their use of covered technologies and accurately memorializing any material features of any covered technology that the firm uses in any investor interaction. These periodic updates to the written description should occur where a covered technology has been upgraded or materially modified in a manner that would make the previously existing written description inaccurate or incomplete. Additionally, if firm personnel become aware of either additional material features of the covered technology used by the firm, or of the firm engaging in a different use of the covered technology that was not previously contemplated by the written description, the written description should be updated at that time to include such information.

We request comment on all aspects of this proposed written description requirement found in paragraph (c)(1) of the proposed conflicts rules, including the following items:

67. Does the proposed conflicts rules' requirement that firms include written descriptions as part of their policies and procedures complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and

[202] *See supra* section I.B (background discussion on conflicts of interest).

[203] *See supra* section II.A.2.a (discussion on Evaluation and Identification).

[204] *See id.*

[205] *See id.*

investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

68. Should we require greater specificity within the written description as to the means a firm will use for evaluating any use or reasonably foreseeable potential use of covered technology in any investor interaction, in addition to a description of the firm's process for conducting such an evaluation? If so, what additional points of specificity should be required? Should we require less specificity? Does the level of specificity in the proposed requirement allow for sufficient flexibility to administer this aspect of the policies and procedures in a variety of circumstances?

69. Should we require that the written description of the firm's evaluation and identification process be prepared by specific firm personnel or approved by firm management? If so, by whom? Similarly, should this written description require the designation of specific individuals to carry out the process firms will use for evaluating any use or reasonably foreseeable potential use of covered technology in any investor interaction?

70. What are the challenges associated with compiling a written description of any material features of and any conflicts of interest associated with the use of any covered technology they employ? Should the proposed conflicts rules be revised to account for those challenges? If so, how?

71. As a practical matter, firms using black box technologies would find it challenging, and potentially impossible, to meet the requirements of the proposed rules to the extent they find it difficult to identify and describe all conflicts of interest associated with the use of such covered technology. In addition to these proposed requirements, should we explicitly require that any technologies used by firms must be explainable?

72. Is it sufficiently clear what features of a covered technology would constitute ''material features'' beyond those features that present conflicts of interest? If not, what additional detail should the Commission provide? Should the Commission define ''material features'' for the purpose of the proposed rule? For example, should the Commission specify as ''material features'' the types of recommendations or advice, or other investor interactions, a covered technology is designed to produce? Should the term also include the types of inputs, the specific methods of analysis, or the user interface of the technology? Why or why not?

73. Is the proposed level of specificity and detail of the written description of the material features of any covered technology used by the firm in any investor interaction appropriate under the circumstances? Should the rule explicitly require that this description be sufficient for the appropriate personnel at the firm to understand whether the use of the covered technology would be associated with any conflicts of interest the appropriate standard? If not, what should be the standard? Does the level of specificity and detail still allow for flexible implementation in a variety of circumstances?

74. Is the scope of covered technologies subject to this written description requirement appropriate in light of the requirements of paragraph (b) of this proposed conflicts rules? Should the proposed conflicts rules be modified to only require a written description of the material features of those covered technologies that the firm uses in any investor interaction that the firm has identified as containing at least one conflict of interest?

b. Written Description of Determination Process

The proposed conflicts rules would also require that firms' policies and procedures must include a written description of the process for determining whether any conflict of interest identified pursuant to paragraph (b)(1) of the proposed conflicts rules results in an investor interaction that places the interest of the investment adviser, broker-dealer, or the firm's associated persons ahead of the interests of the investor.[206] This requirement is designed to help ensure that firms create and implement a process for determining which of those conflicts of interest that they have identified in their use or potential use of a particular covered technology results in an investor interaction that would place the interests of that firm or its associated persons ahead of the interests of the investor. While this determination will ultimately depend on the individual conflict of interest, covered technology, related investor interactions, and other factors that may not be easily predictable, this process generally should be designed to provide a consistent approach to satisfying the requirements of paragraph (b)(2) of the proposed conflicts rules. In doing so, this written description would assist firms in performing this essential step to ultimately comply with the requirement in paragraph (b)(3) of the proposed conflicts rules to eliminate, or neutralize the effect of, such conflicts of interest. In addition to assisting the firm's internal staff, this written description would assist the Commission's examinations staff in assessing the firm's compliance with the proposed rules.

This written description generally should clearly articulate the process for the firm to use in determining whether any conflict of interest that it has identified would result in placing its own interests or the interests of its associated persons ahead of the interests of investors. Although we recognize that the idiosyncrasies of differing conflicts of interest or different types of investor interactions may necessitate some manner of flexibility as to the firm's process, the written description of the firm's process generally should be specific enough to help ensure that the process will be consistently effective in producing determinations by the firm that accurately reflect those conflicts of interest that would result in placing the interests of the firm or its associated persons ahead of the interests of investors. The process described by the firm generally should detail certain steps for determining the effect that the conflict of interest has, or would have, on an investor interaction if the covered technology or material modification were put into use by the firm. This should include a means of determining whether the interest of the firm, or associated person, is or would be placed ahead of investors' interests if the firm used the covered technology or a material modification to the covered technology in investor interactions.

We request comment on all aspects of this proposed written description requirement found in paragraph (c)(2) of the proposed conflicts rules, including the following items:

75. Does this aspect of the proposed conflicts rules complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

76. Should we require the written description of the firm's process for determining whether any conflict of interest identified pursuant to paragraph (b)(1) of the proposed conflicts rules results in an investor interaction that places the interest of the firm, or associated person, ahead of the interests of investors be prepared by specific firm

[206] Proposed conflicts rules at (c)(2).

personnel or approved by firm management? If so, by whom? Similarly, should this written description require the designation of specific individuals, such as those in legal, compliance, technology, or managerial positions, to carry out the process firms will use for determining whether a particular conflict of interest places the interest of the firm, or associated person, ahead of the interests of the investor?

77. Does the level of specificity in the proposed requirement allow for sufficient flexibility to administer this aspect of the policies and procedures in a variety of circumstances? Should we require greater specificity within the written description as to the means a firm will use for determining whether a conflict places the interest of the firm, or associated person, ahead of the interest of the investor, in addition to a description of the firm's process for making such a determination? If so, what additional points of specificity should be required? Should we instead require less specificity? If so, what details should not be required to be included in this written description?

c. Written Description of Process for Determining How To Eliminate, or Neutralize the Effects of, Conflicts of Interest

The proposed conflicts rules would also require that firms' policies and procedures include a written description of the process for determining how to eliminate, or neutralize the effect of, any conflict of interest determined by the firm, pursuant to paragraph (b)(2) of the proposed conflicts rules, to result in an investor interaction that places the interest of the investment adviser, broker-dealer, or the firm's associated persons ahead of the interests of the investor.[207] This element is designed to require firms to have an established framework for eliminating, or neutralizing the effect of, conflicts of interest, which we believe should assist those firms in complying with paragraph (b)(3) of the proposed conflicts rules. The description will also assist the firm's internal staff, as well as examination staff, in assessing a firm's compliance.

The process for elimination or neutralization that a firm sets forth in the written description should be tailored to account for the differing circumstances presented to the firm when making its determination as to a particular conflict of interest. For example, the process described by the firm should account for whether the particular conflict of interest involves a covered technology that is already being used in investor interactions, or instead only involves a conflict of interest from a reasonably foreseeable potential use. Where the process pertains to a reasonably foreseeable potential use, the firm should address how its personnel would determine whether a covered technology has been sufficiently modified such that any identified conflicts of interest have been eliminated, or their effect has been neutralized, prior to any use in an investor interaction. However, if the firm is already using the covered technology in any of its investor interactions, the firm's written description of this process must address how it would promptly eliminate, or neutralize the effect of, any identified conflict of interest. The written process for a covered technology that is already used in investor interactions might, for example, require the firm to immediately limit access to or use of the technology or, if possible, immediately eliminate the identified conflict of interest, prior to considering further modifications.[208] In either instance, the firm would need to include a written description of the steps that the firm would take under its elimination or neutralization procedures to prevent any investor interaction that places the interest of the firm ahead of the interests of investors (*e.g.,* by explicitly eliminating consideration of the factors that reflect the firm's interest, by disabling a part of the technology, by training it to use reinforcement learning to prioritize investors' interest in all cases, or by eliminating the business practice that is associated with the conflict).

To support their efforts at compliance with the proposed conflicts rules, firms using covered technologies in investor interactions could consider providing additional training to staff who will be implementing their elimination and neutralization policies. For example, firms may benefit from providing additional training to their staff responsible for maintaining the covered technologies in order to give them a better understanding of the legal framework governing their firm's use of covered technologies. In addition, firms may consider providing additional technical training to relevant personnel, so that they are better able to understand how the covered technologies that the firm uses work, and as a result can better understand the technical aspects of what is necessary to eliminate or neutralize a given conflict of interest.

Because a firm's policies and procedures would need to address all covered technologies used by the firm in any investor interaction, and each conflict of interest involving such covered technologies, this written description should contain a clear articulation of the process the firm uses for determining how a conflict should be eliminated or its effect neutralized. In addition, when a firm's policies and procedures dictate a specific means of making such a determination, the firm's written description would need to reflect this.

We request comment on all aspects of this proposed written description requirement found in paragraph (c)(3) of the proposed conflicts rules, including the following items:

78. Does this aspect of the proposed conflicts rules complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

79. Should we require greater specificity within the written description as to the means a firm will use for determining whether and how a conflict should be eliminated or neutralized, in addition to a description of the firm's process for making such a determination? If so, what additional points of specificity should be required? Should we require less specificity? Does the level of specificity in the proposed requirement allow for sufficient flexibility to administer this aspect of the policies and procedures in a variety of circumstances?

80. Should we require that the written description of the firm's elimination or neutralization process be prepared by specific firm personnel or approved by firm management? If so, by whom? Similarly, should this written description require the designation of specific individuals to carry out the process firms will use for determining how a particular conflict of interest must be eliminated or neutralized?

81. Should a firm's policies and procedures be required to specifically address the conduct of individuals? For example, should a firm's policies and procedures be required to address conflicts of interest where all of the benefit may accrue to one of the firm's

[207] Proposed conflicts rules at (c)(3); *see also* proposed conflicts rules at (b)(2) requiring such determination by the firm, discussed *supra* section II.A.2.d.

[208] Additional discussion of how firms may eliminate, or neutralize the effect of, conflicts of interest may be found above *supra* section II.A.2.e.

personnel, such as when firm personnel took an action that is designed to increase their own compensation regardless of the overall impact on the firm? If those persons are not registered or required to be registered as an investment adviser, broker, or dealer, would their actions otherwise be covered by the firm's policies and procedures?

d. Annual Review of the Adequacy and Effectiveness of the Policies and Procedures and Written Descriptions

The proposed conflicts rules would also require that the policies and procedures include a review and a written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established under the proposed conflicts rules and the effectiveness of their implementation, as well as a review of the written descriptions established pursuant to this section.[209] During this review, firms would need to specifically evaluate whether their policies and procedures and written descriptions have been adequate and effective over the period under review at achieving compliance with the proposed conflicts rules' requirements to identify and evaluate all instances where their use or potential use of a covered technology in an investor interaction involves a conflict of interest, determine whether that conflict of interest places the interest of the investment adviser, broker-dealer, or an associated person of the firm ahead of those of the investor, and to then eliminate, or neutralize the effect of, any such conflict of interest promptly after the firm has, or reasonably should have, identified the conflict. Further, firms generally should use this annual review to consider whether there have been any changes in the business activities of the firm or its associated persons, any changes in its use of covered technology generally, any issues that arose from its use of covered technologies during the previous year, any changes in applicable law, or any other factor that might suggest that certain covered technologies now present a different or greater risk than the firm's policies and procedures and written descriptions had previously accounted for, and what adjustments might need to be made to such documents or their implementation to address these risks.

Firms would also be required to prepare written documentation of the review that they have conducted. Such documentation would serve to assist firms in assessing their compliance with all obligations under the proposed conflicts rules, and any related adjustments to their policies and procedures and written descriptions that might be necessary. To the extent that firms' annual review identifies any policies and procedures and written descriptions as being inadequate or ineffective, firms would need to make sure that they are in compliance with the requirement to establish and implement, and in the case of broker-dealers, maintain, policies and procedures that are reasonably designed to achieve compliance with the proposed conflicts rules.

Under 17 CFR 275.206(4)–7 (''Advisers Act Compliance Rule''), an investment adviser is required to adopt and implement written policies and procedures reasonably designed to prevent violation, by the adviser and its supervised persons, of the Advisers Act and the rules thereunder as well as review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to the Advisers Act Compliance Rule and the effectiveness of their implementation. Any policies and procedures an investment adviser adopts under the proposed conflicts rules could be reviewed in conjunction with the annual review under the Advisers Act Compliance Rule.

While the Commission has no parallel rule requiring annual review of a broker-dealer's policies and procedures for their adequacy and effectiveness, a broker-dealer that is a FINRA member is required to ''establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.'' [210] In addition, each FINRA member broker-dealer must ''have its chief executive officer(s) (or equivalent officer(s)) certify annually . . . that the member has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB [211] rules and Federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.'' [212] Those broker-dealers who would be subject to the proposed conflicts rule could conduct this annual review in conjunction with their required review and certification obligations under FINRA's rules, in order to increase the organizational efficiency and likely effectiveness of this annual review.

We request comment on all aspects of this proposed annual review requirement found in paragraph (c)(4) of the proposed conflicts rules, including the following items:

82. Does this aspect of the proposed conflicts rules complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed conflicts rules, and vice versa?

83. Should we limit the scope of the annual review requirement for policies and procedures relating to certain covered technologies, or types of covered technologies? For example, if a covered technology has not changed in the past year, or if a covered technology were considered low risk for creating conflicts or changing since the last year, and the firm has not modified how it uses the covered technology, would it still be necessary to require firms to conduct a review in that area? If we were to limit the scope of the annual review requirement, should we require firms to monitor changes in technology more generally in order to be aware of whether, even if the covered technology itself has not changed, its interaction with other technologies in use by the firm could create conflicts of interest? What limitations would be necessary and appropriate to account for any risk of potential harm to investors if such limitations on the scope of the annual review requirement were provided?

84. Should we require more or less frequent reviews? For example, monthly, quarterly, or every other year? Should we require the review be conducted by specific firm personnel, such as a technology compliance specialist? If so, by whom?

B. Proposed Recordkeeping Amendments

We are proposing to amend rules 17a–3 and 17a–4 under the Exchange Act and rule 204–2 under the Advisers Act to set forth requirements for broker-dealers and investment advisers to

[209] Proposed conflicts rules at (c)(4).

[210] *See* FINRA Rule 3110(b)(1).

[211] Municipal Securities Rulemaking Board.

[212] *See* FINRA Rule 3130(b); *see also* FINRA Rule 3130(c) detailing procedures required for such certification.

maintain and preserve, for the specific retention periods,[213] all books and records related to the requirements of the proposed conflicts rules. The proposed recordkeeping amendments would also include making and maintaining six specific types of records discussed in detail below. These proposed recordkeeping amendments are designed to work in concert with the proposed conflicts rules to help ensure that a record with respect to a firm's use of covered technology is maintained and preserved in easily accessible locations for an appropriate period of time consistent with existing recordkeeping obligations.

The proposed retention periods also conform to existing retention periods for broker-dealers and investment advisers. This approach is intended to allow firms to minimize their compliance costs by integrating the proposed requirements into their existing recordkeeping systems and record retention timelines. The proposed retention periods also conform to existing rules by having consistent requirements for maintaining records in an easily accessible location.[214] And, as with other recordkeeping rules, the proposed recordkeeping amendments would help both the firm's compliance staff, as well as examinations staff (including relevant SRO staff, as applicable), assess the firm's compliance with the requirements of the proposed conflicts rules.

First, firms would be required to make and maintain written documentation of the evaluation, pursuant to paragraph (b)(1) of the proposed conflicts rules, of any conflict of interest associated with the use or potential use by the firm or associated person of a covered technology in any investor interaction.[215] This written documentation would include a list or other record of all covered technologies used by the firm in investor interactions, including: (i) the date on which each covered technology is first implemented (*i.e.,* first deployed), and each date on which any covered technology is materially modified, and (ii) the firm's evaluation of the intended use as compared to the actual use and outcome of the covered technology.[216] Firms would also be required to make and maintain documentation describing any testing of the covered technology performed under paragraph (b)(1) of the proposed conflicts rules, including: (i) the date on which testing was completed;[217] (ii) the methods used to conduct the testing; (iii) any actual or reasonably foreseeable potential conflicts of interest identified as a result of the testing; (iv) a description of any changes or modifications made to the covered technology that resulted from the testing and the reason for those changes; and (v) any restrictions placed on the use of the covered technology as a result of the testing.[218] This documentation generally should include, for example, a record of any research or third-party outreach the firm conducted related to any testing of a covered technology that is performed under the proposed conflicts rules.

This information would assist examinations staff, who would have a record they can reference when assessing compliance. This information also may assist firms in evaluating their initial testing methodologies and in evaluating and, where appropriate, remediating instances when the intended use or outcome of a covered technology differs from its actual use or outcome. In some instances, for example where the covered technology is using relatively straightforward mathematical models such as those contained in spreadsheets, firms could simply list all such technologies as a single entry, which we anticipate would ease firms' compliance with the proposed recordkeeping amendments for these technologies.

Second, firms would be required to make and maintain written documentation of the determination, pursuant to paragraph (b)(2) of the proposed conflicts rules, whether any conflict of interest identified pursuant to paragraph (b)(1) of the proposed conflicts rules places the interest of the firm, or associated person of a firm, ahead of the interests of the investor. This would include the rationale for such determination.[219] This written documentation of the rationale generally should include, for example, the basis on which a firm concludes that a conflict did or did not result in an investor interaction that places the firm or associated person's interests ahead of an investor. This information would assist examinations staff, who would have records they can reference when assessing compliance with the proposed conflicts rules. This information also may assist firms in determining whether actual or reasonably foreseeable potential conflicts of interest place the interests of the firm, or an associated person of the firm, ahead of the interests of the investor, as well as reviewing the effectiveness of the policies and procedures to achieve compliance with this requirement pursuant to paragraph (c).

Third, firms would be required to make and maintain written documentation evidencing how the effect of any conflict of interest has been eliminated or neutralized pursuant to paragraph (b)(3) of the proposed conflicts rules.[220] This written documentation generally should include a record of the specific steps taken by the firm (*i.e.,* show your work) in deciding how to eliminate, or neutralize the effects of, any conflicts of interest as required under the proposed conflicts rules. The written documentation also generally should include the rationale for any determination to make changes or modifications to or place restrictions on the covered technology[221] to eliminate, or neutralize the effect of, any identified conflicts of interest, the methodology used to make any such determination, and a description of the firm's analysis that resulted in any such determination. This information would assist examinations staff, who would have records they can reference when assessing compliance. This information also may assist firms in the determination of how to eliminate or neutralize conflicts of interest, as well as reviewing the effectiveness of the policies and procedures to achieve compliance with this requirement pursuant to paragraph (c).

Fourth, firms would be required to maintain the written policies and procedures, including any written descriptions, adopted, implemented, and, with regard to broker-dealers, maintained pursuant to paragraph (c) of the proposed conflicts rules.[222] This documentation would include the date

[213] For broker-dealers, rule 17a–4(a) under the Exchange Act would require that records be ''preserve[d] for a period of not less than 6 years, the first two years in an easily accessible place.'' For investment advisers, rule 204–2(e)(1) under the Advisers Act provides that records, including those under the proposed recordkeeping amendments, ''shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.''

[214] *See id.*

[215] Proposed 17 CFR 240.17–3(e)(36)(i); 17 CFR 275.204–2(a)(24)(i).

[216] *See id.*

[217] *See id.* We are aware that in certain cases, for example when complex technologies are involved, testing could take longer than one day. We propose that this requirement would refer to the date the testing was completed so that staff are able to assess whether the firm frequently relies on ''stale'' information.

[218] *See id.*

[219] Proposed 17 CFR 240.17a–3(e)(36)(ii); 17 CFR 275.204–2(a)(24)(ii).

[220] Proposed 17 CFR 240.17a–3(e)(36)(iii); 17 CFR 275.204–2(a)(24)(iii).

[221] *See* proposed 17 CFR 240.17a–3(e)(36)(i); 17 CFR 275.204–2(a)(24)(i).

[222] Proposed 17 CFR 240.17a–3(e)(36)(iv); 17 CFR 275.204–2(a)(24)(iv).

on which the policies and procedures were last reviewed.[223] Firms must also maintain written documentation evidencing a review, occurring at least annually, of the adequacy of the policies and procedures established pursuant to paragraph (c) of the proposed conflicts rules, and the effectiveness of their implementation, as well as a review of the written descriptions established pursuant to paragraph (c) of the proposed conflicts rules. These provisions would assist examinations staff in assessing firms' compliance with the proposed conflicts rules.

To help demonstrate compliance with the proposed conflicts rules, a firm may elect to maintain records documenting other information regarding covered technology, which could help to demonstrate that it took a reasonable approach when identifying and evaluating the conflicts of interest associated with the technology. For example, a firm may choose to maintain a record of any uses, other than in investor interactions, that the firm reasonably foresees for each covered technology.[224]

Fifth, firms would be required to make and maintain a record of any disclosures provided to investors regarding the firm's use of covered technologies, including, if applicable, the date such disclosure was first provided or the date such disclosure was updated.[225] We do not intend this proposed requirement to impose new disclosure requirements, nor do we intend that firms maintain documents in two locations. Many firms could satisfy this proposed requirement by maintaining a simple bullet-point list with cross-references to all disclosures they make to investors regarding their use of covered technologies (whether the disclosure is made pursuant to an existing requirement or voluntarily). Maintaining a list of any such disclosures would assist examinations staff in reviewing disclosures given to investors regarding a firm's use of covered technologies, to help ensure that these disclosures are full and fair.

Sixth, firms would be required to make and maintain records of each instance in which a covered technology was altered, overridden, or disabled; the reason for such action; and the date thereof. This requirement would include making and maintaining records of all instances where an investor requested that a covered technology be altered or restricted in any manner.[226] We believe these records will assist in identifying which technologies may present higher risks, for example if they require constant alterations or if certain investors request that such technologies not be used on their accounts.

We request comment on all aspects of the proposed recordkeeping amendments, including the following items:

85. Do the proposed recordkeeping amendments complement, overlap with, or duplicate the existing regulatory framework for broker-dealers and investment advisers? If so, in what ways? Specifically, would firms' compliance with those other regulatory requirements contribute to compliance with the proposed recordkeeping amendments, and vice versa?

86. Are there additional records that firms would naturally create as they complied with the proposed conflicts rules that we should require them to maintain? Are there any records beyond what firms would already naturally create that would be useful to require them to maintain? Should we require fewer records? If so, which ones should we eliminate and why?

87. Would the records that firms would be required to make and retain under the proposed recordkeeping amendments likely require firms to retain additional ''backup'' documentation, such as logs, training data, or other documentation? Should we make any changes as a result? For example, should we explicitly require such information to be made and retained? Are there reasons such information should not be required to be made and retained? For example, is it likely that such information would be voluminous, and could therefore be difficult for firms to retain for the full timeframe that records would be required to be maintained? If so, should we reduce the time that firms would be required to retain such records?

88. For records related to all instances where an investor requested that a covered technology be altered or restricted, what challenges would firms face with respect to maintaining this information? What factors should we consider if we qualify this requirement?

89. Are the proposed periods of time for preserving records appropriate, or should certain records be preserved for different periods of time? If records should be preserved for different periods of time, which records should have different time periods and what should those periods of time be?

90. We are proposing to require broker-dealers and investment advisers to maintain the same records. Are there any differences in the way that investment advisers and broker-dealers conduct business that would advocate for maintaining different sets of records?

91. Should the proposed recordkeeping requirement that advisers maintain records of all instances where an investor requested that a covered technology be altered or restricted in any manner apply to prospective clients and prospective investors in a pooled investment vehicle? Should an investment adviser be required to maintain a record of instances where a prospective client or prospective investor in a pooled investment vehicle requested that the covered technology be altered or restricted, but the investment adviser rejected the request, and the prospective client did not ultimately invest?

92. We are proposing to require firms to maintain a record of any disclosures provided to each investor regarding the firm's use of covered technologies. Should the proposed recordkeeping amendments require specific disclosures to be provided or maintained? If so, what disclosures? Should the disclosures be limited to use of covered technologies in investor interactions, or be broadened to include more technology? Should we also require records of disclosures about a firm's or associated person's conflicts associated with the use of such technologies in investor interactions?

93. We are proposing to require firms to make and maintain documentation describing any testing of the covered technology performed under paragraph (b)(1) of the proposed conflicts rules. Along with the existing specifics, should we also require information about who developed and/or conducted the testing (*e.g.,* firm personnel, an outside vendor)?

III. Economic Analysis

A. Introduction

The Commission is sensitive to the economic consequences and effects, including costs and benefits, of its rules. Section 3(f) of the Exchange Act [227] and section 202(c) of the Advisers Act [228] provide that when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will

[223] *See id.*

[224] *See id.*

[225] Proposed 17 CFR 240.17a–3(e)(36)(v); 17 CFR 275.204–2(a)(24)(v).

[226] Proposed 17 CFR 240.17a–3(e)(36)(vi); 17 CFR 275.204–2(a)(24)(vi).

[227] 15 U.S.C. 78c(f).

[228] 15 U.S.C. 80b–2(c).

promote efficiency, competition, and capital formation. Additionally, section 23(a)(2) of the Exchange Act [229] requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the proposed conflicts rules and proposed recordkeeping amendments, including the anticipated benefits and costs of the proposed rules and amendments, and their likely effects on efficiency, competition, and capital formation. Where practicable, the Commission quantifies the likely economic effects of the proposed rules and amendments; however, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges. Some of the benefits and costs discussed below are impracticable to quantify because quantification would necessitate general assumptions about behavioral responses that would be difficult to quantify. The Commission is providing both a qualitative assessment and, where feasible, a quantified estimate of the economic effects. The Commission seeks comment on any data that could aid quantification of these responses.

The proposed conflicts rules and proposed recordkeeping amendments may have economic implications for investors, investment advisers, and broker-dealers, and could also affect third-party service providers. The proposed conflicts rules would introduce requirements to identify conflicts of interest associated with the use of covered technologies in investor interactions and eliminate or neutralize those conflicts that place or result in placing the interest of the firm or associated person ahead of the interest of the investor, as well as proposed recordkeeping requirements regarding such determinations and resulting actions. This economic analysis aims to examine the potential benefits and costs of the proposed rules and amendments and the impact the proposed rules and amendments may have on the market's efficiency, competition, and capital formation.

B. Broad Economic Considerations

In the last two decades and after the proliferation of internet-based services, the advent of new technologies has modified the business operations of broker-dealers and investment advisers.[230] Access to cheaper and more granular data, plus the additional availability of advanced computing power, have advanced data collection and processing techniques. These developments have significantly enhanced the scale and scope of data analytics and their potential applications by investment advisers and broker-dealers in their interactions with investors. These advances have increased the ability of each of these investor interactions to contain conflicted conduct, given the more widespread availability of data about investors, advances in user interface design and gamification, and business practices that could place the firm's or an associated person's interest ahead of investors' interests. Also, some PDA-like technologies are now able to update their interactions with investors dynamically, based on information or data they have gained from their users or from other data sources, which can dynamically alter the nature and scope of conflicts of interest.

The capabilities of these technological advances—including the data the technology uses (including any investor data) and the inferences the technology makes (including in analyzing investor data, other data, securities, or other assets)—may be opaque to investors and firms. This opacity makes it more challenging for an investor to identify the presence of a conflict of interest, understand its importance, and take protective action when making an investment decision or otherwise interacting with the firm. Likewise, a firm's identification of such conflicts is more challenging without unique efforts to both fully understand the PDA-like technology it is using and oversee conflicts that are created by or transmitted through such technology for purposes of the firm's compliance with applicable Federal securities laws. Further, PDA-like technologies can have the capacity to process data, scale outcomes from analysis of data, and evolve at incredibly rapid rates. These traits could rapidly and exponentially scale the effects of any conflicts of interest associated with such technologies, which could impact the markets more broadly.[231]

The Commission considered two broad economic themes raised by firms' use of covered technology in investor interactions. First, the use of covered technology in investor interactions can entail conflicts of interest related to the principal-agent problem between firms and investors, and second, the use of complex and opaque technologies can potentially create events that can harm investors.[232]

The principal-agent problem arises when one party, known as the principal, hires an agent to perform a task on the principal's behalf, but the interests of the principal and the agent are not aligned.[233] The principal-agent problem can result in the agent acting in its own self-interest ahead of the principal's interest. This problem is particularly relevant in the financial industry, where firms manage investments or execute orders on behalf of investors in exchange for fees. Firms usually have more information about the investments they are recommending, pricing, and market dynamics than the investors that they serve, and can potentially place their interests ahead of investors' interests. Similarly, firms can encourage investors to use more services, or increase transactions, potentially placing the firm's interest over investors' interests. These conflicts of interest are exacerbated by firms' use of certain covered technologies because the technologies that firms use may be complex and opaque to investors, who may not have the knowledge or time to understand how firms' use of these technologies may generate conflicts of interest in their interactions with investors. If these conflicts of interest were left unaddressed, investors could be harmed by less efficient investment

[229] 15 U.S.C. 78w(a)(2).

[230] *See supra* section I.B.

[231] *See supra* sections I.A and I.B. For example, a firm may use PDA-like technologies to automatically develop advice and recommendations that are then transmitted to investors through the firm's chatbot, mobile trading app, and robo-advisory platform. If the advice or recommendation is tainted by a conflict of interest, that conflict would rapidly reach many investors. *See supra* note 16 and surrounding text.

[232] The proposed conflicts rules' definition of ''conflict of interest'' is broader than how economists usually define ''conflicts of interest'' such as in the context of the principal-agent problem. One economist's definition of ''conflict of interest'' is ''a situation in which a party to a transaction can potentially gain by taking actions that adversely affect its counterparty.'' Hamid Mehran & René M. Stulz, The Economics of Conflicts of Interest in Financial Institutions, 85 J. Fin. Econ. 267–296 (Aug. 2007).

[233] Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3 J. Fin. Econ. 305 (1976) (''Jensen & Meckling'').

strategies [234] and incur agency costs.[235] This could also adversely affect the formation of capital, as investors might choose to invest less or might lose confidence in capital markets.

Disclosure can sometimes help address conflict of interest problems in principal-agent relationships. When firms fully and fairly disclose conflicts of interest, investors may be able to make informed decisions about their investments. For example, investment advisers are required to provide clients with a Form ADV, which details information about the adviser's business practices, fees, and certain conflicts of interest.[236] The Commission has brought enforcement actions against broker-dealers that failed to disclose certain conflicts to customers.[237] In addition, investment advisers and broker-dealers are required to provide ''retail investors'' with Form CRS, which explains fees, commissions, and other information that may be relevant when choosing a firm.[238] These disclosure requirements provide investors with information that may help them choose among firms. They also help to create a more transparent relationship between a firm and its investors and potentially help investors assess whether investment advisers and broker-dealers are placing their own interests ahead of their investors' interests. In section III.C.3, we discuss the current disclosures that investment advisers and broker-dealers are required to make in addition to other obligations, and in section III.D.1, we discuss why we believe disclosure is unlikely to be sufficient to address the principal-agent problems generated by covered technologies.[239]

Firms may adopt certain DEPs in the use of covered technology in investor interactions that can exploit common biases or tendencies in investors and lead these investors to make investment decisions that will place the firm's interest ahead of investors' interests.[240] These practices can exacerbate the principal-agent problem, as disclosure might not be as effective at addressing the misaligned incentives between the firm and the investor. For example, firms could use demographic information about an investor or their risk-taking behavior to encourage them to take actions that place the firm's interest ahead of the investors' interest.[241] These could be actions such as trading unnecessarily, allowing the firm to collect extra fees or payments from the additional trading activity (*e.g.,* through increased commissions or payment for order flow) or investing in riskier positions that are more profitable to the firm.[242]

Studies have shown, for example, that excess trading has a negative impact on investment returns, with frequent traders exhibiting lower net annual returns than infrequent traders due to overconfidence.[243] Other studies have found that some stock trading apps appear to follow strategies employed by some firms in the gambling industry to encourage frequent repeat betting,[244] obscure costs, and offer complex instruments with lottery-like large payoffs in rare cases, and that these behavior-influencing strategies benefit from survivorship bias.[245] These practices might not constitute recommendations, and therefore might not face the same obligations that recommendations would. In addition, given that these strategies exploit psychological biases and innate tendencies of the investor rather than information deficiencies or asymmetries, even comprehensive, accurate, and legible disclosure might be less effective at ensuring disinterested investor interactions, including recommendations, which do not place the firm's interest above that of investors.[246] Firms could profit from these strategies through increased fees or payment for order flow due to higher transaction frequency and higher fees on more complex trades, among other means. In contrast to these strategies, initial efforts at design research as applied to financial applications identified several practices that could improve investor thoughtfulness and informed decision-making.[247]

The scale and scope of investor interactions that are now possible with new technologies, and the scope and dynamic nature of the conflicts of interest that can be generated by or associated with firms' use of covered technology, present challenges for the use of disclosure to address conflicts of interest. A single, large disclosure at the beginning of the firm's relationship with the investor might be too lengthy to be meaningful or actionable, or not specific enough to be effective, because it would have to capture the full set of conflicts of interest that could evolve dynamically, across investors, through the use of PDA-like technologies, especially if the technology rapidly adjusts in response to prior interactions

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[234] A rational investor seeks out investment strategies that are *efficient* in the sense that they provide the investor with the highest possible expected net benefit, in light of the investor's investment objective that maximizes expected utility. *See, e.g.,* Andreu Mas-Colell, Michael D. Whinston & Jerry R. Green, *Chapter 10: Competitive Markets for a Discussion of Efficient Allocations of Resources, in Microeconomic Theory* (1995).

[235] The difference between the net benefit to the investor from accepting a less than efficient recommendation about a securities transaction or investment strategy, where the associated person or broker-dealer puts its interests ahead of the interests of the investor's interests, and the net benefit the investor might expect from a similar securities transaction or investment strategy that is efficient for him or her, is an *agency cost. See, e.g.,* Jensen & Meckling, *supra* note 233 for a more general discussion of agency costs.

[236] Amendments to Form ADV, Investment Adviser Act Release No. 3060 (July 28, 2010) [75 FR 49233 (Aug. 12, 2010)] (''Amendments to Form ADV'').

[237] *See supra* note 64.

[238] Fiduciary Interpretation, *supra* note 8.

[239] *See also* Reg BI Adopting Release, *supra* note 8, at III.B.4.c. (discussing the effectiveness and limitations of disclosure).

[240] Ontario Securities Commission, Staff Notice 11–796, *Digital Engagement Practices in Retail Investing: Gamification and Other Behavioural Techniques* (2022), *https://www.osc.ca/sites/default/files/2022-11/sn_20221117_11-796_gamification-report.pdf.* George M. Korniotis & Alok Kumar, *Do Portfolio Distortions Reflect Superior Information or Psychological Biases?,* 48 J. Fin. Quant. Analysis 1 (2013) (''Korniotis''); Thomas Dohmen et al., *Individual Risk Attitudes: Measurement, Determinants, and Behavioral Consequences,* 9 J. Eur. Econ. Ass'n 522–550 (June 2011) (''Thomas Dohmen et al.''); Brad M. Barber & Terrance Odean, *Trading Is Hazardous to Your Wealth: The Common Stock Investment Performance of Individual Investors,* 55 J. Fin. 773–806 (2000) (''Trading Is Hazardous''); Brad M. Barber & Terrance Odean, *Boys Will Be Boys: Gender, Overconfidence, and Common Stock Investment,* 116 Q. J. Econ. 261–292 (Feb. 2001) (''Boys Will Be Boys''); Marie Grall-Bronnec et al., *Excessive Trading, a Gambling Disorder in its Own Right? A Case Study on a French Disordered Gamblers Cohort,* 64 Addictive Behav. 340–348 (Jan. 2017); M. Mosenhauer, et al., *The Stock Market as a Casino: Associations Between Stock Market Trading Frequency and Problem Gambling,* 10 J. Behav. Addictions 683–689 (Sept. 2021); Alex Bradley & Richard JE James, *Defining the Key Issues Discussed by Problematic Gamblers on Web-based Forums: A Data-driven Approach,* 21 Int'l Gambling Stud. 59–73 (2021).

[241] For example, attitudes toward risk and risk-taking behavior have been found to be meaningfully predicted by sex, age, height, and parental educational achievement. *See* Dohmen, et al., *supra* note 240.

[242] Korniotis, *supra* note 240.

[243] *See, e.g.,* Trading is Hazardous, *supra* note 240.

[244] Philip W.S. Newall & Leonardo Weiss-Cohen, *The Gamblification of Investing: How a New Generation of Investors Is Being Born to Lose,* 19 Int. J. Env't. Res. Pub. Health (Apr. 28, 2022).

[245] M.W. Brandt & J.A. Gaspar, *Trading on Margin: The Effect of Financial Market Information Services and Trading Apps on Day Trading Behavior,* 33 Rev. Fin. Stud. 2331–2372 (2020).

[246] Human behavior exhibits conditioned responses. *See* William S. Verplanck, *The operant conditioning of human motor behavior,* 53 Psychological Bulletin 70 (1956). Moreover, the anticipation of monetary rewards creates similar neural circuitry to anticipation of primary rewards in other primates. *See* B. Knutson et al., *FMRI visualization of brain activity during a monetary incentive delay task,* 12 Neuroimage, 20–27 (2000).

[247] Chaudhury & Kulkarni, *supra* note 53, at 777–788.

with an investor.[248] Alternatively, attaching a disclosure to each individual investor interaction could address the potential for conflicts of interest that are dynamically generated through the use of PDA. However, the overall large number of disclosures would impose costs on firms and investors, and effectiveness of these disclosures might be reduced because of the sheer quantity of disclosures.[249]

Firms' use of PDA-like technologies could also impact markets more broadly, because these technologies can process data and amend analytical outcomes at incredibly fast rates, thereby creating unanticipated conflicts of interest that can affect numerous investors, and create market disruptions that affect market participants broadly.[250] A given firm might not fully bear the cost of the use of these technologies, and thus might not fully internalize the full cost of the use of these technologies. The costs imposed on entities external to the firm are called negative externalities, and regulatory intervention may be needed to address these costs.

C. Economic Baseline

1. *Affected Parties*

Broadly, the proposed rules would affect investment advisers, broker-dealers, and investors. They could also indirectly affect third-party service providers that provide covered technologies used by these parties.

As of February 28, 2023, there were 15,402 investment advisers registered with the Commission [251] and 3,504 broker-dealers registered with the Commission.[252] There were 308,565 individuals registered with FINRA as broker-dealer representatives only, 80,977 individuals registered as investment adviser representatives only, 312,317 individuals registered as both investment adviser and broker-dealer representatives, and a total of 971,758 employees reported by investment advisers.[253] However, because the proposed rules would also affect associated persons of firms these numbers may undercount the number of affected individuals, because not all associated persons of a firm are registered representatives of the firm. Approximately 73.5% of registered broker-dealers report retail customer activity.[254]

Form ADV requires investment advisers to indicate the approximate number of advisory clients and the amount of total regulatory assets under management (''RAUM'') attributable to various client types.[255] Table 1 provides information on the number of client accounts, total RAUM, and the number of advisers by client type.

TABLE 1—CLIENTS OF INVESTMENT ADVISERS FROM FORM ADV [256]

Client type	Total RAUM (billions)	Clients (millions)	RIAs
Investment Companies	$42,955	0.022	1,565
Pooled Investment Vehicles—Other	34,433	0.094	5,897
High Net Worth Individuals	11,664	6.898	9,166
Pension Plans	7,807	0.442	5,429
Insurance Companies	7,623	0.015	1,381
Non-High Net Worth Individuals	7,030	44.092	8,493
State/Municipal Entities	4,214	0.029	1,608
Corporations	3,198	0.348	5,196
Foreign Institutions	2,194	0.003	752
Charities	1,580	0.127	5,369
Other Advisers	1,385	0.904	1,202
Banking Institutions	903	0.011	825
Business Development Companies	213	0.000	97

As of February 2023, 50,554 private funds were reported on Form PF, and 5,620 registered investment advisers listed private funds on their Form ADV.[257] The effects of the proposed rules to firms and associated persons would be contingent on a number of factors, such as, among others, the types of covered technologies the firm uses, the number of current and prospective clients or customers of the firm, the number of investors in pooled investment vehicles advised by the firm, the frequency of investor interactions, and the nature and extent of the conflicts of interest. Because of the wide diversity of services and relationships offered by firms, we expect that the obligations imposed by the proposed rules would, accordingly, vary substantially. The Commission seeks public comment on the number and type of these affected parties. When developing the baseline, we considered how current trends in technological development and the conflicts associated with them might reasonably affect financial markets in the absence of the proposed rules. The Commission invites public comment on our characterization of these trends in the baseline.

The proposed rules would affect investors. As discussed earlier in this release, the proposed rules would define ''investor'' differently for investment

[248] *See e.g.,* Maartje Elshout, et al., *Study on consumers' attitudes towards Terms and Conditions (T&Cs),* European Commission Final Report (2016); Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable,* 60 B. C. L. Rev. 2255 (2019); Yannis Bakos, et al., *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts,* 43 J. Legal Stud. 1 (2014).

[249] Due to the potential scalability of these disclosures, incremental costs for firms might be de minimis, but these disclosures would still take costly effort by investors to interpret.

[250] SEC Staff Report, *Equity and Options Market Structure Conditions in Early 2021* (Oct. 4, 2021) (''GameStop Report''), *https://www.sec.gov/files/staff-report-equity-options-market-struction-conditions-early-2021.pdf.*

[251] Based on IARD data as of Mar. 27, 2023.

[252] Based on SEC data as of Mar. 1, 2023, *https://www.sec.gov/help/foiadocsbdfoia.*

[253] Based on FOCUS Filing data, as of March 2023.

[254] Consistent with the Form CRS Adopting Release, we estimate that 73.5% of registered broker-dealers report retail activity and thus, would likely be subject to the proposed conflicts rule. However, we recognize this may capture some broker-dealers that do not have retail activity.

[255] If a client fits into more than one category, Form ADV requires an adviser to select one category that most accurately represents the client (to avoid double counting clients and assets).

[256] This report reflects analysis of Form ADV data downloaded from the Enterprise Data Warehouse as of February 28, 2023. Form ADV, Items 5C, 5D, and 5F(2)(c). Prior to the October 2017 changes to Form ADV, clients and client RAUM were estimated based on the midpoint of ranges reported.

[257] SEC, Div. of Investment Mgmt, Analytics Office, *Private Funds Statistics Third Calendar Quarter 2022,* (Apr. 6, 2023).

advisers as compared to broker-dealers. For investment advisers, ''investor'' is defined as any prospective or current client of an investment adviser or any prospective or current investor in a pooled investment vehicle advised by the investment adviser. For broker-dealers, ''investor'' is defined to mean a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes. This definition is identical to the one used for ''retail investor'' in Form CRS, and it excludes non-retail investors of broker-dealers.

According to the Federal Reserve Board's 2019 Survey of Consumer Finances, a total of 41.3 million U.S. households have either an individual retirement account (''IRA'') or a brokerage account; an estimated 23.0 million U.S. households have a brokerage account, and 32.7 million households have an IRA (including 63% of households that also hold a brokerage account).[258] Households have increased their use of business professionals for investment decisions, rising from 48.9 percent in 2001 to 56.5 percent in 2019. In addition, household use of the internet for investment decisions has risen from 14.8 percent in 2001 to 45.2 percent in 2019.[259] A 2019 survey of households found that approximately 10 million U.S. households use robo-advisers.[260] In 2022, the top 10 robo-advisers reported $353.2 billion in assets under management.[261] The Commission seeks comment on the number of investors this definition could cause to be affected by the proposed conflicts rules, and the extent and nature of the use of covered technologies.

The proposed conflicts rules may indirectly affect third-party service providers of covered technologies. A firm may be using a covered technology developed by a third-party service provider, including through some license agreement with the third-party service provider. A firm may also outsource certain functionality of the covered technology to, or utilize the support or services of, a third-party provider for a variety of reasons, including cost efficiencies, increased automation, particular expertise, or functionality that the firm does not have in-house.

Based on Commission staff experience, the Commission believes that these third-party providers play a growing role with respect to the development of covered technologies, and the Commission anticipates that third-party providers will likely arise to provide other types of functionality, service, or support to firms that are not contemplated yet today.

Due to data limitations, we are unable to quantify or characterize in much detail the structure of these various service provider markets. The Commission lacks specific information on the exact extent to which third-party service providers are retained, the specific services they provide, and the costs for those services. We also do not have information about the market for these services, including the competitiveness of such markets. We request information from commenters on the services related to covered technologies provided by third parties to firms, the costs for those services, and the nature of the market for these services.

2. *Technology and Market Practices*

The use of technology in investing has undergone significant transformation in recent years.[262] Some firms and investors in financial markets now use new technologies such as AI, machine learning, NLP, and chatbot technologies to communicate and make investment decisions.[263] In addition, improvements and new applications for existing technologies for data-analytics, data collection, and investor interaction continue to be developed.[264]

Financial market participants currently use AI and machine learning technologies in a variety of ways. For example, algorithmic trading is a widely used application of machine learning in finance, where machine-learning models analyze large datasets and identify patterns and signals to optimize, forecast, predict, guide, or direct investment-related behaviors or outcomes.[265] Several banks and other financial institutions have developed chatbots to assist with customer service and support, and have attempted to make the chatbot interactions feel similar to conversations with humans.[266] These chatbots can help customers with a range of tasks, from checking account balances and transactions to making payments and disputing fraudulent charges. NLP is used to analyze financial news and social media data, identifying trends and sentiment that may influence market behavior. For instance, hedge funds and trading firms use NLP tools to analyze financial news articles, press releases, and social media posts in real-time, to identify patterns and make trading decisions based on sentiment analysis.[267] Some robo-advisers use chatbots and NLP technology to provide investment advice via online platforms.[268] These platforms may use a combination of AI, machine learning, NLP, and chatbot technologies to provide personalized investment recommendations to investors based on risk tolerance and investment goals.

Recent advancements in data collection techniques have significantly enhanced the scale and scope of data analytics and its potential applications. Thanks to increases in processing power and data storage capacity, a vast amount of data is now available for high-speed analysis using these technologies.[269] Furthermore, the range of data types has also expanded, with consumer shopping

[258] The data is obtained from the Federal Reserve System's 2019 Survey of Consumer Finances (''SCF''). *See* Board of Governors of the Fed. Rsrv. Sys., *Survey of Consumer Finances* (2019), *https://www.federalreserve.gov/econres/scfindex.htm.*

[259] *See* Neil Bhutta et al., Board of Governors of the Fed. Rsrv. Sys., 106 Fed. Rsrv. Bulletin 31 (Sept. 2020) (''Business professionals'' combines seven options: accountant, banker, broker, financial planner, insurance agent, lawyer, and real estate agent).

[260] Michael Mackenzie, *Demand for Advice Rises as Not All Investors Go It Alone,* Fin. Times (Sept. 13, 2020), *https://www.ft.com/content/3900c943-245a-424d-b2e5-da6128655ed5.*

[261] Barbara Friedberg, *Top-10 Robo-Advisors by Assets under Management,* Forbes Advisor (July 9, 2022), *https://www.forbes.com/advisor/investing/top-robo-advisors-by-aum/.*

[262] *See supra* section I.A; *see* Shaw & Gani, *supra* note 75.

[263] Kearns & Nevmyvaka, *supra* note 24; Thier & dos Santos Monteiro, *supra* note 24.

[264] Lekh & Pátek, *supra* note 25; Martindale, *supra* note 25.

[265] Forecasting in contexts contemplated by these rules, such as machine learning, involves estimation of a future value based on data which includes a temporal component. Prediction, in contrast, is the more general estimation of unknown data from known data, for example, missing words in a transcript. *See, e.g.,* Mattias Döring, *Prediction vs Forecasting,* Data Science Blog (Dec. 9, 2018), *https://www.datascienceblog.net/post/machine-learning/forecasting_vs_prediction/.*

[266] *See, e.g.,* Suman Bhattacharyya, *Bank of America Wants a Human Bridge for Its AI Help,* BankingDive (Dec. 12, 2022), *https://www.bankingdive.com/news/bank-america-erica-chatbot-virtual-assistant-human-middle-interaction-gopalkrishnan/638523/;* Sara Castellanos, *Capital One Brings 'Humanity' to Its Forthcoming Chatbot, CIO Blog* (July 19, 2017), *https://www.wsj.com/articles/capital-one-brings-humanity-to-its-forthcoming-chatbot-1500488098* (retrieved from Factiva database); Moise, *supra* note 24.

[267] *See, e.g.,* Patrick Henry & Dilip Krishna, *Making the Investment Decision Process More Naturally Intelligent,* Deloitte Insights (Mar. 2, 2021), *https://www2.deloitte.com/us/en/insights/industry/financial-services/natural-language-processing-investment-management.html; see also* Yong Chen et al., *Sentiment Trading and Hedge Fund Returns,* 76 J. Fin. 2001 (Apr. 8, 2011).

[268] *See supra* note 41 and surrounding text.

[269] *See, e.g.,* Andriosopoulos et al., *supra* note 51; Lawler et al., *supra* note 51; Alex Padalka, *Tech Firms Court Fidelity for Data Heap to Build AI Systems,* Fin. Advisor IQ (June 8, 2023), *https://www.financialadvisoriq.com/c/4104954/529084/tech_firms_court_fidelity_data_heap_build_systems.*

histories, media preferences, and online behavior now among the many types of data that data analytics can use to synthesize information, forecast financial outcomes, and predict investor and customer behavior.[270] As a result, these technologies can be applied in novel and powerful, yet subtle ways, such as using data layout and formatting choices to influence trading decisions.[271] Some technologies use predictive data analytics and AI/machine learning along with detailed user data to increase user engagement, and trading activity.

The use of these technologies can generate conflicts of interest if firms use these technologies to suggest or nudge users to trade more frequently on their platform, or to invest in products that are more profitable for the firm but expose investors to higher costs or risks, against investors' interests. In addition, although investors are free to choose a firm that uses technology in a manner with which they are comfortable, investors may have to undertake costly efforts to understand how firms are using technology and to be comfortable with newer technologies used by firms, including any associated disclosures of conflicts of interest. In the case of broker-dealers, non-recommendation interactions with investors are not subject to Reg BI's Conflict of Interest Obligation, but can still influence investor behavior in a way that places the firm's interests ahead of investors' interests.

Many of these technologies are not directly developed by investment advisers or broker-dealers, but are instead licensed from third party providers.[272] This practice can harness the economies of scale in the development and testing of a technology with broad applications, by centralizing the costs within the service provider, rather than spreading the costs across multiple firms independently developing similar technologies. However, the use of third party providers can also potentially concentrate the risks that stem from conflicts of interest from the use of these technologies if such providers are concentrated within the market serving covered entities and provide products or services which operate broadly similarly across their covered customers.

3. Regulatory Baseline

Investment advisers and broker-dealers are currently subject to obligations under Federal securities laws and regulations, and, in the case of broker-dealers, rules of SROs (in particular, FINRA),[273] which are designed to promote conduct that, among other things, protects investors, including from certain conflicts of interest.[274] The specific obligations are designed for the particular practices of investment advisers and broker-dealers and, accordingly, the regulatory baseline differs for each population.

a. Investment Advisers

The Advisers Act establishes a Federal fiduciary duty for investment advisers, which includes a duty to eliminate or disclose conflicts of interest.[275] An adviser's fiduciary duty, which encompasses both a duty of loyalty and a duty of care,[276] extends to the entire relationship between the adviser and client.[277] Accordingly, an investment adviser (including one who uses PDA-like technologies) must, at all times, serve the best interest of its client and not subordinate its client's interest to its own. In other words, an investment adviser must not place its own interest ahead of its client's interests. As part of meeting this fiduciary duty, investment advisers must eliminate conflicts of interest—interests that might incline an investment adviser, consciously or unconsciously, to render advice that is not disinterested— or at a minimum, make full and fair disclosure of the conflict of interest such that a client can provide informed consent to the conflict.[278] Under this duty, investment advisers must also make full and fair disclosure of all material facts relating to the advisory relationship.[279]

Advisers are required to provide clients with a Form ADV brochure, which details information about the adviser's business practices, fees, and certain conflicts of interest.[280] The information provided must be sufficiently specific that a client is able to understand the investment adviser's business practices and conflicts of interests,[281] and it is essential that the information be presented in a manner that clients are likely to read (if in writing) and understand.[282] In addition, investment advisers (and broker-dealers) are required to provide ''retail investors'' with Form CRS, which explains fees, commissions, and other information that may be relevant when choosing a firm.[283]

The duty of care requires, among other things, investment advisers to provide investment advice in the client's best interest, based on a reasonable understanding of the client's objectives. Investment advisers are subject more generally to the antifraud provisions, including section 206 of the Advisers Act,[284] which prohibits fraud or deceit upon any client or prospective client; and 17 CFR 240.10b–5 (''Exchange Act rule 10b–5''), which

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[270] Daniel Broby, *supra* note 52; OECD, *supra* note 52.

[271] *See* Chaudhuri & Kulkarni, *supra* note 53.

[272] *See, e.g.,* Karl Flinders, *Banks Don't Want to Develop Fintech In-house,* Computer Wkly (Apr. 20, 2023), *https://www.computerweekly.com/news/365535576/Banks-dont-want-to-develop-fintech-in-house;* Justin L. Mack, *What Advisors Really Use Fintech For, and Why Ease of Use Matters Most: Wealthtech Weekly, Fin. Plan.* (July 7, 2023), *https://www.financial-planning.com/list/what-most-financial-advisors-are-using-fintech-for-wealthtech-weekly.*

[273] *See supra* note 59 and surrounding text.

[274] *See supra* note 60 and surrounding text.

[275] *SEC* v. *Capital Gains,* 375 U.S. 180, 194 (1963) (''Capital Gains''). *See also* Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (July 2, 2004) [69 FR 41695 (July 9, 2004)]; Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [68 FR 74713 (Dec. 24, 2003)] (''Compliance Programs Release'').

[276] *See* Fiduciary Interpretation, *supra* note 8, at n.15 and accompanying text.

[277] *See* Fiduciary Interpretation, *supra* note 8, at section II.A.

[278] *See* Fiduciary Interpretation, *supra* note 8, at section II.C; Capital Gains, *supra* note 275, at 191–192 (describing a Congressional intent to ''eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested'').

[279] *See* Fiduciary Interpretation, *supra* note 8, at section II.C. *See also* Capital Gains, *supra* note 275 (''Failure to disclose material facts must be deemed fraud or deceit within its intended meaning.''); Amendments to Form ADV, *supra* note 236 (''as a fiduciary, an adviser has an ongoing obligation to inform its clients of any material information that could affect the advisory relationship''); General Instruction 3 to Part 2 of Form ADV (''Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.'').

[280] *See* Amendments to Form ADV, *supra* note 236, at section I (''Since 1979, the Commission has required each adviser registered with us to deliver a written disclosure statement to clients pursuant to rule 204–3 under the Advisers Act.'') (citations omitted).

[281] *See* Amendments to Form ADV, *supra* note 236, at n.28.

[282] *See* Amendments to Form ADV, *supra* note 236, at section I. (''To allow clients and prospective clients to evaluate the risks associated with a particular investment adviser, its business practices, and its investment strategies, it is essential that clients and prospective clients have clear disclosure that they are likely to read and understand.''); *see also* Fiduciary Interpretation, *supra* note 8, at section I.C. (''In order for disclosure to be full and fair, it should be sufficiently specific so that a client is able to understand the material fact or conflict of interest and make an informed decision whether to provide consent.'') and at n.59.

[283] *See* Form CRS, General Instructions (''Under rule 17a–14 under the Securities Exchange Act of 1934 and rule 204–5 under the Investment Advisers Act of 1940, broker-dealers registered under section 15 of the Exchange Act and investment advisers registered under section 203 of the Advisers Act are required to deliver to retail investors a relationship summary disclosing certain information about the firm.'').

[284] 15 U.S.C. 80b–6.

makes it unlawful for any person to engage in fraud or deceit upon any person. Similarly, with respect to investors in pooled investment vehicles, rule 206(4)–8 under the Advisers Act makes it unlawful to make any untrue statement of a material fact, or to omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.[285] It also makes it unlawful to engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.[286]

In addition, the Advisers Act Compliance Rule requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of the Act and the rules thereunder. In designing its policies and procedures pursuant to the Advisers Act Compliance Rule, each adviser should first identify conflicts and other compliance factors creating risk exposure for itself and its clients, and then design policies and procedures to address those risks.[287] Moreover, rule 206(4)–1 under the Advisers Act prohibits advisers from disseminating any advertisement that violates any requirements of that rule, including making untrue statements of material fact or misleading omissions, and discussing with clients or investors in a private fund [288] any potential benefits connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits.[289] An investment adviser that uses PDA-like technology is subject to these obligations as applicable, and the fiduciary duty and the Advisers Act rules apply to an investment adviser's conduct for the entire scope of its relationship with its client, regardless of whether the adviser's conduct relies on the use of technology.[290]

b. Broker-Dealers

Broker-dealers are subject to comprehensive obligations under the Federal securities laws and SRO rules.[291] For example, under the antifraud provisions of the Federal securities laws and SRO rules, broker-dealers have a duty to deal fairly with their customers and observe high standards of commercial honor and just and equitable principles of trade.[292] As discussed below, these existing regulatory obligations apply generally, including to broker-dealers' current use of technology.

Broker-dealers are subject to general and specific requirements aimed at addressing certain conflicts of interest, including requirements to eliminate,[293] mitigate,[294] or disclose certain conflicts of interest.[295] Disclosure obligations related to conflicts of interest include disclosures before or at inception of the customer relationship.[296] For example, broker-dealers (and investment advisers) are required to provide ''retail investors'' with Form CRS, which includes disclosures about, among other things, fees, commissions and firm- and financial professional-level conflicts of interest such as incentives created by the ways the firm makes money and

[285] Prohibition of Fraud by Advisers to Certain Pooled Investment Vehicles, Investment Adviser Release No. 2628 (Aug. 3, 2007) [72 FR 44756 (Aug. 9, 2007)] (''[Our] intent is to prohibit all fraud on investors in pools managed by investment advisers'').

[286] 17 CFR 275.206(4)–8.

[287] Compliance Programs Release, *supra* note 275.

[288] As discussed above, in the case of investment advisers the proposed conflicts rules would apply with respect to an adviser's clients as well as investors in a private fund that an adviser manages. The Commission's existing regulatory regime under certain circumstances also applies to investors in a private fund. *See, e.g.,* 17 CFR 275.206(4)–1, 275.206(4)–8, 240.10b–5.

[289] *See* 17 CFR 275.206(4)–1(a).

[290] *See* Fiduciary Interpretation, *supra* note 8, at section II.A; *see, e.g.,* 2017 IM Guidance, *supra* note 115 (addressing among other things, presentation of disclosures, provision of suitable advice, and effective compliance programs).

[291] These obligations cannot be waived or contracted away by customers. *See* Exchange Act section 29(a), 15 U.S.C. 78cc(a) (''Any condition, stipulation, or provision binding any person to waive compliance with any provision of [the Exchange Act] or any rule or regulation thereunder, or any rule of a [SRO], shall be void.'').

[292] *See, e.g.,* Duker & Duker, Exchange Act Release No. 2350 (Dec. 19, 1939) (Commission opinion) (''Inherent in the relationship between a dealer and his customer is the vital representation that the customer be dealt with fairly, and in accordance with the standards of the profession.''); *see also* SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, at 238 (1st Sess. 1963) (''An obligation of fair dealing, based upon the general antifraud provisions of the Federal securities laws, rests upon the theory that even a dealer at arm's length impliedly represents when he hangs out his shingle that he will deal fairly with the public.''); FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade); FINRA Rule 2020 (Use of Manipulative, Deceptive, or Other Fraudulent Devices). *See also* FINRA Rule 2090 (Know Your Customer) requiring the broker-dealer to know essential facts concerning every customer and the authority of each person acting on behalf of the customer; FINRA Rule 4512 (Customer Account Information) requiring the broker-dealer to know, among other things, whether the customer is of legal age.

[293] *See, e.g.,* 17 CFR 240.151–1(a)(2)(iii)(D) (requiring broker-dealers subject to Reg BI to ''[i]dentify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time''); 17 CFR 240.17a–14 (requiring broker-dealers offering services to retail investors to disclose certain conflicts of interest in their Form CRS).

[294] *See, e.g.,* 17 CFR 240.151–1(a)(2)(iii)(B) (requiring broker-dealers subject to Reg BI to ''[i]dentify and mitigate any conflicts of interest associated with such recommendations that create an incentive for a natural person who is an associated person of a broker or dealer to place the interest of the broker, dealer, or such natural person ahead of the interest of the retail customer''); FINRA Rule 3110(c)(3) (firm must have procedures to prevent the effectiveness of an internal inspection from being compromised due to conflicts of interest); FINRA Rule 3110(b)(6)(C) (supervisory personnel generally cannot supervise their own activities); FINRA Rule 3110(b)(6)(D) (firm must have procedures reasonably designed to prevent the required supervisory system from being compromised due to conflicts of interest). In addition, FINRA rules establish restrictions on the use of non-cash compensation in connection with the sale and distribution of mutual funds, variable annuities, direct participation program securities, public offerings of debt and equity securities, investment company securities, real estate investment trust programs, and the use of non-cash compensation to influence or reward employees of others. *See* FINRA Rules 2310, 2320, 2331, 2341, 5110 and 3220. These rules generally limit the manner in which members can pay or accept non-cash compensation and detail the types of non-cash compensation that are permissible.

[295] *See supra* note 68 and surrounding text explaining that a broker-dealer may be liable if it does not disclose ''material adverse facts of which it is aware.'' For example, when engaging in transactions directly with customers on a principal basis, a broker-dealer violates Exchange Act Rule 10b–5 when it knowingly or recklessly sells a security to a customer at a price not reasonably related to the prevailing market price and charges excessive markups without disclosing the fact to the customer. *See, e.g., Grandon* v. *Merrill Lynch,* 147 F.3d 184, 189–90 (2d Cir. 1998). In addition, Exchange Act Rule 10b–10 requires a broker-dealer effecting transactions in securities (other than U.S. savings bonds or municipal securities) to provide written notice to the customer of certain information specific to the transaction at or before completion of the transaction, including the capacity in which the broker-dealer is acting (*i.e.,* agent or principal) and any third-party remuneration it has received or will receive). *See also* 17 CFR 240.15c1–5 and 17 CFR 240.15c1–6, which require a broker-dealer to disclose in writing to the customer if it has any control, affiliation, or interest in a security it is offering or the issuer of such security. There are also specific, additional obligations that apply, for example, to recommendations by research analysts in research reports and to public appearances under Regulation Analyst Certification (AC). *See, e.g.,* 17 CFR 242.500 *et seq*. Moreover, 17 CFR 240.15l–1(a)(2)(i)(B) requires broker-dealers subject to Reg BI to fully and fairly ''disclose [a]ll material facts relating to conflicts of interest that are associated with the recommendation.'' Finally, SRO rules apply to specific situations, such as FINRA Rule 2124 (Net Transactions with Customers); FINRA Rule 2262 (Disclosure of Control Relationship with Issuer), and FINRA Rule 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution).

[296] The Form CRS relationship summary requires disclosure of the broker-dealer's services, fees, costs, conflicts of interest and disciplinary history. *See* 17 CFR 240.17a–14.

how it compensates its financial professionals.[297]

Additionally, broker-dealers are liable under the antifraud provisions for failing to disclose material information to their customers when they have a duty to make such disclosure, including disclosures associated with the use of PDA-like technologies.[298] Specifically, the antifraud provisions prohibit broker-dealers from making misstatements or misleading omissions of material facts, and fraudulent or manipulative acts and practices, in connection with the purchase or sale of securities.[299]

Broker-dealers are subject to Reg BI when the broker-dealer, or an associated person of the broker-dealer, makes a recommendation of a securities transaction, or an investment strategy involving securities (including an account recommendation), to a retail customer. Reg BI requires that broker-dealers and associated persons act in the best interest of the retail customer at the time a recommendation is made, without placing the financial or other interest of the broker-dealer or an associated person making the recommendation ahead of the interests of the retail customer.[300] This includes a requirement to have a reasonable basis to believe that a series of recommended transactions is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile.[301]

Broker-dealers and, as applicable, their associated persons, satisfy the general obligation of Reg BI by complying with four specified component obligations: Disclosure, Care, Conflict of Interest, and Compliance.[302] Reg BI, among other things, requires that broker-dealers address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest. In instances where the Commission has determined that disclosure is insufficient to reasonably address a conflict, the requirement is to mitigate or, in certain cases, eliminate the conflict.

Section 17(a) of the Securities Act of 1933 and Exchange Act rule 10b–5 both prohibit fraud and deceit in the context of an offer, purchase, or sale of securities. These provisions generally prohibit fraudulent, deceptive, or manipulative practices and require issuers, broker-dealers, and advisers to be transparent and honest in their dealings with investors.[303] In addition, FINRA rules govern broker-dealer communications with the public—requiring them to reflect fair dealing, good faith, and to be fair and balanced—and prices for securities and services, which must be fair and reasonable given the relevant circumstances. Broker-dealers must also comply with FINRA's Rules of Fair Practice, which generally require broker-dealers to observe high standards of commercial honor and just and equitable principles of trade in conducting their business. Further, under the Federal securities laws and FINRA rules, prices for securities and broker-dealer compensation are required to be fair and reasonable, taking into consideration all relevant circumstances.[304]

Under FINRA Rule 2210, broker-dealers' written (including electronic) communications with the public are subject to obligations pertaining to content, supervision, filing, and recordkeeping. FINRA has also adopted specialized requirements for communications with the public applicable to certain types of investments, including options.[305] A broker-dealer's use of PDA-like technology is subject to these obligations as applicable. In addition, FINRA Rule 2214 provides a limited exception to FINRA Rule 2210's prohibition on projected performance and allows broker-dealers to use ''investment analysis tools'' provided certain conditions are met.[306] In particular, FINRA Rule 2214 requires broker-dealers using investment analysis tools to describe the criteria and methodology used, including the tool's limitations and key assumptions.[307] Moreover, broker-dealers using investment analysis tools pursuant to the rule must, among other things, describe the universe of investments considered in the analysis, explain how the tool determines which securities to select, and disclose if the tool favors certain securities.[308]

Broker-dealers are also subject to supervision obligations, including the establishment of policies and procedures and systems for applying such policies and procedures reasonably designed to prevent and detect violations of, and to achieve compliance with, the Federal securities laws and regulations,[309] as well as applicable SRO rules.[310] Specifically, the Exchange Act authorizes the Commission to sanction a broker-dealer or any associated person that fails to reasonably supervise another person subject to the firm's or the person's supervision that commits a violation of the Federal securities laws.[311] In addition to broker-dealers' supervisory obligations under the Exchange Act, FINRA Rule 3110 requires firms to establish and maintain a supervisory system for their business activities and to supervise the activities of their registered representatives, principals and other associated persons for purposes of achieving compliance with applicable securities laws and FINRA

[297] *See* 17 CFR 240.17a–14; Form CRS, Instruction to Item 3.B.(ii) of Form CRS (requiring firms to summarize the incentives created by certain ways in which they make money, including incentives crated by proprietary products); Form CRS, Instruction Item 3.C.(i)(requiring firms to summarize how their financial professionals are compensated, and the conflicts of interest those payments create).

[298] *See Basic* v. *Levinson,* 485 U.S. 224, 239 n.17 (1988). Generally, under the antifraud provisions, a broker-dealer's duty to disclose material information to its customer is based upon the scope of the relationship with the customer, which depends on the relevant facts and circumstances. *See, e.g., Conway* v. *Icahn,* 16 F.3d 504, 510 (2d Cir. 1994) (''A broker, as agent, has a duty to use reasonable efforts to give its principal information relevant to the affairs that have been entrusted to it.'').

[299] *See, e.g.,* Exchange Act Sections 10(b) and 15(c). Broker-dealers may also be held liable under the Securities Act [of 1933] if ''in the offer or sale'' of any securities, the broker-dealer (1) employs any device, scheme, or artifice to defraud, (2) obtains money or property by means of any untrue statement of a material fact or any omission to state a material fact, or (3) engages in any practice which operates as a fraud or deceit upon the purchaser. *See* Securities Act of 1933 Section 17(a); *see also Aaron* v. *SEC,* 446 U.S. 680 (1980) (holding that violations of Section 17(a)(1) require proof of scienter, but that violations of 17(a)(2) and (3) do not).

[300] Reg BI Adopting Release, *supra* note 8, at n.549 and surrounding text.

[301] 17 CFR 240.15l–1(a)(2)(ii)(C); Reg BI Adopting Release, *supra* note 8.

[302] *See* Reg BI Adopting Release, *supra* note 8, at n.16 and surrounding text.

[303] *See supra* notes 285 and 299.

[304] *See, e.g.,* Exchange Act sections 10(b) and 15(c); FINRA Rules 2121 (Fair Prices and Commissions), 2122 (Charges for Services Performed), and 2341 (Investment Company Securities); *see also* FINRA Rule 3221 (Non-Cash Compensation).

[305] *See, e.g.,* FINRA Rule 2211 (Communications with the Public About Variable Life Insurance and Variable Annuities); FINRA Rule 2212 (Use of Investment Companies Rankings in Retail Communications); FINRA Rule 2213 (Requirements for the Use of Bond Mutual Fund Volatility Ratings); FINRA Rule 2215 (Communications with the Public Regarding Security Futures); FINRA Rule 2216 (Communications with the Public About Collateralized Mortgage Obligations (CMOs)); and FINRA Rule 2220 (Options Communications).

[306] *See* FINRA Rule 2214 (Requirements for the Use of Investment Analysis Tools). Investment analysis tools ''are interactive technological tools that produce simulations and statistical analyses that present the likelihood of various investment outcomes if particular investments are made or particular investment strategies or styles are undertaken.'' FINRA Regulatory Notice 16–41, Communications with the Public (Oct. 2016).

[307] *See* FINRA Rule 2214(c)(1).

[308] *See* FINRA Rule 2214(c)(3).

[309] *See* section 15(b)(4)(E) of the Exchange Act.

[310] *See* FINRA Rule 3110 (Supervision).

[311] *See* section 15(b)(4)(E) of the Exchange Act.

rules. This supervisory system must include, among other things, the establishment, maintenance and enforcement of policies and procedures reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules.[312] FINRA rules also require policies and procedures to identify and manage conflicts of interest related to research analysts.[313]

FINRA further requires that the chief executive officer (or equivalent officer) of each member firm must annually certify that it has in place processes which include testing and modifying the firm's policies and procedures to help ensure that they achieve compliance with applicable laws, regulations, and rules.[314]

c. Third-Party Service Providers

Currently, third-party service providers who work with investment advisers or broker-dealers may not be required to address or disclose any conflicts of interest that may arise between the firm and the investor when firms use their services. Providers that develop covered technologies for use in the financial sector, however, are likely to be aware of the regulatory requirements governing the use of their products and may alter behavior as a result. Additionally, firms may contractually require service providers to identify potential sources of conflicts to aid firms' compliance with Commission and SRO rules.[315]

D. Benefits and Costs

The proposed conflicts rules would impose several requirements on investment advisers and broker-dealers related to conflicts of interest associated with their use of a covered technology in investor interactions. Existing obligations already restrict firms from placing their interests ahead of customers, clients, or investors in certain contexts, such as when providing investment advice or recommendations, including as a result of conflicting interests related to their use of covered technologies. But the proposed conflicts rules would be beneficial because they would apply to a broader set of investor interactions and impose express requirements to evaluate and document certain conflicts of interest and to eliminate them or neutralize their effect. Because advisers and broker-dealers have different regulatory obligations currently, our discussion sometimes addresses the benefits and costs of the proposal to advisers separately from the benefits and costs of the proposal to broker-dealers.

For advisers using covered technologies, the proposed rules may represent a shift in their obligations, as firms would be required to take proactive steps to address the conflicts of interest through elimination of conflicts or neutralization of the effect of the conflicts.[316] For some technologies, though, advisers may be unable to rely on disclosure to address their existing conflicts obligations to the extent that the complex nature of the technologies and associated conflicts makes it difficult or impossible for the adviser to accurately determine whether it has designed a disclosure to put its clients in a position to be able to understand and provide informed consent to the conflicts; for these technologies, the proposed conflicts rules would specify the steps advisers must take with respect to a conflict of interest associated with the technology, but would not change advisers' underlying obligation to the extent that full and fair disclosure might be impossible.[317]

Broker-dealers are governed by, among other requirements, the obligations of Reg BI, which requires that broker-dealers act in the best interest of the customer, when making a recommendation regarding securities to a retail customer. For recommendations, certain conflicts of interest at the firm level can be addressed through disclosure, and others which arise at the level of the firm's associated persons or resulting from limited menu options can be addressed through mitigation. In addition, under its care obligations, the broker or associated person must have a reasonable basis to believe its recommendations do not place its interests ahead of the retail customer's interests. However, a broker-dealer has no Regulation BI obligations for non-recommendation investor interactions, and instead is bound by underlying antifraud provisions and FINRA rules including the Rules of Fair Practice and those governing communications with the public.

Firms that have any investor interactions using covered technology would also be required to adopt, implement, and (in the case of broker-dealers) maintain specific policies and procedures with respect to the proposed conflicts rules' requirements to address conflicts, including with regard to the elimination or neutralization of conflicts of interest that place the firm's interests ahead of investors' interests. Firms generally are already required to have policies and procedures with respect to conflicts of interest, which may address conflicts associated with their use of technologies, including technologies that are highly complex and may pose serious risks of conflicts of interest.[318] The proposed conflicts rules would provide minimum standards for what such policies must require, and would also seek to ensure all firms using covered technologies in connection with investor interactions.[319] By requiring all such firms to have policies and procedures meeting these minimum standards, the proposed conflicts rules would likely represent a shift as compared to the baseline.

Many of the investor protection benefits of the proposed conflicts rules would be reduced to the extent that firms are already evaluating and eliminating, or neutralizing the effect of, conflicts associated with the use of covered technology. Benefits could also be reduced to the extent that firms already understand and are able to disclose the potential conflicts of interest associated with covered technology and investors already understand and respond to those disclosures such that disclosure adequately addresses the conflict of interest. On the other hand, for those covered technologies where it is difficult, or impossible, for firms to accurately determine whether they have designed their disclosures to put

[312] FINRA Rule 3110(a). In addition, FINRA Rule 3120 requires each member firm to (i) have a system of supervisory control policies and procedures to test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and FINRA rules, and (ii) where necessary, amend or create additional supervisory procedures.

[313] FINRA Rule 2241 (Research Analysts and Research Reports).

[314] *See supra* note 212 (citing FINRA Rule 3130(b)).

[315] *See, e.g.,* the baseline discussion in Proposed Outsourcing Rule, *supra* note 124.

[316] While full and fair disclosure of all material facts relating to the advisory relationship or of conflicts of interest and/or a client's informed consent could prevent the presence of those material facts or conflicts themselves from violating the adviser's fiduciary duty, such disclosure and/or consent do not themselves satisfy the adviser's duty to act in the client's best interest. *See* Fiduciary Interpretation, *supra* note 8, at n.58 and accompanying text.

[317] An adviser is already obligated to eliminate or mitigate conflicts of interest that cannot be fully and fairly disclosed. *See* Fiduciary Interpretation, *supra* note 8.

[318] *See* Section III.C.3.

[319] This may include firms that generally meet the proposed requirements already, and, to varying degrees, firms that do not already meet the proposed requirements for a variety of possible reasons including that the firms may not completely understand the covered technology they use or may not recognize conflicts of interest or recognize when disclosure is inadequate.

investors in a position to be able to understand and provide informed consent to conflicts of interest due to the complex nature of the underlying technologies, the proposed conflicts rules could have comparatively greater benefits.[320]

1. Benefits

We preliminarily believe the primary benefit of the proposed conflicts rules and proposed recordkeeping amendments would stem from the requirement to eliminate, or neutralize the effect of, conflicts of interest that place the firm or associated person's interest ahead of investors' interests. This requirement could enhance investor protection by eliminating or neutralizing the effects of certain conflicts of interest, particularly in the context of the increasing scope and scale of investor interactions made possible by new technologies and by firms' increased ability to influence investor behavior in interactions that may not be viewed as constituting a recommendation or investment advice. The evaluation and identification requirements, the policies and procedures requirements, and the recordkeeping requirements primarily support the policy objectives of the elimination and neutralization requirement, and would serve to aid the examinations staff. However, we also note that the evaluation and identification requirements and the policies and procedures requirements might also yield ancillary benefits to investors, which we discuss below.

In the following subsections, we discuss the specific requirements of the proposed conflicts rules and proposed recordkeeping amendments in detail. In the first part of this section, we discuss the benefits of the proposed conflicts requirements, and in the second part, we discuss the benefits of the policies and procedures requirements, and in the third, we discuss the benefits of the proposed recordkeeping amendments.

a. Proposed Conflicts Requirements

i. Evaluation and Identification

The proposed conflicts rules would require that firms evaluate any use or potential use by the firm of a covered technology in any investor interaction, to identify any conflict of interest (including by testing each such covered technology prior to its implementation or material modification and periodically thereafter). The terms ''covered technology,'' ''investor interaction,'' and ''conflict of interest'' are defined broadly in the proposal. They would capture a wide variety of technology uses, interactions, and conflicts of interest, not all of which would be required to be eliminated or their effect to be neutralized. However, identifying and evaluating this broad set of activities would help firms to determine which conflicts of interest place a firm's interests ahead of investors' interests.

This proposed requirement is important to help ensure that firms take proactive steps to identify conflicts of interest and evaluate their nature. Although firms already have obligations to address conflicts of interest, these do not necessarily apply equally to all forms of investor interaction, and the novelty and opacity of some covered technologies may leave firms unaware of conflicts of interest unless they take proactive steps to identify them.[321]

In addition, the proposed conflicts rules would require firms to test periodically whether any covered technology is associated with a conflict of interest. The test would be required prior to implementation or material modification of the technology, and periodically thereafter. This requirement is important for the proposed conflicts rules because certain technologies might change or adapt over time. For example, algorithms that adapt the firm's recommendations based on the data it collects from its users might display behaviors that change over time, even though the underlying technology may not have been materially modified, which would need periodic testing to evaluate and to identify any new conflicts of interest that are generated.

ii. Determination, Elimination, and Neutralization

The proposed conflicts rules would require the firm to determine whether an identified conflict of interest places the interest of the firm or an associated person ahead of the interests of the investor. As discussed below, these types of conflicts may require additional action. Requiring firms to make this determination is critical for the investor protection objectives of the proposed conflicts rules. This requirement would facilitate the elimination and neutralization requirements of the proposed conflicts rules.

The proposed conflicts rules would impose requirements on firms to eliminate, or neutralize the effect of, conflicts of interest that place the firm's or an associated person's interest ahead of investors' interests (except for conflicts which exist solely due to seeking to open a new account).

As discussed in section III.B, the scale and scope of investor interactions that are now possible with new technologies, and the scope and dynamic nature of the conflicts of interest that can be associated with the use of the technologies, present challenges for the use of disclosure. Disclosure of the full scope and dynamic nature of conflicts of interest that can be associated with the use of covered technologies can potentially be too broad and unspecific to be useful to a particular investor, or alternatively could entail too many disclosures to be useful to an investor. By requiring firms to eliminate, or neutralize, the effect of conflicts of interest that place the firm's or an associated person's interest ahead of investors' interest, the proposed conflicts rules could enhance investor protection and address some of the unique challenges posed by the use of covered technologies in investor interactions.

Currently, broker-dealers' non-recommendation interactions with investors are not subject to conflict of interest requirements under Reg BI, and are instead bound by underlying antifraud provisions and FINRA rules including the Rules of Fair Practice, the requirement to observe just and equitable principles of trade, and rules governing communications with the public. Given the advances in covered technologies and DEPs, these non-recommendation interactions have the potential to influence investor behavior and place the firm's or associated person's interest ahead of investors' interests.

The use of DEPs in retail investing can exacerbate the principal-agent problem, by influencing investor behavior even if no recommendation is made. These platforms often utilize game-like features such as points, rewards, badges, leaderboards, interactive interfaces, push notifications, and other methods to encourage users to engage in trading activities. Some platforms use PDA technologies to target investors with notifications using detailed datasets, or use social proof and peer influence to influence investor behavior. These practices can take advantage of psychological biases and lead to impulsive, irrational investment decisions.

While DEPs are perhaps the clearest and best understood case, behavioral

[320] *See, e.g.,* Bakos, et al., *supra* note 248; Agnieszka Kitkowska, Johan Högberg & Erik Wästlund, *Online Terms and Conditions: Improving User Engagement, Awareness, and Satisfaction Through UI Design,* CHI '22: Proceedings of the 2022 CHI Conference on Human Factors in Computing Systems, Article No. 624, at 1–22 (Apr. 2022).

[321] *See supra* section I.B.4.a.

nudges embedded in interfaces, choices about data displays, the responses of chat bots, and other existing or future features may likewise influence investor behavior to their detriment and the benefit of covered firms. These uses of technology in investor interactions make it possible for firms to influence investor behaviors in a way that places the firm's or associated person's interest ahead of investors' interests.

The addition of more information through disclosure may not mitigate the negative effects of the use of these DEPs on investing behavior. This is because the use of DEPs can rely on human psychological factors, rather than a lack of information. Given the rate of investor interactions and the ability of technology to learn investor preferences or behavior, disclosures may be too unspecific (if provided to cover the entire relationship) or too frequent (if provided with every interaction) to be useful to investors.[322] Moreover, the features and design of covered technologies increase the risk through the constant presence enabled by automation, design practices which encourage habit formation, and the ability to collect data and individually and automatically tailor interventions to the proclivities of each investor. Elimination, or neutralization of the effect of, a conflict of interest could have greater investor protection benefits than disclosure to the extent that it could be difficult for a firm to accurately determine whether it has designed a disclosure that puts investors in a position to be able to understand the conflict of interest despite these psychological factors.

Many of the covered investor interactions are already subject to existing requirements described in the baseline. These include the requirements of the investment adviser's fiduciary duty obligations toward clients; and the broker-dealer's Conflict of Interest Obligation under Reg BI for recommendation interactions. However, some interactions covered by the proposed conflicts rules would not constitute recommendations for the purposes of Reg BI, and might not receive the same investor protection benefits as recommendations. Relative to the baseline, the proposed conflicts rules would impose requirements specific to the use of covered technologies in investor interactions. The proposed conflicts rules' conflict of interest obligations would cover the entirety of investment advisers' interactions with investors, and for broker-dealers the entirety of their interactions with retail investors. This addition is motivated by the complex, opaque, and evolving nature of covered technologies and how firms use them to interact with investors, and the fact that they can operate on psychological rather than rational factors. In this context, for the use of certain complex and opaque technologies, the proposed conflicts rules could enhance investor protection and address some of the unique challenges posed by conflicts of interest in the use of covered technologies in investor interactions.

The scope and frequency of investor interactions with new technologies and the complex, dynamic nature of those technologies may make it difficult for investors to understand or contextualize disclosures of conflicts of interest to the extent that the investors interact with the technologies, with interfaces or communications which feature outputs of the technologies, or with associated persons who make use of outputs of the technologies. For example, complex algorithms used in discretionary or non-discretionary robo-advising platforms could make it difficult for an investor to understand material facts or conflicts of interest and make an informed decision whether to consent or to allocate assets into or out of the platform. This could make it difficult for a firm to accurately determine whether it has designed a disclosure to put investors in a position to be able to understand and provide informed consent to the conflict of interest. Similarly, a chat-bot might provide investment advice based on a set of firm-investor conversations it has been trained to mimic using large language models. This advice may inherit any tendency to act on conflicts already present in conversations with firms or which were introduced by preferentially including conversations in the training data which resulted in the firm deriving greater benefits from the investor's resulting actions, for instance by overcoming investor resistance. In this situation where a conflict of interest may be exacerbated by the use of a covered technology, eliminating or neutralizing effects that place the firm's or associated person's interests ahead of investors' interests would better protect investors to the extent that investors may be unable to assess, or have difficulty in assessing, the significance of conflicts in the firm's interactions with them.

By eliminating, or neutralizing the effect of, conflicts of interest that place the firm's or its associated persons' interest ahead of investors' interests, the proposed rules would protect investors from the negative effects of these conflicts. As mentioned in Section III.B, these conflicts of interest could lead firms to influence investors to use more services, increase transactions, or invest in risky investments that yield the firm or its associated persons higher profits than other products. To the extent that covered technologies present unique challenges to the current regulatory obligations of firms, eliminating, or neutralizing the effect of these conflicts would benefit investors by protecting them from these behaviors, and enabling them to make investment decisions that are in their best interests and aligned with their investment preferences, or improve the decisions made for the investor on their behalf.

The scope and dynamic nature of covered technologies in investor interactions, and the scale at which they can reach investors, can also prompt bandwagon or herding effects in investor behavior that enhance volatility and liquidity risks.[323] However, the firms that use covered technologies in investor interactions do not bear all of the costs of these risks. This negative externality creates a suboptimal incentive to allocate resources toward mitigating these risks. The proposed conflicts rules would require identification and evaluation of conflicts of interest, determination of which conflicts of interest place the firm's or an associated person's interest ahead of investors' interests, and elimination, or neutralization of the effect of, these conflicts, which could improve investor confidence in these technologies and prevent the loss of confidence in these technologies from spreading from one firm to another.[324]

b. Policies and Procedures

Under the proposed conflicts rules, any firm that is subject to paragraph (b) of the proposed conflicts rules and that has any investor interactions using covered technology will have policies and procedures obligations. Specifically, investment advisers will be required to adopt and implement written policies and procedures reasonably designed to prevent violation of paragraph (b) of the proposed conflict rule, and broker-dealers will be required to adopt, implement, and maintain

[322] *See supra* section III.B generally, and *supra* note 248 on disclosures. *See also* Reg BI Adopting Release, *supra* note 8, at III.B.4.c. (discussing the effectiveness and limitations of disclosure).

[323] GameStop Report, *supra* note 250.

[324] Some broker-dealers use covered technologies and interact with both retail and non-retail investors. Even though non-retail investors are not defined by the proposed conflicts rule applicable to broker-dealers as investors, they might nevertheless indirectly benefit from the elimination or neutralization of conflicts of interest that place the firm's interest ahead of investors' interests.

written policies and procedures reasonably designed to achieve compliance with paragraph (b) of the proposed conflict rule.[325] We do not believe, however, that there is a substantive difference between how firms would need to comply with each proposed conflict rule.[326] The written policies and procedures must include the following features:

i. Written Description of Process Evaluating Use, Material Features and Conflicts of Interest of Covered Technology

The policies and procedures must include: (i) a written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b) and (ii) a written description of any material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered technology's implementation or material modification, which must be updated periodically. These written policies and procedures help to ensure firms adopt effective implementation plans and help examinations staff assess whether firms have complied with paragraph (b) of the proposed conflicts rules. Requiring that firms describe the process they use to evaluate the use or potential use of covered technologies is important for helping ensure that firms understand and document how their technology will be used or potentially used, and whether it involves investor interaction. Similarly, requiring a description of the material features of, and any conflicts of interest associated with the use of, the covered technology is important for helping ensure firms understand and document how their technology functions, and the conflicts of interest associated with their use. Requiring that the description of material features and conflicts of interest be in place before implementation or material modification would help ensure that firms consider covered technologies and identify and address conflicts of interest before investors could be harmed.

In addition, these written descriptions would be required to be updated periodically. Given that the effects of technologies can change materially as they are further developed or used in new contexts, this requirement would help ensure that the information remains current and the firm performs the necessary evaluation before harmful changes can proliferate.

ii. Written Description Determining Whether and How To Eliminate, or Neutralize the Effect of, Any Conflict of Interest

The proposed conflicts rules would require that the policies and procedures include a written description of the process for determining whether and how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to paragraph (b)(2) of the proposed conflicts rules to place the interest of the firm or an associated person ahead of the interests of the investor. The proposed conflicts rules give firms considerable latitude to determine how to approach the elimination, or neutralization of the effect of, conflicts of interest. While this is necessary to help the proposed conflicts rules apply to a wide variety of business models and technologies, it also raises the risk that firms could adopt approaches that are inadequate to prevent them from placing their interests ahead of those of investors. This requirement would promote the development of considered and documented policies and procedures for determining whether and how to eliminate, or neutralize the effect of, any conflict of interest, instead of doing so on an ad hoc basis. Having a documented policy and procedure could also aid the training of the firm's compliance staff, and aid examiners and the firm when assessing a firm's compliance with the rules.

iii. Review of Written Description

The proposed conflicts rules would also require that the policies and procedures include a review of the written description required pursuant to paragraph (c)(1) of the proposed conflicts rules. The periodic review element requires a firm to consider whether any changes in the business activities, any changes in the use of technology generally, any issues that arose with the technologies during the previous year, and any changes in applicable law might suggest that certain covered technologies are of a different or greater risk than the firm had previously understood. Based on this periodic review, firms might be better able to determine whether changes are necessary in their approach to identification, determination, and elimination or neutralization of conflicts of interest and whether material changes to the use of technology are reflected by the written description. The regular review of the written description can help to ensure that the investor protection benefits of the proposed rules do not diminish after a covered technology is initially implemented, and improve investor confidence that firms have updated policies and procedures to identify, determine, and eliminate or neutralize certain conflicts of interest.

c. Proposed Recordkeeping Amendments

The proposed recordkeeping amendments would require firms to make and keep several types of records. First, firms would be required to maintain written documentation of the evaluation conducted pursuant to paragraph (b)(1) of the proposed conflicts rules, including a list or other record of all covered technologies used by the firm in investor interactions, as well as documentation describing any testing of the covered technology in accordance with paragraph (b)(1) of the proposed conflicts rules. Second, firms would be required to maintain written documentation of each determination made pursuant to paragraph (b)(2) of the proposed conflicts rules, including the rationale for such determination. Third, firms would be required to maintain written documentation of each elimination or neutralization made pursuant to paragraph (b)(3) of the proposed conflicts rules. Fourth, firms would be required to maintain written policies and procedures, including written descriptions, prepared in accordance with paragraph (c) of the proposed conflicts rules. Fifth, firms would be required to maintain a record of the disclosures provided to investors regarding the firm's use of covered technologies. And sixth, firms would be required to maintain records of each instance in which a covered technology was altered, overridden, or disabled, the reason for such action, and the date thereof, including records of all instances where an investor requested that a covered technology be altered or restricted in any manner.

The proposed recordkeeping amendments would help ensure that a record of a firm's use of covered technology is maintained and preserved for an appropriate period of time consistent with the firm's other existing recordkeeping obligations. The proposed recordkeeping amendments would also help facilitate the Commission's oversight and enforcement capabilities by creating a record that the staff could use to assess compliance with the requirements of the proposed conflicts rules, and help ensure that the investor protection benefits of the proposed rules are realized.

[325] *See supra* note 196.

[326] *See id.*

2. Costs

This section discusses two types of costs. We discuss the direct costs of the requirements of the proposed conflicts rules and proposed recordkeeping amendments and provide quantitative estimates of the costs of each provision. We then discuss the indirect costs of the proposed conflicts rules and proposed recordkeeping amendments, such as the potential impact on the use of technology and innovation.

a. Direct Costs

i. Proposed Conflicts Rules—Eliminate, or Neutralize the Effect of, Conflicts of Interest

We preliminarily anticipate that firms might need to hire dedicated personnel or dedicate the time of existing personnel to comply with the requirements of the proposed conflicts rules. The cost of identifying the presence of conflicts present in technology and determining if they lead to interactions in which the interests of the firm are placed ahead of those of the investor may vary greatly. Firms which have more conflicts of interest, or have conflicts more deeply embedded in the covered technologies they use, would likely bear greater costs than those that do not. Similarly, a firm's costs are likely to vary depending on the nature of covered technology they use in investor interactions and the extent of that use. For tools and processes which are relatively transparent, a code review may suffice. For technology where the process of generating outputs from a given set of inputs is opaque, as is often the case with the product of machine learning, it may be necessary to develop a testing system or engage with an independent third party with a system to identify conflicts of interest in all reasonably foreseeable uses of the technology. Such a system might record the outputs of the technology, measure the prospective or achieved outcomes for the investor and the firm, and compare them to those achieved by alternative specifications of the technology. To the extent that training models often require substantial computational resources and human feedback during the training process, testing of opaque systems could entail significant costs, which could entail the need to either hire dedicated personnel, or allocate the time of existing personnel.

The direct costs to eliminate, or neutralize the effect of, conflicts of interest in covered technologies would depend strongly on the technology used, the firm's business model, the nature of the conflicts, and the nature and extent of the interactions. For traditional optimizing methods or functions where a conflict is explicitly included in the model, the cost of excising the offending features may be trivial. In contrast, for methods which are opaque or where the technology optimizes over factors other than the firm's or an associated person's interest, but which may correlate with the firm's or associated person's interest, a more substantial and thus costly testing regime might be necessary. For some methods, such as NLP methods trained to replicate employee responses to investor communications, additional human input into the training process may be necessary to identify responses which potentially reflect conflicts of interest. This training input could be substantial and may need to be repeated as market institutions and conditions change, particularly if such changes are such that the data set on which the technology was trained does not adequately reflect new conditions. In some cases, firms could opt to eliminate conflicts directly, such as by changing their fee structure or other revenue generation models, rather than eliminating or neutralizing the consideration of the conflicts within their covered technologies.

We provide two sets of cost estimates in Table 1, to reflect the extent to which the costs can vary depending on the complexity of the firm's use of covered technology. Firms with complex covered technologies, such as machine learning or NLP algorithms, or those that process large datasets, might require more resources to comply with the requirements associated with eliminating, or neutralizing the effect of, conflicts of interest where the firm's or an associated person's interest is placed ahead of the interests of investors. Firms with simple technologies, such as spreadsheets or basic algorithms, would likely require fewer resources. In addition, firms might have business models of varying complexity, or with varying degrees of investor interaction, which could affect the costs they would bear. The Commission seeks comment or data on the costs of requirements of the proposed rules that could improve these estimates.

TABLE 2—DIRECT COSTS OF PROPOSED RULES REQUIREMENTS TO EVALUATE, IDENTIFY, DETERMINE, AND ELIMINATE, OR NEUTRALIZE THE EFFECT OF, CERTAIN CONFLICTS OF INTEREST

Proposed rules requirement	Simple covered technology firm				Complex covered technology firm			
	Initial hours	Initial cost	Annual hours	Annual cost	Initial hours	Initial cost	Annual hours	Annual cost
Evaluate Use of Covered Technology and Identify Conflicts of Interest	10	$4,460	5	$2,230	100	$44,600	50	$22,300
Determine Which Conflicts of Interest Require Elimination or Neutralization	5	2,230	2.5	1,115	50	22,300	25	11,150
Eliminate or Neutralize Effects of Certain Conflicts of Interest	10	4,460	5	2,230	200	89,200	100	44,600
Sub-Total Burden	25	11,150	12.5	5,575	350	156,100	175	78,050
Total Number of Firms	16,182				1,798			
Total Aggregate Burden	404,550	180,429,300	202,275	90,214,650	629,300	280,667,800	314,650	140,333,900

[1] Commission staff estimates, based on blended rate for a senior portfolio manager ($383), senior operations manager ($425), compliance attorney ($425), assistant general counsel ($523), senior programmer ($386), and computer operations department manager ($513), rounded to the nearest dollar.

[2] Based on the estimates in section IV.B, we preliminarily estimate that 17,719 firms will bear the cost of a Simple Covered Technology firm, consisting of 15,402 investment advisers and 2,317 broker-dealers. We preliminarily estimate that 1,798 firms will bear the cost of Complex Covered Technology firm, consisting of 1,540 investment advisers and 258 broker-dealers.

ii. Proposed Conflicts Rules—Policies and Procedures

The policies and procedures portion of the proposed conflicts rules would require investment advisers to adopt and implement written policies and procedures reasonably designed to prevent violations of paragraph (b) of the proposed conflicts rules, and broker-dealers to adopt, implement, and maintain written policies and procedures reasonably designed to achieve compliance with paragraph (b) of the proposed conflicts rules.[327] These policies and procedures would need to include a written description of any material features of, any conflicts of interest associated with the use of, and any covered technology used in any investor interaction prior to such covered technology's implementation or material modification. In addition, the policies and procedures must require that the adequacy of the policies and procedures and written description of material features be reviewed regularly. The policies and procedures also must require a written description of the process by which the firm determines whether and how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to paragraph (b)(2) of the proposed rules to place the interest of the firm or an associated person ahead of the interests of the investor.

We note that the Commission has provided certain estimates for purposes of compliance with the Paperwork Reduction Act of 1995 (''PRA''), as further discussed in Section IV below. Those estimates, while useful to understanding the collection of information burden associated with the final rules, do not purport to reflect the full economic costs associated with making the required disclosures. The PRA cost estimates are: (1) for the adoption and implementation of policies and procedures, an annual cost of $14,610 for the firm; (2) for the requirement to create and maintain a written description of the covered technology, an annual cost of $18,955 on firms and (3) and for the annual review requirement, an ongoing annual cost of $2,230.[328]

iii. Proposed Recordkeeping Amendments

As discussed above, the proposed recordkeeping amendments would require firms to maintain information about the firm's use of covered technology in investor interactions, and any associated conflicts of interest. This includes written documentation of the evaluation conducted pursuant to paragraph (b)(1) of the proposed conflicts rules, including a list or other record of all covered technologies used by the firm in investor interactions, as well as documentation describing any testing of the covered technology in accordance with paragraph (b)(1) of the proposed conflicts rules; written documentation of each determination made pursuant to paragraph (b)(2) of the proposed conflicts rules, including the rationale for such determination; written documentation of each elimination or neutralization made pursuant to paragraph (b)(3) of the proposed conflicts rules; written policies and procedures, including written descriptions, prepared in accordance with paragraph (c) of the proposed conflicts rules; a record of the disclosures provided to investors regarding the firm's use of covered technologies; and records of each instance in which a covered technology was altered, overridden, or disabled, the reason for such action, and the date thereof, as well as records of all instances where an investor requested that a covered technology be altered or restricted in any manner. While these requirements aid the Commission in assessing the extent to which firms have complied with the other requirements of the proposed conflicts rules, we expect these requirements to impose costs on firms that will have to create and maintain these records. As further discussed in Section IV below, the PRA estimates that firms would face an ongoing annual cost of $7,622 from the recordkeeping requirements, but would not face initial costs.

b. Indirect Costs

In the previous section, we discussed the direct costs of complying with the requirements of the proposed conflicts rules and proposed recordkeeping amendments. However, firms might not bear the ultimate burden of these costs. Firms might pass the cost of the requirements along to investors through higher fees, commissions, or other methods. It is difficult to estimate or quantify how much of these costs firms will end up paying themselves instead of passing on to investors, and this depends on how sensitive investors are to changes in the cost of the service provided by the firm, and how sensitive the firm is to changes in the costs of providing that service.[329]

The proposed requirements to eliminate, or neutralize the effect of, conflicts of interest which place the firm's or an associated person's interest ahead of the interests of investors can impose additional costs on the firm. Eliminating conflicts or neutralizing their effect can cause firms to lose the revenue that might have been generated by conflicts associated with uses of the technology, where the firm complied with and made adequate disclosure under all preexisting rules regarding conflicts of interest. In addition, eliminating conflicts or neutralizing their effect could also make technologies less efficient, as firms might alter these technologies with internal checks and safeguards to comply with the rules. For example, firms might add testing code to the technology or guard rails to the development process that could make the technology or its development less efficient and impose costs on the firm.

The overall costs, including recordkeeping costs, of the proposed conflicts rules and proposed recordkeeping amendments could also cause some firms to avoid using certain covered technologies in investor interactions, even if the technologies did not create any conflicts of interest. This might happen if the costs of complying with the proposed rules and amendments exceed the revenue that can be gained and/or costs that can be saved by using the technology. For example, a firm might opt not to use an automated investment advice technology because of the costs associated with complying with the proposed rules and amendments. In these types of situations, firms would lose the potential revenues that these technologies could have generated, and investors would lose the potential benefits of the use of these technologies. In addition, in the absence of these technologies, firms might raise the costs of their services, thus increasing the costs to investors.

In addition, to the extent that the firm's existing obligations do not require the elimination, neutralization, or disclosure of covered conflicts of interest, the requirement to identify conflicts of interest in a technology could dissuade firms from using certain technologies when it is too difficult or costly to adequately evaluate the use of the covered technology, identify a conflict of interest, or determine whether they place the firm's or an

[327] *See supra* note 196.

[328] *See infra* section IV.B.

[329] Arnold C. Harberger, *The Incidence of the Corporation Income Tax,* 70 J. Pol. Econ. 215–240 (1962). The ultimate cost burden will be determined by the relative elasticity of the demand and supply curves for the service provided by the technology. Although this paper refers to the incidence of the tax burden, it is mechanically identical to determining which entities will bear the ultimate cost of the proposed rules.

associated person's interest ahead of an investor's. Some types of AI and machine learning, or a marketing algorithm with a large dataset, could be costly to test or difficult for the firm to assess. In these situations, investors would lose the potential benefit of these types of technologies, which could in theory have no conflict of interest, but firms might have no practical or financially viable way to demonstrate that there was not a conflict of interest or that any such conflict did not result in actions placing the firm's or an associated person's interest ahead of an investor's interest. Similarly, there may be technologies that do create conflicts that must be eliminated or their effect neutralized, but that also benefit investors if firms address those conflicts. Investors would lose the benefit of such technologies if firms determine that the process of eliminating, or neutralizing the effect of, conflicts is too difficult, costly, or uncertain to succeed.

Broker-dealers that use covered technologies and interact with both retail and non-retail investors might pass along some of the cost burden of the rules onto both retail and non-retail investors. Even though non-retail investors are not defined by the proposed rules as investors, they might nevertheless indirectly bear some of the costs of the proposed conflicts rule. In addition, non-retail investors might also be adversely affected to the extent that broker-dealers alter the use of their covered technologies to respond to conflicts of interest with retail investors.

We anticipate that firms may rely on third-party providers to develop covered technologies. Even if these third-party providers are not regulated entities under the proposed conflicts rules, they could consider the proposed rules when designing their products and processes for firms that must meet the proposed conflicts rules' requirements, either independently or at the request of firms covered by the proposed conflicts rules. To the extent that the requirements of the proposed conflicts rules result in more costly development, testing, and documentation, these third-party providers may incur costs. In addition, competition between third-party providers might drive down the costs of compliance for firms. Firms with bargaining power might also seek to pass on certain compliance costs to third-party providers, for instance by seeking assurances that the covered technology provided by the third party would not generate conflicts of interest between the firm and the investor. In this context, competition between third-party providers might pass some or all of these costs on to firms in product prices and service fees, and firms in turn may pass some or all of these costs on to investors. The proportion of costs that are passed through each entity will depend on competition among providers and firms, the price sensitivity of investors, and the perceived value of the various covered technologies.

The requirements to test and document conflicts related to the use of technologies would not only add costs to firms that use covered technologies in investor interaction, they could also slow down the rate at which firms update existing or develop or adopt new technologies. The time needed to review and document changes to the technology could incentivize firms to reduce the frequency of technological updates, or slow the overall rate of updates, which could harm both the firm and investors. These delays and associated monetary costs could reduce the quality or increase the cost of the technology or service for investors, and could reduce the revenues of the firms.

E. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed conflicts rules would positively impact efficiency by providing investors with greater confidence regarding the conflicts of interest associated with the use of covered technologies that they interact with or whose outputs help determine the form or content of investor interactions. Investors would not have to expend costly efforts (including in terms of the opportunity cost of time) on understanding the effects of complex and opaque technologies, and the disclosures thereof, that the firms use in their interactions with investors when they can instead rely on conflicts which place the interest of the firm or an associated person ahead of investors' interests to have been eliminated or their effect to have been neutralized. Further, myriad of investors would not have to duplicate these costly efforts that they each may otherwise independently expend. In this context, the proposed conflicts rules would enhance economic efficiency by improving the efficiency of portfolio allocations, or by enabling the resources thereby saved to be allocated to more productive economic outcomes. In addition, reducing the costly effort that investors must undertake to understand covered technologies and their associated disclosures by eliminating, or neutralizing the effect of, conflicts of interest that place the firm's or an associated person's interest ahead of an investor's could increase participation in financial markets and improve efficiency.

The proposed conflicts rules could negatively affect efficiency by impeding the use of technology in several ways. First, the compliance costs of the proposed conflicts rules could dissuade some firms from using covered technologies in investor interactions. For example, a firm might decide that using a chatbot technology that provided investment advice would be too costly because of the obligations imposed by these rules, and instead opt for human alternatives. To the extent that the chatbot technology was more efficient at providing support to investors, the efficiency of the firm's ability to provide advice would be decreased. Second, certain types of technology might be too difficult or costly to evaluate, or to modify to comply with the rules, and firms could avoid using these technologies. For example, a firm might decide that a covered technology was developed based on data that are too complex to evaluate, or to identify all conflicts of interest, and therefore the firm might have difficulty complying with the proposed conflicts rules. In these cases, firms and investors would not enjoy any of the efficiency gains that the covered technology might have yielded, or have yielded if already implemented. Third, the costs and requirements could slow down the frequency or overall rate of technological updates to existing covered technologies and exploration of new covered technologies, as well as make the technology itself less efficient. For example, firms might need to add guard rails to the development process, or additional layers of review of any potential changes to the technology. Not only could this harm the firm and investors due to, for example, foregone cost savings, lack of tailoring of recommendations to individual investors, or unimplemented user experience improvements, but it also could slow down technological innovation and progress more broadly.[330] However, to the extent rapid development and implementation of such innovations result in the release of flawed or otherwise harmful products into the marketplace, efficiency may be improved.[331]

[330] These losses in efficiency could also adversely affect non-retail investors that interact with broker-dealer covered technologies that also interact with retail investors.

[331] We do not expect the proposed recordkeeping amendments to generate significant effects on efficiency. The proposed recordkeeping

Continued

2. Competition

Eliminating, or neutralizing the effect of, conflicts of interest would have two principal competition-related effects. First, investors could have greater confidence in interactions with firms using covered technologies, and could therefore be more likely to participate in financial markets. Second, when evaluating firms, investors would likely put additional weight on key factors such as advisory, management, or brokerage fees and execution quality, which also directly impact market efficiency, thereby increasing the extent to which firms compete on these factors. These two effects could positively affect competition between firms and result in lower fees and higher service quality for investors.

The proposed conflicts rules could also result in costs that could act as barriers to entry or create economies of scale, potentially making it challenging for smaller firms to compete with larger firms utilizing covered technologies—as firms continue to increasingly rely on covered technologies for investor interactions.[332] Ensuring compliance with the proposed conflicts rules would require additional resources and expertise, which could become a significant barrier to entry, potentially hindering smaller firms from entering the market or adopting new technologies. Moreover, larger firms with a larger client or customer base may have a competitive advantage over smaller firms because they may be better able to spread the (fixed) cost of the proposed conflicts rules across their clients, or more effectively negotiate with third party providers to obtain compliant technology externally. Smaller firms subject to the proposed conflicts rules could also face a competitive disadvantage compared to larger firms when negotiating with technology companies to build software that complies with the proposed conflicts rules.

These competitive effects might be mitigated to the extent that firms are using technologies licensed from third party providers. Third party technology providers might compete with each other to lower the cost of compliance, compared to the case where firms bore the costs of compliance internally. Moreover, to the extent that firms have bargaining power over third party providers, they may be able to shift some of the compliance burden onto these providers. To the extent that third party providers develop the ability to lower compliance costs through competition, smaller firms may also experience reduced compliance costs.[333]

3. Capital Formation

The impact of the proposed conflicts rules on capital formation would be influenced by a number of factors. On the one hand, the elimination or neutralization of the effects of certain harmful conflicts of interest in firms' use of covered technologies could enhance capital formation if the quality of services is improved, or investment performance or execution quality is improved, and investors trust these technologies more and invest more as a result. On the other hand, the costs associated with the proposed conflicts rules could have the opposite effect. If these costs result in increased fees for investors or deter firms from using covered technologies in investor interaction, then capital formation could be hindered. This could be particularly problematic for smaller firms who may struggle to absorb these additional costs. In addition, to the extent that the costs of the technology are too high and firms avoid using certain covered technologies that benefit investors, capital formation could be hindered.[334]

F. Reasonable Alternatives

In formulating our proposal, we have considered various alternatives. Those alternatives are discussed below and we have also requested comments on certain of these alternatives.

1. Expressly Permit, or Require, the Use of Independent Third-Party Analyses

This alternative would expressly state that firms may utilize independent third parties to assess compliance with elements of the proposed conflicts rules.[335] A variation on this alternative would require the use of independent third-party assessments. Allowing or requiring the use of independent third parties to carry out and assess compliance could help ensure that identification and evaluation of conflicts of interest, the determination of which conflicts of interest place the firm's or an associated person's interest ahead of investors', and the elimination, or neutralization of the effect of, the conflict of interest are done in an objective and unbiased manner. In addition, the use of independent third parties could reduce the costs of complying with the associated proposed conflicts rules and eliminate or reduce the need for firms to maintain dedicated staff. Independent third-party firms might have more expertise or be more efficient than individual firms, especially smaller firms, at analyzing the function and the effects of covered technologies, especially technologies licensed from third party service providers.

However, this alternative could undermine the investor protection benefits of the proposed conflicts rules and proposed recordkeeping amendments if independent third parties are less efficient at identifying and evaluating conflicts of interest in the use of covered technologies in investor interactions, because they might not have the same level of information about a firm's business and investors. In addition, competition between independent third parties for the business of firms could result in a ''race to the bottom'' of the quality of compliance assessments.

2. Require That Senior Firm Personnel and/or Specific Technology Subject-Matter Experts Participate in the Process of Adopting and Implementing These Policies and Procedures

This alternative would add a requirement to the proposed conflicts rules that senior firm personnel and/or specific technology subject-matter experts participate in the process of adopting and implementing these policies and procedures. In addition, these senior firm personnel and/or specific technology subject-matter experts would be required to certify that such policies and procedures that the firm adopts and implements (and, in the case of broker-dealers, maintains) are in compliance with the requirements of this paragraph (c) of the proposed conflicts rules. Requiring the use of these personnel could potentially enhance the effectiveness of the policies and procedures that firms create, which could improve a firm's ability to evaluate and identify conflicts of interest, and eliminate or neutralize conflicts of interest that place the firm's interest ahead of the investors. To the extent that such personnel are not necessary to satisfy the policies and

amendments generally would serve to support the implementation of the proposed conflicts rules.

[332] Similarly, some broker-dealers with a small retail investor business line and a larger non-retail investor business line could decide to cut back on serving retail investors to avoid incurring the compliance costs. This could increase market concentration among broker-dealers that service retail investors.

[333] We do not expect the proposed recordkeeping amendments to generate significant effects on competition. The proposed recordkeeping amendments generally would serve to support the implementation of the proposed conflicts rules.

[334] We do not expect the proposed recordkeeping amendments to generate significant effects on capital formation. The proposed recordkeeping amendments generally serve to support the implementation of the proposed conflicts rules.

[335] The proposed conflicts rules do not prohibit such third-party analyses.

procedures requirements of the proposed conflicts rules, the requirement to use these personnel could impose additional costs on firms, which would have to hire additional personnel to satisfy the requirement, divert the labor of existing personnel, or engage with a third-party service provider. In addition, the requirement that these personnel provide a certification for the policies and procedures would also add additional costs not present in the proposal on firm, and create potential barriers to entry for small firms.

3. Provide an Exclusion for Technologies That Consider Large Datasets Where Firms Have No Reason To Believe the Dataset Favors the Interests of the Firm From the Identification, Evaluation, and Testing Requirements

This alternative would provide an exclusion from all of the proposed requirements for technologies that consider large datasets, where firms have no reason to believe the dataset favors the interests of the firm. An example of this type of technology might include a chatbot technology that is trained on large portions of the internet. To the extent that the training dataset is not chosen or created in a biased manner, a firm could reasonably believe that it does not consider the interest of the firm, and yet the firm could have difficulty complying with the proposed conflicts rules' requirements to identify conflicts of interest generated by the use of the technology.

An exclusion for this type of technology use could reduce the costs imposed on the firms that use these technologies, or make certain covered technologies cost-effective to use. However, the exclusion could also undermine the investor protection goals of the proposed conflicts rules by lowering the standards placed on firms' use of covered technologies in investor interactions. Even though firms likely would need to conduct due diligence in order to establish their reasonable belief, and update it regularly, this alternative could result in a regime where firms only reasonably believe that their technologies do not have conflicts of interest, rather than one where firms have tested for conflicts of interest in their covered technologies. In addition, this alternative may incentivize firms to avoid testing datasets in order to avoid receiving information that would challenge their reasonable belief about the unbiased nature of their data.

4. Apply the Requirements of the Proposed Conflicts Rule and Proposed Recordkeeping Amendments Only to Broker-Dealer Use of Covered Technologies That Have Non-Recommendation Investor Interaction

This alternative would limit the scope of the requirements to covered technologies used by broker-dealers in non-recommendation interactions with investors. Such an alternative would target those investor interactions that fall outside Reg BI's Conflict of Interest Obligation. These broker-dealer non-recommendation interactions can influence investor behavior due to advances in technology and the psychological biases of investors. Imposing requirements on broker-dealer covered technologies that have non-recommendation interactions with investors would expand the set of investor interactions that have some form of conflict of interest obligation, requiring that broker-dealers eliminate, or neutralize the effect of, certain conflicts of interest that arise in non-recommendation interactions covered by the proposed conflicts rule. This alternative would also place on certain non-recommendation interactions the proposed policies and procedures and recordkeeping obligations, including those related to testing.

However, this alternative cedes the benefits and costs of the proposed conflicts rules' requirements for a large portion of investor interactions with covered technologies, namely those interactions with broker-dealers that involve a recommendation, and with investment advisers. These interactions would still be subject to existing conflict of interest obligations, but would not benefit from, for example, the proposed evaluation and identification (including testing) provisions or the requirement to eliminate, or neutralize the effects of, conflicts of interest that place the firm's or an associated person's interest ahead of investors' interests. In addition to forgoing these benefits, this alternative would result in non-recommendation interactions being subject to more prescriptive requirements, and more documentation pursuant to the policies and procedures and recordkeeping elements of the proposal, than recommendation interactions, which could create frictions for broker-dealers that use covered technologies that have both recommendation and non-recommendation interactions with investors.

Another variation of this alternative would, in addition to the application of the requirements of the proposed conflicts rules to broker-dealer use of covered technology for non-recommendation investor interactions, apply the policy and procedures requirements and the recordkeeping requirements of the proposed conflicts rules and proposed recordkeeping amendments to investment adviser and broker-dealer use of covered technology with any investor interaction. This alternative would forgo the benefits and costs associated with the proposal's requirement to eliminate, or neutralize the effect of, certain conflicts of interest for advice and recommendation interactions. However, the alternative might strengthen existing conflict of interest obligations by requiring that firms have documented policies and procedures to evaluate the use of covered technologies, the conflicts of interest associated with their use, and the extent to which any conflicts of interest place the firm's interest ahead of the investors, which could yield investor protection benefits for investors. This alternative would impose the costs of the policies and procedures requirements and the recordkeeping requirements on firms.

5. Require That Firms Test Covered Technologies on an Annual Basis, or at a Specific Minimum Frequency

This alternative would require that firms test covered technologies used in investor interactions on an annual basis at a minimum, instead of periodically as under the proposal. This alternative could enhance investor protection by ensuring that covered technologies used in investor interactions are tested regularly at a minimum level for conflicts of interest. However, this alternative could impose unnecessary costs on firms that use covered technologies which have relatively static potential for conflicts of interest. For example, an investment recommendation algorithm that bases its responses on a static data set and accepts limited input from investors from a simple questionnaire, might not need to be tested as frequently as push notifications based on a dataset that is frequently being updated. Similarly, a covered technology operating within a static business model or defined set of investor interactions might not need to be tested as frequently. Imposing a minimum testing frequency that would be adequate for the latter example would impose unnecessary costs on the former, and a minimum testing frequency that would be suitable for the former example might be too infrequent for the latter example, potentially exposing investors to unidentified conflicts of interest.

6. Require That Firms Provide a Prescribed and Standardized Disclosure

This alternative would require that firms deliver to investors prescribed and standardized disclosure of conflicts of interest that place the firm's or an associated person's interest ahead of investors' interests, in lieu of the proposed conflicts rules' requirement to eliminate, or neutralize the effect of, such conflicts of interest.[336] Firms would also have to file their disclosures with the Commission. This disclosure would be a free-standing form like Form CRS, but would focus on the conflicts of interest associated with covered technologies and their use in investor interactions. The prescribed and standardized disclosure would require information such as the technologies used, a brief description of how they work, the data used, any third-party service providers associated with the technology, and any conflicts of interest identified. This disclosure would be in addition to the firm's existing Reg BI, fiduciary duty, and other baseline disclosure obligations.

By providing a prescribed and standardized disclosure, the firm could address the effects of the conflicts of interest by providing additional information and context in a format that is more easily understood by investors. A prescribed and standardized disclosure could also reduce the costs to investors to understand and interpret information about covered technologies. In addition, these disclosures might allow investors to more easily compare the conflicts of interest that firms have, or understand which firms use the same or similar underlying covered technologies.

However, it is not clear that prescribing a standardized disclosure would be sufficient to enable investors to provide informed consent or otherwise achieve the investor protection goals of the proposed rules. In particular, disclosure may be ineffective in light of, as discussed in section III.B, the rate of investor interactions and the ability of the technology to learn investor preferences or behavior, which could entail providing disclosure that is highly technical and variable. Firms might have difficulty fully conveying the scope of conflicts of interest generated by the use of covered technologies, which could hamper its ability to address the effects of conflicts of interest they generate. And, as previously discussed, disclosures may be too lengthy to be meaningful or actionable.[337] Conflicts disclosure may also, for example, lead to under- or over-reaction by investors: investors may not know how to respond to information about conflicts and therefore fail to adequately adjust their behavior, or may overreact to disclosures of conflicts of interest and therefore forgo valuable investment advice.[338]

G. Request for Comment

We request comment on all aspects of the economic analysis of the proposed conflicts rules and proposed recordkeeping amendments. To the extent possible, we request that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed conflicts rules and proposed recordkeeping amendments or any reasonable alternatives. In particular, we ask commenters to consider the following questions:

94. What additional regulatory, qualitative, or quantitative information should be considered as part of the baseline for the economic analysis of the proposed conflicts rules and proposed recordkeeping amendments?

95. The Commission seeks comment on the types of technologies that are currently in use that could potentially be affected by the proposed conflicts rules and proposed recordkeeping amendments. Have they been accurately characterized? If not, why not? Are there any technologies that haven't been included, that should be? Are there any technologies that have been included, that shouldn't be? Is the simpler and complex technology distinction discussed in this release sufficient to describe the cost burdens of technologies?

96. The Commission seeks comment on the conflicts of interest associated with the use of covered technologies. What types of conflicts of interest are associated with the use of these technologies? What costs do they impose on investors? What practices exist for eliminating, or neutralizing the effect of, these conflicts of interest? What practices exist for mitigating the effects of these conflicts of interest? What are the current costs of these methods?

97. Are the costs and benefits of the proposed conflicts rules and proposed recordkeeping amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these costs and benefits. What additional considerations can be used to estimate the costs and benefits of the proposed conflicts rules and proposed recordkeeping amendments?

98. Are the effects on competition, efficiency, and capital formation arising from the proposed conflicts rules and proposed recordkeeping amendments accurately characterized? If not, why not?

99. The Commission seeks comment on the potential costs associated with the proposed conflicts rules and proposed recordkeeping amendments. What types of costs are likely to be incurred by firms in order to comply with the proposed conflicts rules and proposed recordkeeping amendments? How might these costs vary depending on the types of technology, the business model, or the nature and extent of investor interactions used by the firms? To what extent do firms already incur these costs in order to comply with their existing obligations? What costs would there be for investors?

100. The Commission seeks comment on the types of labor and other resources that would be required for firms to comply with the proposed conflicts rules and proposed recordkeeping amendments. What personnel would need to be involved in complying with the proposed conflicts rules and proposed recordkeeping amendments? What types of expertise would be required? How might the size and complexity of a firm impact the resources needed to comply with the proposed conflicts rules and proposed recordkeeping amendments?

101. The Commission seeks comment on how the proposed conflicts rules and proposed recordkeeping amendments might impact a firm's or a technology

[336] However, the use of covered technology in investor interaction would still be subject to the firm's existing conflict of interest obligations, which might require the firm to eliminate or mitigate the conflict of interest.

[337] *See supra* note 248 and surrounding text.

[338] *See, e.g.,* James M. Lacko & Janis K. Pappalardo, *The Effect of Mortgage Broker Compensation Disclosures on Consumers and Competition: A Controlled Experiment, Federal Trade Commission,* Bureau of Economics Staff Report (Feb. 2004), *https://www.ftc.gov/sites/default/files/documents/reports/effect-mortgage-broker-compensation-disclosures-consumers-and-competition-controlled-experiment/030123mortgagefullrpt.pdf* (documenting that when mortgage customers receive information about mortgage broker compensation through disclosures, such disclosures lead to an increase in more expensive loans and create a bias against broker-sold loans, even when the broker-sold loans are the more cost effective option); George Loewenstein, Cass R. Sunstein, & Russell Golman, Disclosure: Psychology Changes Everything, 6 Ann. Rev. Econ. 391 (2014). *See also* Reg BI Adopting Release, *supra* note 8, at III.B.4.c. (discussing the effectiveness and limitations of disclosure). *See also* SEC Staff Study Regarding Financial Literacy Among Investors, August 2012, at *https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf.*

provider's software development process. What changes might be necessary in order to help ensure that firms using covered technologies in investor interactions are in compliance with the proposed conflicts rules and proposed recordkeeping amendments? How might the proposed conflicts rules and proposed recordkeeping amendments impact the speed or efficiency of software development?

102. The Commission seeks comment on the potential impact of the proposed conflicts rules and proposed recordkeeping amendments on smaller firms, or firms with simpler or more transparent covered technologies. What additional costs might these firms face in order to comply with the proposed conflicts rules and proposed recordkeeping amendments? How might these costs impact smaller firms and their investors differently than larger firms and their investors?

103. The Commission seeks comment on the potential benefits of the proposed conflicts rules and proposed recordkeeping amendments. How might the proposed conflicts rules and proposed recordkeeping amendments improve transparency and fairness in the use of covered technologies? What impact might this have on investor confidence and trust in the market?

104. The Commission seeks comment on the potential alternatives to the proposed conflicts rules and proposed recordkeeping amendments. Are there other approaches that might be more effective at achieving the goals of the proposed conflicts rules and proposed recordkeeping amendments? What trade-offs might be involved in pursuing these alternatives?

105. Are the economic effects of the above alternatives accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account?

106. Are there other reasonable alternatives to the proposed conflicts rules and proposed recordkeeping amendments that should be considered? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

IV. Paperwork Reduction Act

A. Introduction

Certain provisions of our proposal would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[339] Proposed rule 15l–2 under the Exchange Act and proposed rule 211(h)(2)–4 under the Advisers Act would result in new collection of information burdens and related amendments to rule 17a–3 and 17a–4 under the Exchange Act and rule 204–2 under the Advisers Act and would have an impact on current collection of information burdens. The titles of the new collection of information requirements we are proposing are ''Rule 211(h)(1)–4 under the Advisers Act'' and ''Rule 15l–2 under the Exchange Act.'' The Office of Management and Budget (''OMB'') has not yet assigned control numbers for these new collections of information. The titles for the existing collections of information that we are proposing to amend are: (i) ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB control number 3235–0278); and (ii) ''Rule 17a–3 and Rule 17a–4 under the Exchange Act'' (OMB control numbers 3235–0033 and 3235–0279). The Commission is submitting these collections of information to the OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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.

We discuss below the new collection of information burdens associated with the proposed new rules, and amendments to existing rules. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed rules and corresponding amendments would be kept confidential subject to the provisions of applicable law. A description of the proposed new rules and proposed amendments to existing rules, including the need for the information and its use, as well as a description of the types of respondents, can be found in section II above, and a discussion of the expected economic effects of the proposed new rules and proposed amendments to existing rules can be found in section III above.

B. Proposed Conflicts Rules and Proposed Recordkeeping Amendments

The proposed conflicts rules are designed to address the conflicts of interest associated with firms' use of certain technology when engaging in certain investor interactions. As discussed in greater detail above, the proposed conflicts rules would generally require the elimination or neutralization of the effects of certain conflicts of interest. Specifically, paragraph (b) of the proposed conflicts rules would require a firm to (i) evaluate any use or reasonably foreseeable potential use by the firm of a covered technology in any investor interaction to identify any conflict of interest associated with that use or potential use (including by testing each such covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest); (ii) determine whether any such conflict of interest places or results in placing the firm's or an associated persons interest ahead of investors' interests; and (iii) eliminate, or neutralize the effect of, any such conflict of interest.[340] As also discussed above, paragraph (c) of the proposed rules would require a firm that has any investor interaction using covered technology to adopt, implement, and in the case of broker-dealers, maintain written policies and procedures that are, in the case of investment advisers, reasonably designed to prevent violations of, or in the case of broker-dealers, reasonably designed to achieve compliance with, paragraph (b) of the rules.

We believe that paragraph (c) constitutes a collection of information. We do not believe that the proposed requirements under paragraph (b) constitute an independent information collection. But, to the extent they do, we believe that the process firms would engage in to comply with the policies and procedures requirements under paragraph (c) of the proposed conflicts rules, and the information collection burden related thereto, are inextricable from any information collection burden under paragraph (b) of the proposed conflicts rules. Therefore, the information collection burden resulting from the policies and procedures required under the proposed conflicts rules would constitute the full burden of the rules.

Finally, the proposed recordkeeping amendments would require investment advisers that are registered or required to be registered under the Advisers Act and broker-dealers that use covered technologies in investor interactions to make and maintain written records documenting compliance with the requirements of the proposed conflicts rules. Under the proposed recordkeeping amendments, the time periods for preserving records would vary between those for investment advisers that are registered or required to be registered under the Advisers Act and broker-dealers, in accordance with the existing recordkeeping rules that

[339] 44 U.S.C. 3501 *et seq.*

[340] *See* proposed rule 211(h)(2)–4(b); *see also supra* sections II.A.1 and II.A.2.c.

would be amended.[341] Time periods for maintaining records where they are easily accessible would be the same between investment advisers and broker-dealers.[342]

Each of the proposed requirements to obtain or maintain information constitutes a ''collection of information'' requirement under the PRA and is mandatory. These proposed collections are designed to require firms to have an established framework for eliminating or neutralizing conflicts of interest that could harm clients and which we believe would assist these firms in complying with the requirements under paragraph (b)(3) of the proposed rules. Accordingly, we believe the proposal would have investor protection benefits. Additionally, the Commission's staff could use the information obtained through these collections in its enforcement, regulatory, and examination programs. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered under the Advisers Act and broker-dealers that are registered under the Exchange Act that used covered technologies in investor interactions.

As of February 28, 2023, there were 15,402 investment advisers registered with the Commission [343] and 3,504 [344] broker-dealers registered with the Commission. We believe that substantially all of the 15,402 registered investment advisers would be subject to the proposed rules and, based on an analysis of filings by these firms performed by the staff, we believe that approximately 2,575 [345] broker-dealers would be subject to the proposed rules.

The application of the provisions of the proposed conflicts rules and proposed recordkeeping amendments—and thus the extent to which there are collections of information and their related burdens—would be contingent on a number of factors, such as, among others, the types of covered technologies a firm uses, a firm's business model, the number of clients or customers of the firm, the extent, nature and frequency of investor interactions, and the nature and extent of its conflicts. Because of the wide diversity of services and relationships offered by firms, we expect that the obligations imposed by the proposed rules would, accordingly, vary substantially. However, we have made certain estimates of this data solely for the purpose of this PRA analysis.

TABLE 3—PROPOSED CONFLICTS RULES AND PROPOSED RECORDKEEPING AMENDMENTS

	Internal initial burden hours [1]	Internal annual burden hours [2]	Wage rate [3]	Internal time cost [4]	Annual external cost burden [5]
PROPOSED ESTIMATES					
Adopting and implementing policies and procedures.	21 hours ...	30 hours ...	$487 (blended rate for senior corporate and information technology managers, assistant general counsel, and compliance attorney).	$14,610 (equal to the internal annual burden × the wage rate).	$0.
Preparation of written descriptions [6].	60 hours ...	42.5 hours	$446 (blended rate for senior corporate and information technology managers and staff, assistant general counsel, and compliance attorney).	$18,955 (equal to the internal annual burden × the wage rate).	$0.
Annual review of policies and procedures and written descriptions.	.....	5 hours	$446 (blended rate for senior corporate and information technology managers and staff, assistant general counsel, and compliance attorney).	$2,230 (equal to the internal annual burden hours × the wage rate).	$0.
Recordkeeping requirements [7].	N/A	18.5 hours	$412 (blended rate for compliance attorney, senior programmer, and senior corporate manager).	$7,622 (equal to the internal annual burden hours × the wage rate).	$0.
Total new annual burden.	.....	96 hours (equal to the sum of the above four boxes).	.....	$43,417 (equal to the sum of the above four boxes).	$0 (equal to the sum of the above four boxes).
Number of investment advisers covered.	.....	× 15,402 covered investment advisers [7].	.....	× 15,402 covered investment advisers.	$0.
Number of broker-dealers covered.	.....	× 2,573 covered broker-dealers.	.....	× 2,573 covered broker-dealers	$0.
Total new annual aggregate burden for investment advisers covered.	.....	1,478,592 hours.	.....	$668,708,634	$0.
Total new annual aggregate burden for broker-dealers covered.	.....	247,008 hours.	.....	$ 111,711,941	$0.

Notes:

[341] Pursuant to current rule 204–2(e)(1), the records required to be maintained and preserved under proposed amendments to rule 204–2 under the Advisers Act would be required to be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. For broker-dealers, rule 17a–4(a) requires that records be ''preserve[d] for a period of not less than 6 years, the first two years in an easily accessible place.'' *See also supra* section II.B.

[342] *See id.*

[343] Based on IARD data as of Mar. 27, 2023.

[344] Based on FOCUS Filing data, as of Mar. 2023.

[345] Consistent with the Form CRS Adopting Release, we estimate that 73.5% of registered broker-dealers report retail activity and thus, would likely be subject to the proposed rules. However, we recognize this may capture some broker-dealers that do not have retail activity.

[1] In the case of investment advisers, most advisers using covered technology already have certain policies and procedures in place relevant to these technologies so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm. Similarly, broker-dealers are already subject to extensive obligations, including certain policies and procedures requirements, under Federal securities laws and regulations, and rules of self-regulatory organizations (in particular, FINRA) that would apply to the extent PDA-like technologies are used in investor interactions that are subject to such existing obligations. In reaching our estimates, we considered that advisers and broker-dealers relying more heavily on complex covered technologies may exceed this average, while advisers and broker-dealers relying less heavily on these technologies may fall below this average.

[2] Totals for this category include internal initial hour burden estimates annualized over a three-year period.

[3] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff for 2023 (''SIFMA Wage Report''). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[4] All costs calculated are rounded to the nearest dollar.

[5] Firms may incur third-party costs in connection with the proposed conflicts rules but, due to data limitations, for the purpose of this Paperwork Reduction Act analysis, we estimate the full cost of compliance to be internal. *See supra* section III.C.1. (discussing data limitations).

[6] Includes all written descriptions to be required under proposed rules 275.211(h)(2)–4(c)(1) through (3) and 240.15l–2 (c)(1) through (3).

[7] In our most recent Paperwork Reduction Act submission for rule 204–2, we estimated for rule 204–2 a total annual aggregate hour burden of 2,764,563 hours, and a total annual aggregate external cost burden of $175,980,426. The table above summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–2. We have made certain estimates of the burdens associated with the proposed amendments solely for the purpose of this PRA analysis. We estimate that the proposed amendments would result in an aggregate burden of 284,937 hours (18.5 hours × 15,402 advisers) and with an estimated aggregate internal monetized cost of $117,394,044 (284,937 hours × $412 blended rate of professional staff described above = $117,394,044). Based on our most recent Paperwork Reduction Act submission, we believe that the total burden under rule 204–2, including the proposed amendments to rule 204–2, amount to 3,049,500 hours with a total internal monetized cost of $293,374,470.

C. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–12–23. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–12–23, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act.[346] It relates to: (i) proposed rule 151–2 under the Exchange Act and proposed rule 211(h)(2)–4 under the Advisers Act; and (ii) proposed amendments to rules 17a–3 and 17a–4 under the Exchange Act and rule 204–2 under the Advisers Act.

A. Reason for and Objectives of the Proposed Action

The reasons for, and objectives of, the proposed rules and amendments are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers and broker-dealers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers and broker-dealers. Sections II through IV discuss the professional skills that we believe compliance with the proposed rules and amendments would require.

1. Proposed Rules 151–2 and 211(h)(2)–4

We are proposing rules 15l–2 under the Exchange Act and 211(h)(2)–4 under the Advisers Act (collectively, the ''conflicts rules'') which, generally, would require investment advisers and broker-dealers registered with the Commission to take certain steps to eliminate, or neutralize the effect of, certain conflicts of interest from these firms' use of covered technology when engaging in certain investor interactions. As firms adopt and utilize covered technologies at an increasingly rapid pace, the risk of conflicts of interest associated with the use of those technologies becomes increasingly pronounced and potentially harmful on a broader scale than previously possible. In addition, the conflicts associated with a firm's use of these technologies may expose investors to unique and opaque conflicts of interest for which disclosure may not possible or sufficient and which may not otherwise be sufficiently addressed by the existing legal framework. The proposed conflicts rules, therefore, would require a firm to identify and evaluate whether any use or potential use by the firm of a covered technology in any investor interaction involves a conflict of interest, determine whether any such conflict of interest results in an investor interaction that places the firm's or an associated person's interest ahead of investors' interests, and eliminate, or neutralize the effect of, any such conflict of interest.

The proposed conflicts rules would also require a firm that has any investor interaction using covered technology to adopt, implement, and, in the case of broker-dealers, maintain, written policies and procedures reasonably designed to achieve compliance with the elimination and neutralization of effect of conflicts of interest requirement. These proposed policies and procedures requirements, as well as the written descriptions and annual review to be required by those policies and procedures, are designed to require firms to have an established framework for eliminating, or neutralizing the effect of, conflicts of interest that could harm clients and which we believe would assist these firms in complying with the requirements under paragraph (b) of the proposed rules. The description would also assist the firm's internal staff, as well as examination staff, in assessing a firm's compliance. In turn, this design would help ensure that firms are appropriately eliminating, or neutralizing the effects of, any conflict of interest in accordance with the proposed rules.

The proposed rules would require the policies and procedures to address certain matters that, collectively, are

[346] 5 U.S.C. 603(a).

designed to help ensure that a firm understands how its covered technologies work and the actual or potential conflicts they could involve. The policies and procedures would require a firm that has any investor interaction using covered technology to adopt, implement, and maintain written policies and procedures reasonably designed to achieve compliance with the proposed conflicts rules, including policies and procedures designed to require: (i) a written description of any material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered technology's implementation or material modification, which must be updated periodically thereafter; (ii) a written description of the process for determining whether any conflict of interest identified pursuant to the proposed conflicts rules places or results in placing the interest of the firm or person associated with the firm ahead of the interests of the investor; (iii) a written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to the proposed conflicts rules to result in an investor interaction that places the interest of the firm or person associated with the firm ahead of the interests of the investor; and (iv) a review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established pursuant to the proposed conflicts rules and the effectiveness of their implementation as well as a review of the written descriptions established pursuant to the proposed conflicts rules.

The proposed conflict rules are designed to promote investor protection while allowing continued technological innovation in the industry.

2. Proposed Amendments to Rules 17a–3 and 17a–4 and Rule 204–2

Proposed amendments to rules 17a–3 and 17a–4, the books and records rules under the Exchange Act, and proposed amendments to rule 204–2, the books and records rule under the Advisers Act, would require firms to make and keep books and records related to the requirements of the proposed conflicts rules and are designed to help facilitate the Commission's examination and enforcement capabilities by creating records staff can use to assess compliance with the requirements of the proposed conflicts rules, and to help facilitate assessment by firm compliance staff of such compliance. The rules would require firms to maintain six types of records, as follows, and as more fully described in section II above: (1) written documentation of the evaluation conducted pursuant to paragraph (b)(1) of the proposed conflicts rules, including a list or other record of all covered technologies used by the firm in investor interactions, as well as documentation describing any testing of the covered technology in accordance with paragraph (b)(1) of the proposed conflicts rules; (2) written documentation of each determination made pursuant to paragraph (b)(2) of the proposed conflicts rules, including the rationale for such determination; (3) written documentation of each elimination or neutralization made pursuant to paragraph (b)(3) of the proposed conflicts rules; (4) written policies and procedures, including written descriptions, prepared in accordance with paragraph (c) of the proposed conflicts rules; (5) a record of the disclosures provided to investors regarding the firm's use of covered technologies; and (6) records of each instance in which a covered technology was altered, overridden, or disabled, the reason for such action, and the date thereof, as well as records of all instances where an investor requested that a covered technology be altered or restricted in any manner.

B. Legal Basis

The Commission is proposing the new rules and rule amendments described above under the authority set forth in sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80(b)–11) and sections 15 and 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78j).

C. Small Entities Subject to the Rules and Rule Amendments

In developing these proposals, we have considered their potential impact on small entities that would be subject to the proposed rules and rule amendments. The proposed rules and amendments would affect investment advisers registered, or required to be registered, with the Commission and broker-dealers registered with the Commission, including some small entities.

1. Small Advisers Subject to Proposed Rule 211(h)(2)–4 and Proposed Amendments to Recordkeeping Rule

Under Commission rules under the Advisers Act, for the purposes of the RFA, an investment adviser generally is a small entity if it: (i) has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year. Our proposed rules and amendments would not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. We estimate that approximately 489 SEC-registered advisers are small entities under the RFA.[347]

As discussed above in section IV (the Paperwork Reduction Act Analysis), the Commission estimates that based on IARD data through March 31, 2023, approximately 15,402 investment advisers would be subject to proposed rule 211(h)(2)–4 and the related amendments to the recordkeeping rule. We estimate that all of the approximately 489 SEC-registered advisers that are small entities under the RFA would be subject to the proposed conflicts rules and amendments to the recordkeeping rule.

D. Small Broker-Dealers Subject to Proposed Conflicts Rule and Amendments to Recordkeeping Rules

For purposes of the RFA, under the Exchange Act a broker or dealer is a small entity if it: (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year; and (ii) is not affiliated with any person that is not a small entity.[348] Based on Commission filings, we estimate that approximately 764 broker-dealers may be considered small entities.[349]

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed conflicts rules and amendments to rule 204–2 and to rules 17a–3 and 17a–4 would impose certain compliance and recordkeeping requirements on those investment advisers and broker-dealers subject to the terms of the rules, including those

[347] Based on IARD data as of Dec. 31, 2022.

[348] 17 CFR 240.0–10.

[349] Estimate based on FOCUS Report data collected by the Commission as of Sept. 30, 2022.

that are small entities. All advisers and broker-dealers that have any investor interaction using covered technology would be subject to the proposed conflict rules' requirement to adopt, implement, and (in the case of broker-dealers) maintain written policies and procedures reasonably designed to achieve compliance with the proposed conflicts rules. These firms would also be subject to the recordkeeping requirements in the proposed amendments to rule 204–2 and rules 17a–3 and 17a–4. The proposed requirements and rule amendments, including compliance, reporting, and recordkeeping requirements, are summarized in this IRFA (section V.A., above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

1. Proposed Conflicts Rules

As discussed above, approximately 489 small advisers were registered with us as of December 31, 2022, and we estimate that all of these advisers would be subject to proposed rule 211(h)(2)–4. As discussed above in our Paperwork Reduction Act Analysis in section IV above, proposed rule 211(h)(2)–4 would create an annual burden of approximately 77.5 hours per adviser, or 37,897.5 hours in aggregate for small advisers.[350] We therefore expect that the annual monetized aggregate cost to small advisers associated with proposed rule 211(h)(2)–4 would be $17,432,850.[351]

As discussed above, approximately 764 broker-dealers may be considered small entities as of September 30, 2022, and we estimate that 562 [352] of those small registered broker-dealers would be subject to the proposed amendments (73.5% of all registered small broker-dealers). As discussed above in our Paperwork Reduction Act Analysis in section IV above, proposed rule 15–2 would create an annual burden of approximately 77.5 hours per broker-dealers, 43,555 hours in aggregate for small broker-dealers.[353] We therefore expect that the annual monetized aggregate cost to small broker-dealers associated with proposed rule 15l-2 would be $20,035,300.[354]

2. Proposed Amendments to Rule 204–2

The proposed amendments to rule 204–2 would impose certain recordkeeping requirements on investment advisers using covered technology in interactions with investors. The proposed amendments, including recordkeeping requirements, are summarized above in this IRFA (section V.A). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

Our Economic Analysis (section III above) discusses these costs and burdens for respondents, which include small advisers. As discussed above in our Paperwork Reduction Act Analysis in section IV above, the proposed amendments to rule 204–2 would create an annual burden of approximately 18.5 hours per adviser. Based on our estimate of 489 advisers subject to the proposed amendments to the rule, we estimate the aggregate burden on small advisers to amount to 9,046.5 hours.[355] We therefore expect that the annual monetized aggregate cost to small advisers associated with the proposed amendments to rule 204–2 would be $3,727,158.[356]

3. Proposed Amendments to Rules 17a–3 and 17a–4

The proposed amendments to rules 17a–3 and 17a–4 would impose certain recordkeeping requirements on broker-dealers using covered technology in interactions with investors. The proposed amendments, including recordkeeping requirements, are summarized above in this IRFA (section V.A). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small broker-dealers, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

Our Economic Analysis (section III above) discusses these costs and burdens for respondents, which include small broker-dealers. As discussed above in our Paperwork Reduction Act Analysis in section IV above, the proposed amendments to rules 17a–3 and 17a–4 would create an annual burden of approximately 18.5 hours per broker-dealer. Based on our estimate of 562 small broker-dealers subject to the proposed amendments to the rule, we estimate the aggregate burden on small broker-dealers to amount to 10,397 hours.[357] We therefore expect that the annual monetized aggregate cost to small broker-dealers associated with the proposed amendments to rules 17a–3 and 17a–4 would be $4,283,564.[358]

F. Duplicative, Overlapping, or Conflicting Federal Rules

1. Proposed Rule 211(h)(2)–4 and Proposed Amendments to Rule 204–2

In proposing rule 211(h)(2)–4, we recognize that investment advisers today are subject to a number of laws, rules, and regulations which indirectly address the oversight of the way an adviser relies on and uses technology in its interactions with advisory clients. As discussed in section I and section III.C.3, their fiduciary duty requires them to take steps to protect client interests, which would include steps to provide investment advice that it reasonably believes is in the best interest of the client regardless of whether the adviser is using a covered technology in an investor interaction. This duty requires investment advisers to eliminate a conflict of interest or, at a minimum, make full and fair disclosure of the conflict of interest such that a client can provide informed consent to the conflict.[359] Investment advisers are subject to the antifraud provisions found in section 206 of the

[350] 77.5 hours × 489 small advisers subject to the proposed rule and rule amendments.

[351] $460 (blended rate for professionals assisting with adopting and implementing policies and procedures, (ii) preparation of written descriptions, and (iii) annual review of policies and procedures and written descriptions) × 37,897.55 hours.

[352] 2,573 (estimated number of broker-dealers subject to proposed rule and rule amendments)/ 3,501 (number of registered broker-dealers) = 0.735 (estimated ratio of broker-dealers subject to rule and rule amendments). 0.735 × 764 (number of small broker-dealers) = 562 small broker-dealers subject to proposed rule and rule amendments.

[353] 77.5 hours × 562 small broker-dealers subject to the proposed rule and rule amendments.

[354] $460 (blended rate for professionals assisting with adopting and implementing policies and procedures, (ii) preparation of written descriptions, and (iii) annual review of policies and procedures and written descriptions) × 43,555 hours.

[355] 18.5 hours × 489 advisers.

[356] $412 (blended rate for compliance attorney, senior programmer, and senior corporate manager) × 9,046.5 hours.

[357] 18.5 hours × 562 small broker-dealers.

[358] $412 (blended rate for compliance attorney, senior programmer, and senior corporate manager) × 10,397 hours.

[359] *See* Fiduciary Interpretation, *supra* note 8, at section II.

Advisers Act,[360] which prohibits fraud or deceit upon any client or prospective client; rule 206(4)–8 under the Advisers Act, which makes it unlawful for any investment adviser to a pooled investment vehicle to engage in fraud or deceit upon any investor or prospective investor in the pooled investment vehicle; [361] and Exchange Act rule 10b–5, which makes it unlawful for any person to engage in fraud or deceit upon any person.[362] Advisers are also subject to the Advisers Act Compliance Rule, requiring advisers to adopt, implement, and annually review written policies and procedures reasonably designed to prevent violations of the Act and the rules thereunder,[363] and rule 206(4)–1 under the Advisers Act, prohibiting advisers from disseminating any advertisement that violates any requirements of that rule, including making untrue statements of material fact or misleading omissions and discussing any potential benefits connected with or resulting from the investment adviser's services or methods of operation without providing fair and balanced treatment of any material risks or material limitations associated with the potential benefits.[364] Individually and collectively, these impose obligations on an adviser's use of covered technologies in investor interactions depending on how the adviser uses the technology.

However, investment advisers do not have specific obligations under the Advisers Act or any of its rules to eliminate, or neutralize the effect of, conflicts of interest promptly after the adviser identifies, or reasonably should have identified, such conflict of interest.[365] Further, the Advisers Act compliance rule is principles based and, as such, does not require *specific* elements that would be required under the policies and procedures requirements of the proposed conflict rule.[366] Similarly, existing recordkeeping obligations do not specifically require the records that firms would be required to keep under the proposed amendments to that rule.[367] The proposed rules would provide a comprehensive oversight framework, consisting of targeted obligations, policies and procedures, and recordkeeping requirements, which we believe would be complementary to existing obligations and practices rather than duplicative or conflicting. To the extent there is overlap among the existing and proposed requirements, it is incomplete overlap and would ease burdens on smaller firms in complying with the proposed rules.

2. Proposed Rule 151–2 and Proposed Amendments to Rules 17a–3 and 17a–4

As noted above, broker-dealers are currently subject to extensive obligations under Federal securities laws and regulations, and rules of self-regulatory organizations (in particular, FINRA), that are designed to promote conduct that, among other things, protects investors from conflicts of interest.[368] To the extent PDA-like technologies are used in investor interactions that are subject to existing obligations (including, but not limited to, obligations related to recommendations, general and specific requirements aimed at addressing certain conflicts of interest, including requirements to eliminate, mitigate or disclose certain conflicts of interest, disclosure of firms' services, fees and costs, disclosure of certain business practices, communications with the public, supervision, and obligations related to policies and procedures), those obligations would apply. In addition to these obligations, Federal securities laws and regulations broadly prohibit fraud by broker-dealers as well as fraud by any person in the offer, purchase, or sale of securities, or in connection with the purchase or sale of securities. However, broker-dealers do not have specific obligations under the Exchange Act or any of its rules to eliminate, or neutralize the effect of, conflicts of interest in the same way as required under proposed rule 151–2. Similarly, while existing recordkeeping obligations apply more generally to ''business'' records, they do not specifically require the records that firms would be required to keep under the proposed amendments to the proposed conflict rule for broker-dealers. The proposed rules would provide a comprehensive oversight framework, consisting of targeted obligations, policies and procedures, and recordkeeping requirements, which we believe would be complementary to existing obligations and practices rather than duplicative or conflicting. To the extent there is overlap among the existing and proposed requirements, it is incomplete overlap and would ease burdens on smaller firms in complying with the proposed rules.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed rules and rule amendments, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules and rule amendments for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rules and rule amendments, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, we do not believe that differing compliance or reporting requirements or an exemption from coverage of the proposed rules and rule amendments, or any part thereof, for small entities, would be appropriate or consistent with investor protection. Because the protections of the Advisers Act and Exchange Act are intended to apply equally to clients and customers of both large and small advisory and brokerage firms, it would be inconsistent with the purposes of the Advisers Act and Exchange Act to specify different requirements for small entities under the proposed rules and rule amendments. We believe there has been, and will continue to be, rapid adoption and use of covered technologies in the industry,[369] and that the effects of conflicts of interest associated with these covered technologies are contrary to the public interest and the protection of

[360] 15 U.S.C. 80b–6.

[361] 17 CFR 275.206(4)–8.

[362] 17 CFR 240.10b–5.

[363] *See* rule 206(4)–7.

[364] *See* rule 206(4)–1(a)(1), (4).

[365] *See* proposed rule 211(h)(2)–4(b).

[366] *See* proposed rule 211(h)(2)–4(c).

[367] *See* proposed rule 204–2.

[368] *See* Reg BI Adopting Release, *supra* note 8, at section II.A.1. (The ''without placing the financial or other interest . . . ahead of the interest of the retail customer'' phrasing recognizes that while a broker-dealer will inevitably have some financial interest in a recommendation—the nature and magnitude of which will vary—the broker-dealer's interests cannot be placed ahead of the retail customer's interest''). Additionally, broker-dealers often provide a range of services that do not involve a recommendation to a retail customer—which is required in order for Reg BI to apply—and those services are subject to general and specific requirements to address associated conflicts of interest under the Exchange Act, Securities Act of 1933, and relevant SRO rules as applicable. *See, e.g.,* Reg BI Proposing Release, *supra* note 8; *see also* FINRA Conflict Report, *supra* note 60, at Appendix I (Conflicts Regulation in the United States and Selected International Jurisdictions) (describing broad obligations under SEC and FINRA rules as well as specific conflicts-related disclosure requirements under FINRA rules).

[369] *See supra* section I.B.

investors.[370] Consequently, we believe that investors would receive important protections under the proposed conflicts rules and proposed recordkeeping amendments and that establishing different conditions for large and small firms, when investors use both large and small firms, would negate these benefits.

Regarding the second alternative, the proposed conflicts rules and amendments to rule 204–2 and rules 17a–3 and 17a–4 are intended to prohibit conduct that the Commission considers to be contrary to the public interest and protection of investors under section 211 of the Advisers Act and Section 15 of the Exchange Act. We have endeavored to consolidate and simplify the compliance requirements under the proposed conflicts rules and the proposed amendments to rule 204–2 and 17a–3 and 17a–4 for all firms, and we do not believe that the goal of the proposed conflicts rules and proposed recordkeeping amendments of enhancing investor protection would be achieved as well by further consolidating or simplifying the requirements. In addition, the proposed conflicts rules provide minimum standards for all covered technologies, but the elimination and neutralization requirement would only affect firms whose use of covered technology is actually determined to place the interests of the firm ahead of investors, meaning certain aspects of the proposed conflicts rules would only have an impact on small entities to the extent that the entities' use of covered technologies places their interests ahead of investors.

Regarding the third alternative, we determined to use a combination of performance and design standards. Although the proposed conflicts rules would require firms to undertake certain functions relating to the elimination or neutralization of the effect of certain conflicts of interest and requires firms to adopt, implement, and, in the case of broker-dealers, maintain, certain policies and procedures reasonably designed to achieve compliance with the requirement to eliminate, or neutralize the effect of, certain conflicts of interest,[371] the proposed conflicts rules would allow firms a broad range of flexibility in complying with these requirements. For example, as described in detail in section II.A.2.e., firms have flexibility in determining whether to eliminate a conflict of interest or neutralize the effect of the conflict. Similarly, in light of the broad range of covered technology and investor interactions, the proposed conflicts rules provide firms with flexibility in their evaluation of any use or reasonably foreseeable potential use by the firm or its associated person of a covered technology and flexibility in their determination of whether any such conflict of interest places or results in placing the firm's or its associated person's interest ahead of investors' interests. We believe that flexibility is appropriate, but also believe that certain of the design standards in the proposed conflicts rules and proposed recordkeeping amendments are necessary to, among other things, facilitate the Commission's examination and enforcement capabilities by creating records staff can use to assess compliance with the requirements of the proposed conflicts rules, and to help facilitate assessment by firm compliance staff of such compliance.

H. Solicitation of Comments

We encourage written comments on the matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed conflicts rules and the proposed amendments to rule 204–2 and rules 17a–3 and 17a–4, as well as the potential impacts discussed in this analysis; and whether the proposal could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [372] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (i) an annual effect on the economy of $100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed conflicts rules and proposed recordkeeping amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

The Commission is proposing new rule 240.151–2 under the Exchange Act under the authority set forth in section 15 of the Exchange Act (15 U.S.C. 78j). The Commission is proposing amendments to §§ 240.17a–3 and 17a–4 under the Exchange Act under the authority set forth in section 17 of the Exchange Act (15 U.S.C. 78q).

The Commission is proposing new rule 211(h)(2)–4 under the Advisers Act under the authority set forth in section 211 of the Investment Advisers Act (15 U.S.C. 80b–11(a) and (h)). The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Investment Advisers Act (15 U.S.C. 80b–4 and 80b–11).

List of Subjects in 17 CFR Parts 240 and 275

Brokers, Reporting and recordkeeping requirements; Securities.

Text of Proposed Rules and Form Amendments

For the reasons set out in the preamble, the SEC proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 is amended to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 7 7z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C.5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat.1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted

* * * * *

■ 2. Add § 240.15l–2 to read as follows:

§ 240.15l–2 Prohibition against conflicts associated with investor interactions employing covered technology.

(a) *Definitions.* For purposes of this section:

Conflict of interest exists when a broker or dealer uses a covered technology that takes into consideration an interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer.

Covered technology means an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar

[370] *See id.*

[371] *See supra* section II.

[372] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

method or process that optimizes for, predicts, guides, forecasts, or directs investment-related behaviors or outcomes.

Investor means a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.

Investor interaction means engaging or communicating with an investor, including by exercising discretion with respect to an investor's account; providing information to an investor; or soliciting an investor; except that the term does not apply to interactions solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support.

(b) *Elimination or neutralization of the effect of conflicts of interest.* A broker or dealer must:

(1) Evaluate any use or reasonably foreseeable potential use of a covered technology by the broker or dealer, or a natural person who is an associated person of a broker or dealer, in any investor interaction to identify any conflict of interest associated with that use or potential use (including by testing each such covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest);

(2) Determine if any conflict of interest identified pursuant to paragraph (b)(1) of this section places or results in placing the interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer ahead of the interests of investors; and

(3) Eliminate, or neutralize the effect of, any conflict of interest (other than conflicts of interest that exist solely because the broker or dealer seeks to open a new investor account) determined pursuant to paragraph (b)(2) of this section to result in an investor interaction that places the interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer, ahead of the interests of investors, promptly after the broker or dealer determines, or reasonably should have determined, that the conflict of interest placed the interests of the broker or dealer, or a natural person who is an associated person of a broker or dealer, ahead of the interests of investors.

(c) *Policies and procedures.* A broker or dealer that is subject to paragraph (b) of this section and that has any investor interaction using covered technology must adopt, implement, and maintain written policies and procedures reasonably designed to achieve compliance with paragraph (b) of this section, including:

(1) A written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b)(1) of this section and a written description of any material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered technology's implementation or material modification, which must be updated periodically;

(2) A written description of the process for determining whether any conflict of interest identified pursuant to paragraph (b)(1) of this section results in an investor interaction that places the interest of the broker or dealer, or a natural person who is an associated person of a broker or dealer ahead of the interests of investors;

(3) A written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to paragraph (b)(2) of this section to result in an investor interaction that places the interest of the broker or dealer or a natural person who is an associated person of a broker or dealer ahead of the interests of investors; and

(4) A review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation as well as a review of the written descriptions established pursuant to this section.

■ 3. Amend § 240.17a–3 by adding paragraph (a)(36) to read as follows:

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

* * * * *

(a) * * *

* * * * * *

(36) All records required to be made and maintained pursuant to § 240.15l–2, including:

(i) Written documentation of the evaluation conducted pursuant to § 240.15l–2(b)(1), including:

(A) A list or other record of all *covered technologies* used in *investor interactions* by the broker or dealer, including:

(*1*) The date on which each *covered technology* is first implemented, and each date on which any *covered technology* is materially modified; and

(*2*) The broker or dealer's evaluation of the intended as compared to the actual use and outcome of each *covered technology* in *investor interactions.*

(B) Documentation describing any testing of the *covered technology* in accordance with § 240.15l–2(b)(1), including:

(*1*) The date on which testing was completed;

(*2*) The methods used to conduct the testing;

(*3*) Any actual or reasonably foreseeable potential *conflicts of interest* identified as a result of the testing;

(*4*) A description of any changes or modifications to the *covered technology* made as a result of the testing and the reason for those changes; and

(*5*) Any restrictions placed on the broker or dealer's use of the *covered technology* as a result of the testing.

(ii) Written documentation of each determination made pursuant to § 240.15l–2(b)(2), including the rationale for such determination.

(iii) Written documentation of each elimination or neutralization made pursuant to § 240.15l–2(b)(3).

(iv) The written policies and procedures prepared in accordance with § 240.15l–2(c), including any written description and the date on which the policies and procedures were last reviewed.

(v) A record of any disclosures provided to each *investor* regarding the broker or dealer's use of *covered technologies,* including, if applicable, the date such disclosure was provided or updated.

(vi) A record of each instance in which a *covered technology* was altered, overridden, or disabled, the reason for such action, and the date thereof, including a record of all instances where an *investor* requested that a *covered technology* be altered or restricted in any manner.

(vii) For the purposes of this paragraph, the terms *covered technology, investor, investor interaction,* and *conflict of interest* have the same meanings as set forth in § 240.15l–2.

■ 4. Amend § 240.17a–4 by amending paragraph (a) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(a) Every member, broker or dealer subject to § 240.17a–3 must preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.17a–3(a)(1) through (3), (5), (21), (22), and (36) and analogous records created pursuant to § 240.17a–3(e).

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 5. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 6. Amend § 275.204–2 by:
■ a. Adding and reserving paragraphs (a)(20) through (23); and
■ b. Adding paragraph (a)(24).

The addition reads as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(20)–(23) [Reserved]

(24) All records required to be made and maintained pursuant to § 275.211(h)(2)–4, including:

(i) Written documentation of the evaluation conducted pursuant to § 275.211(h)(2)–4(b)(1), including:

(A) A list or other record of all *covered technologies* used in *investor interactions* by the investment adviser, including:

(*1*) The date on which each *covered technology* is first implemented, and each date on which any *covered technology* is materially modified; and

(*2*) The investment adviser's evaluation of the intended as compared to the actual use and outcome of each *covered technology* in *investor interactions.*

(B) Documentation describing any testing of the *covered technology* in accordance with § 275.211(h)(2)–4(b)(1), including:

(*1*) The date on which testing was completed;

(*2*) The methods used to conduct the testing;

(*3*) Any actual or reasonably foreseeable potential *conflicts of interest* identified as a result of the testing;

(*4*) A description of any changes or modifications to the *covered technology* made as a result of the testing and the reason for those changes; and

(*5*) Any restrictions placed on the investment adviser's use of the *covered technology* as a result of the testing.

(ii) Written documentation of each determination made pursuant to § 275.211(h)(2)–4(b)(2), including the rationale for such determination.

(iii) Written documentation of each elimination or neutralization made pursuant to § 275.211(h)(2)–4(b)(3).

(iv) The written policies and procedures prepared in accordance with § 275.211(h)(2)–4(c), including any written description and the date on which the policies and procedures were last reviewed.

(v) A record of any disclosures provided to each *investor* regarding the investment adviser's use of *covered technologies,* including, if applicable, the date such disclosure was provided or updated.

(vi) A record of each instance in which a *covered technology* was altered, overridden, or disabled, the reason for such action, and the date thereof, including a record of all instances where an investor requested that a *covered technology* be altered or restricted in any manner.

(vii) For the purposes of this paragraph, the terms *covered technology, investor, investor interaction,* and *conflict of interest* have the same meanings as set forth in § 275.211(h)(2)–4.

■ 7. Add § 275.211(h)(2)–4 to read as follows:

§ 275.211(h)(2)–4 Prohibition against conflicts associated with investor interactions employing covered technology.

(a) *Definitions.* For purposes of this section:

Conflict of interest exists when an investment adviser uses a covered technology that takes into consideration an interest of the investment adviser, or a natural person who is a person associated with the investment adviser.

Covered technology means an analytical, technological, or computational function, algorithm, model, correlation matrix, or similar method or process that optimizes for, predicts, guides, forecasts, or directs investment–related behaviors or outcomes.

Investor means any prospective or current client of an investment adviser or any prospective or current investor in a pooled investment vehicle (as defined in § 275.206(4)–8) advised by the investment adviser.

Investor interaction means engaging or communicating with an investor, including by exercising discretion with respect to an investor's account; providing information to an investor; or soliciting an investor; except that the term does not apply to interactions solely for purposes of meeting legal or regulatory obligations or providing clerical, ministerial, or general administrative support.

(b) *Elimination or neutralization of the effect of conflicts of interest.* An investment adviser that is registered or required to be registered under section 203 of the Act must:

(1) Evaluate any use or reasonably foreseeable potential use of a covered technology by the investment adviser, or a natural person who is a person associated with the investment adviser, in any investor interaction to identify any conflict of interest associated with that use or potential use (including by testing each such covered technology prior to its implementation or material modification, and periodically thereafter, to determine whether the use of such covered technology is associated with a conflict of interest);

(2) Determine if any conflict of interest identified pursuant to paragraph (b)(1) of this section places or results in placing the interest of the investment adviser, or a natural person who is a person associated with the investment adviser, ahead of the interests of investors; and

(3) Eliminate, or neutralize the effect of, any conflict of interest (other than conflicts of interest that exist solely because the investment adviser seeks to open a new client account) determined pursuant to paragraph (b)(2) of this section to result in an investor interaction that places the interest of the investment adviser, or a natural person who is a person associated with the investment adviser, ahead of the interests of investors, promptly after the investment adviser determines, or reasonably should have determined, that the conflict of interest placed the interests of the investment adviser, or a natural person who is a person associated with the investment adviser, ahead of the interests of investors.

(c) *Policies and procedures.* An investment adviser that is subject to paragraph (b) of this section and that has any investor interaction using covered technology must adopt and implement written policies and procedures reasonably designed to prevent violations of paragraph (b) of this section, including:

(1) A written description of the process for evaluating any use or reasonably foreseeable potential use of a covered technology in any investor interaction pursuant to paragraph (b)(1) of this section and a written description of any material features of, including any conflicts of interest associated with the use of, any covered technology used in any investor interaction prior to such covered technology's implementation or material modification, which must be updated periodically;

(2) A written description of the process for determining whether any conflict of interest identified pursuant to paragraph (b)(1) of this section results in an investor interaction that places the interest of the investment adviser or a natural person who is a person

associated with the investment adviser ahead of the interests of investors;

(3) A written description of the process for determining how to eliminate, or neutralize the effect of, any conflicts of interest determined pursuant to paragraph (b)(2) of this section to result in an investor interaction that places the interest of the investment adviser or natural person who is a person associated with the investment adviser ahead of the interests of investors; and

(4) A review and written documentation of that review, no less frequently than annually, of the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation as well as a review of the written descriptions established pursuant to this section.

By the Commission.

Dated: July 26, 2023.

Vanessa A. Countryman,

Secretary.

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Part III

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226
Endangered and Threatened Species; Critical Habitat for the Threatened Caribbean Corals; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 230726–0177]

RIN 0648–BG26

Endangered and Threatened Species; Critical Habitat for the Threatened Caribbean Corals

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

ACTION: Final rule.

SUMMARY: We, NMFS, designate critical habitat for five threatened Caribbean coral species, *Orbicella annularis, O. faveolata, O. franksi, Dendrogyra cylindrus,* and *Mycetophyllia ferox,* pursuant to section 4 of the Endangered Species Act (ESA). Twenty-eight mostly overlapping specific occupied areas containing physical features essential to the conservation of these coral species are designated as critical habitat. These areas contain approximately 16,830 square kilometers (km^2; 6,500 square miles (mi^2)) of marine habitat. We have considered economic, national security, and other relevant impacts of designating these areas as critical habitat, and we exclude one area from the designations due to anticipated impacts on national security.

DATES: This rule becomes effective September 8, 2023.

ADDRESSES: The final rule, maps, and Final Information Report can be found on the NMFS website at *https://www.fisheries.noaa.gov/action/final-rule-designate-critical-habitat-threatened-caribbean-corals.*

FOR FURTHER INFORMATION CONTACT: Jennifer Moore, NMFS, SERO, 727–824–5312, *Jennifer.Moore@noaa.gov;* Celeste Stout, NMFS, Office of Protected Resources, 301–427–8436, *Celeste.Stout@noaa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12), this final rule is based on the best scientific data available concerning the range, biology, habitat, threats to the habitat, and conservation objectives for the threatened Caribbean boulder star coral (*Orbicella franksi*), lobed star coral (*O. annularis*), mountainous star coral (*O. faveolata*), pillar coral (*Dendrogyra cylindrus*), and rough cactus coral (*Mycetophyllia ferox*). We have reviewed the available data and public comments received on the proposed rule. We used the best data available to identify: (1) a composite physical feature essential to the conservation of each coral species; (2) the specific areas within the occupied geographical areas that contain the physical essential feature that may require special management considerations or protection; (3) the Federal activities that may impact the critical habitat; and (4) the potential impacts of designating critical habitat for the corals. This final rule is based on the biological information and the economic, national security, and other relevant impacts described in the document titled, Final Information Basis and Impact Considerations of Critical Habitat Designations for Threatened Caribbean Corals (Final Information Report). This supporting document is available at *https://www.regulations.gov* or upon request (see **ADDRESSES**).

Background

We listed 20 coral species as threatened under the ESA effective October 10, 2014 (79 FR 53851, September 10, 2014). Five of the corals occur in the Caribbean: *Orbicella annularis, O. faveolata, O. franksi, Dendrogyra cylindrus,* and *Mycetophyllia ferox.* The final listing determinations were based on the best scientific and commercial data available on a suite of demographic, spatial, and susceptibility factors that influence the species' vulnerability to extinction in the face of continuing threats over the foreseeable future. All of the species had undergone population declines and are susceptible to multiple threats, including ocean warming, diseases, ocean acidification, ecological effects of fishing, and land-based sources of pollution. However, aspects of the species' demography and distribution buffered the effects of the threats. We determined that all the Caribbean coral species were likely to become endangered throughout all of their ranges within a foreseeable future of the next several decades as a result of a combination of threats, of which the most severe are related to climate change, and we listed them as threatened.

On November 27, 2020, NMFS proposed to designate critical habitat for the five listed Caribbean coral species within U.S. waters, and opened a 60-day public comment period (85 FR 76302). The proposed coral critical habitat consisted of a substrate and water column feature essential for the reproduction, recruitment, growth, and maturation of the listed corals. A total of 28 mostly-overlapping areas within the species' ranges in Florida, Puerto Rico, the U.S. Virgin Islands (USVI), Navassa Island, and the Flower Gardens Banks were identified to contain the essential feature. The area covered by the Naval Air Station Key West (NASKW) Integrated Natural Resource Management Plan (INRMP) was ineligible for designation pursuant to section 4(a)(3)(B)(i) of the ESA due to the conservation benefits it affords the threatened corals. Pursuant to section 4(b)(2) of the ESA, only one area was proposed for exclusion from the designation on the basis of national security impacts, and no areas were proposed for exclusion on the basis of economic or other relevant impacts.

The proposed designation was developed in accordance with the ESA section 4 implementing regulations applicable at that time (in 50 CFR 424), which included changes made in 2019 to the definition of physical or biological feature and the designation of unoccupied critical habitat (84 FR 45020, August 27, 2019). On July 5, 2022, the U.S. District Court for the Northern District of California issued an order vacating the ESA section 4 implementing regulations that were revised or added to 50 CFR part 424 in 2019 (''2019 regulations''; 84 FR 45020, August 27, 2019) without making a finding on the merits. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order. On November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. The District Court issued a slightly amended order 2 days later on November 16, 2022. As a result, the 2019 regulations remain in effect, and we are applying the 2019 regulations here. For purposes of this designation and in an abundance of caution, we considered whether the analysis or conclusions would be any different under the pre-2019 regulations. We have determined that our analysis and conclusions related to the physical or biological features essential to conservation of the species would not be any different under the 2019 or pre-2019 regulations. Our analysis of unoccupied critical habitat would be different under the pre-2019 regulations but, as explained below, this does not change our prior conclusion that it is not appropriate to designate any unoccupied critical habitat.

Statutory and Regulatory Background for Critical Habitat Designations

The ESA defines critical habitat under section 3(5)(A) as the (1) specific areas

within the geographical area occupied by the species at the time it is listed, on which are found those physical or biological features essential to the conservation of the species (hereafter also referred to as ''PBFs'' or ''essential features'') and which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (16 U.S.C. 1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Our regulations provide that critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD) or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is designated. Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. Pursuant to this section, the Secretary may exclude any area from critical habitat upon determining that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the Secretary may not exclude areas if this will result in the extinction of the species.

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic location of critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. Critical habitat requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency. However, designating critical habitat can help focus the efforts of other conservation partners (*e.g.,* state and local governments, individuals, and non-governmental organizations).

Summary of Changes From the Proposed Rule

We evaluated the comments and information received from the public during the public comment period. Based on our consideration of these comments and information (as noted below in the Summary of Comments and Responses section), we made four substantive changes to the boundaries of critical habitat: (1) the reduction of the maximum depth of the Florida units from 90 m (295 ft) to 40 m (131 ft); (2) the addition of an area north of the Florida Keys within the Florida Keys National Marine Sanctuary (FKNMS) for the three *Orbicella* species; (3) the addition of Bright, McGrail, and Geyer Banks within the Flower Garden Banks National Marine Sanctuary (FGBNMS) for the three *Orbicella* species; and (4) the reduction of the shallow depth limit from 17 m (56 ft) to 16 m (53 ft) in the FGBNMS units. Together, these changes resulted in adding 1,622 sq km (626 sq mi) to the total area of designated critical habitat in FKNMS and 48 sq km (19 sq mi) to the total area of designated critical habitat in FGBNMS.

Reduction of the Maximum Depth of the Florida Units

In the proposed rule, we assumed *O. faveolata, O. franksi, and M. ferox* were present to 90 m (295 ft) in Florida, based on information on the depth limits of the species in other areas in the Caribbean. We received a public comment that the maximum depth limit of these species in Florida was 40 m (131 ft) based on personal observations. Furthermore, a new report on coral species distribution on the mesophotic reefs of Florida confirms that the deepest distribution of *O. faveolata, O. franksi, and M. ferox* is limited to 40 m (131 ft), with a few extremely rare occurrences slightly deeper (1 colony at 43 m (141 ft)) and the majority of the observations less than 37 m (121 ft) (Reed 2021). Based on this information, we changed the portions of the boundaries of the three Florida critical habitat units that were formerly based on the 90-m depth contour to the 40-m contour for *O. faveolata, O. franksi,* and *M. ferox.*

Addition of the Area North of the Florida Keys

We received a public comment that the three *Orbicella* species occur in the areas north of the Florida Keys in the FKNMS. Following receipt of this comment, we conducted a further inspection of the data we have collected on the locations of all ESA-listed corals. We also received additional location data specifically on the occurrence of these three species in the area north of the Florida Keys from the FKNMS. Based on this information, we are including this area in the Florida critical habitat units for *O. annularis, O. faveolata,* and *O franksi.*

Addition of Bright, McGrail, and Geyer Banks Within the FGBNMS

We received a public comment that the three *Orbicella* species occur at three additional banks within the FGBNMS. The FGBNMS provided data to support the presence of these species within Bright, McGrail, and Geyer Banks, which were recently added to the FGBNMS. Based on this information, we are adding these three banks to the FGBNMS critical habitat units for *O. annularis, O. faveolata,* and *O franksi.*

Changing the Shallow Depth Limit in the FGBNMS Units

We also received a public comment that the shallow depth limit of the three *Orbicella* species is 16 m (53 ft), not 17 m (56 ft) as we had proposed. Based on the information provided by the FGBNMS, we are changing the shallow depth limit to 16 m in the Flower Garden Banks (FGB) critical habitat units for *O. annularis, O. faveolata,* and *O franksi.*

Other Changes

In addition to these four substantive changes in the final rule, we also made some minor, clarifying changes to the final rule, and to the Final Information Report and its appendices, in response to public comments and new information. Specifically, we made two minor edits to the regulatory language for clarity. The first edit revises the first two sentences of the description of the essential feature to more clearly articulate that this feature is comprised of the sites that support the normal function of all life stages. The second

minor edit is to change ''does not'' to ''cannot'' in paragraph (d)(2). This second minor edit is intended to clarify, and thus improve the understanding of, this sentence. All sections of the Final Information Report were updated with information based on the additional reports and studies. The final economic impact analysis took into account the latest economic data and ESA section 7 consultation history, and the Final Regulatory Flexibility Analysis took into account the latest economic information and data. Note, however, that, as in the proposed rule, this final rule does not include any economic exclusions.

Summary of Comments and Responses

We solicited comments on the proposed rule and its supporting documents in a 60-day public comment period (85 FR 76302; November 27, 2020). To facilitate public participation, the proposed rule was made available on our website and comments were accepted via both standard mail and through the Federal eRulemaking portal, *www.regulations.gov.*

We received 552 comments through *www.regulations.gov,* which included a combination of comments in support of the action, comments providing additional information, and comments requesting changes to the rule. In addition, we received one comment submission containing a list of 20,566 signatories to a campaign by the Center for Biological Diversity in support of the proposed rule. Comments were received from a range of sources including global and local environmental non-profit groups, local, state, and federal government agencies, trade associations, and concerned citizens. Of the 552 comments submitted, most expressed general support for the proposed rule but did not include substantive content. We considered all public comments and below we provide responses to all substantive issues raised by commenters that are relevant to the proposed coral critical habitat. We do not respond to comments or concerns that we received outside the scope of this rulemaking. As described above in the Summary of Changes from the Proposed Rule section, we incorporated information provided by commenters into the Final Information Report and this final rule.

Comments on the Essential Feature

Comment 1: One commenter requested that we add a quantitative threshold to the temperature component of the water quality attribute of the essential feature and suggested it could be reworded to ''Marine water with temperatures (not to exceed 1.0 °C of location-specific total warming), aragonite saturation, nutrients, and water clarity that have been observed to support any demographic function.'' The commenter provided two references to support the 1 °C threshold, Donner *et al.,* 2005 and Donner *et al.,* 2009.

Response: In the Draft Information Report and the proposed rule, we described the conditions that may lead to thermal stress, citing several studies that identify the various intensities and durations that lead to stress and mortality. We reviewed the references provided by the commenter, and they have been added to the Final Information Report and this final rule. The majority of this information further supported the information already included in the proposed rule and Draft Information Report. However, we also explained that temperature thresholds are variable in both time (*e.g.,* season) and geographic location (*i.e.,* latitude and longitude) and may be nonlinear. Therefore, we determined that it is not appropriate to identify a standard threshold that applies to all locations and temporal scales as described in the *Physical or Biological Feature Essential to Conservation* section below.

Comment 2: One commenter stated that the designation ''. . . does not take into consideration the protection for any habitats critical to those species that are involved in crucial interactions with the coral species.''

Response: We understand this comment to mean that we did not consider habitats that support other species, such as parrotfish, that provide specific beneficial functions for healthy coral reefs. The ESA requires us to designate critical habitat for listed species, not associated species such as parrotfish. The proposed rule contemplated the physical and biological features essential to the conservation of the threatened corals and identified one composite feature that supports successful reproduction, recruitment, survival, and growth of all life stages of the five coral species. We did not identify any other features that are essential to the conservation of these species. Coral reef ecosystems are a complex mosaic of habitat and species interactions. The composite essential feature does include many of those interactions within the attributes that determine the quality of the area that contains the essential feature and influences the value of the associated feature. For example, one attribute of the substrate component of the essential feature is low occupancy by fleshy and turf macroalgae, which is mediated by herbivores. Therefore, species interactions that influence the essential feature have already been contemplated in the critical habitat designations.

Comments on the Boundaries of Critical Habitat Areas

Comment 3: One commenter requested that we add the area on the north side of the Florida Keys (also known as ''the backcountry'') within the FKNMS to the critical habitat designations for the three *Orbicella* species due to their presence in that area. The commenter also requested we look at monitoring data to determine the presence of *Mycetophyllia ferox* in the same area and include that species within the designation if the species is present.

Response: Based on the information provided by the commenter and our review of various monitoring reports, we agree that the area north of the Florida Keys within the boundaries of the FKNMS are occupied by the 3 *Orbicella* spp. and these areas are now included in the final designation. We did not find any evidence of *Mycetophyllia ferox* being present within the area; therefore, we are not including the area within the designation for that species.

Comment 4: One commenter requested that we add several areas in the FGBNMS. They requested that we add the occupied areas within McGrail, Bright, and Geyer Banks. They also requested that we add the unoccupied areas of Stetson and Sonnier Banks. Last, they requested that the shallow depth limit be 16 m (53 ft), rather thant 17 m (56 ft) as identified in the proposed rule.

Response: As discussed above in the Summary of Changes from the Proposed Rule section, we have included the occupied areas within McGrail, Bright, and Geyer Banks in the final designation. However, as described in the *Unoccupied Critical Habitat Areas* section below, neither the proposed rule nor this final rule include any unoccupied areas within the final designation; therefore, we are not including Stetson and Sonnier Banks. In addition, we have changed the shallow depth limit to 16 m for all occupied areas within the final designation, based on the information that the FGBNMS provided on the depth distribution of these species on these banks.

Comment 5: One commenter requested that we not include the Dry Tortugas National Park within the critical habitat designation citing the remoteness of the area and existing protections afforded by being a national park.

Response: The ESA defines critical habitat as: (i) the specific areas within

the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, upon a determination by the Secretary that such areas are essential for the conservation. If an area is occupied by the species, contains the essential feature, and may require special management, it meets the definition of critical habitat unless there is a specific basis to exclude the area (*i.e.,* national security or economic, with the benefits of exclusion outweigh the benefits of designating the area). The areas within the boundaries of the Dry Tortugas National Park meet the ESA definition of critical habitat. Furthermore, we did not identify any basis for exclusion (national security, economic, or other relevant) of this area. Although the area in the Dry Tortugas National Park is remote and has existing protections, the area is essential to the conservation of the threatened corals, and it is included in the final designation.

Comment 6: One commenter requested that we extend the offshore depth boundary for *Orbicella annularis* in the U.S. Virgin Islands to 80 m (263 ft).

Response: The commenter did not provide any evidence of the presence of *O. annularis* deeper than 20 m in the U.S. Virgin Islands. We do not have any record of the species occurring deeper than 20 m. Therefore, we did not change the boundary for *O. annularis* in the U.S. Virgin Islands.

Comments on the Threats to Critical Habitat

Comment 7: One commenter stated that the current levels of dissolved inorganic nitrogen concentrations in Florida are detrimental to corals.

Response: In the proposed rule and Draft Information Report, we identify that excess nutrients, which include inorganic nitrogen, are a threat to corals and their habitat. Excess nutrients are included in the critical habitat designation as part of the attribute, ''nutrient levels that have been observed to support any demographic function'' of the essential feature.

Comment 8: One commenter requested that we include the impact on oil and gas exploration and development in areas that may be affected by oil- and gas-related activity in our analysis of the impact of critical habitat, specifically in the Gulf of Mexico, given the location of the Flower Gardens Banks.

Response: We have included an analysis of potential future consultations on oil and gas exploration in the Final Information Report. We concur that oil and gas exploration and development may affect the essential feature and would be subject to ESA section 7 consultation. Any future Federal activities that may affect the essential feature within the designated critical habitat would require consultation.

Comment 9: One commenter expressed concern that the decision not to include ''managed areas,'' such as dredged channels and harbors, in the designation of critical habitat could be detrimental to the survival of corals in the surrounding areas.

Response: We agree that sedimentation caused by channel dredging is a threat to the five coral species and their habitat. All Federal actions involving potential effects of sedimentation on the threatened corals or their designated critical habitat will be subject to ESA section 7 consultation. However, those areas that are consistently disturbed and that will continue to be disturbed as part of planned management activities by local, state, or Federal government entities (as of the time this rule becomes effective) do not support the essential feature, and, therefore, designation of those areas would not provide for the conservation of the species.

Comment 10: One commenter discussed our identification of sunscreen ingredients as a threat to corals. They stated that the European Chemicals Agency and the U.S. Environmental Protection Agency (EPA) have data reliability assessment guidelines to determine whether a peer-reviewed study can be used for an environmental risk assessment (ERA). They also stated that Benzophenone-2 is not an approved ultraviolet (UV) filter in the United States and should not be referenced in the rule.

Response: In the Final Information Report and this final rule (as in the proposed rule), we include the best available information on the threats to corals and their habitat, which includes literature on the impacts of chemicals included in sunscreens and personal care products on corals. Our standard is to use the best available information in designating critical habitat. Thus, we included the best available information on the contaminants that have been found to cause adverse effects in corals, including Benzophenone-2. Furthermore, the reference to the EPA data reliability assessment guidelines for ERAs is not relevant to a critical habitat designation under the ESA. ERAs are a separate Federal process for a separate purpose.

Natural History

This section summarizes life history and biological characteristics of the five corals to provide context for the identification of the physical and biological features essential for the conservation of these species. In this section, we cover several topic areas, including an introduction to reef-building corals, reproduction, settlement and growth, coral habitat types, and coral reef ecosystems. The amount of information available on life history, reproductive biology, and ecology varies for each of the five corals that occur in U.S. waters of the Caribbean. We provide specific information for each species where possible. In addition, we provide information on the biology and ecology of Caribbean corals in general, highlighting traits that these five corals share. The information below is largely summarized from the final listing rule (79 FR 53852, September 10, 2014), and updated with the best scientific information available to date.

Reef-building corals, in the phylum Cnidaria, are marine invertebrates that occur as polyps. The Cnidaria include true stony corals (class Anthozoa, order Scleractinia), the blue coral (class Anthozoa, order Helioporacea), and fire corals (class Hydrozoa, order Milleporina). These species secrete massive calcium carbonate skeletons that form the physical structure of coral reefs. Reef-building coral species collectively produce coral reefs over time when growth outpaces erosion. Corals may also occur on hard substrate that is interspersed among other benthic features (*e.g.,* seagrass beds in the back reef lagoon) in the coral reef ecosystem, but not on the physical structure of coral reefs. Corals also contain symbiotic algae within their cells. As described below, corals produce clones of themselves by several different means, and most corals occur as colonies of polyps.

Reef-building corals are able to grow and thrive in the characteristically nutrient-poor environments of tropical and subtropical regions due to their ability to form mutually beneficial symbioses with unicellular photosynthetic algae (zooxanthellae) belonging to the dinoflagellate genus *Symbiodinium* living within the host coral's tissues. Zooxanthellae provide a

food source for their host by translocating fixed organic carbon and other nutrients. In return, the algae receive shelter and nutrients in the form of inorganic waste metabolites from host respiration. This exchange of energy, nutrients, and inorganic metabolites allows the symbiosis to flourish and helps the coral secrete the calcium carbonate that forms the skeletal structure of the coral colony, which in turn contributes to the formation of the reef. Thus, reef-building corals are also known as zooxanthellate corals. Some corals, which do not contain zooxanthellae, form skeletons much more slowly, and therefore are not considered reef-building. The five corals discussed in this rule are zooxanthellate species, and thus are reef-building species that can grow large skeletons that contribute to the physical structure of coral reefs.

Only about 10 percent of the world's approximately 800 reef-building coral species occur in the Caribbean. The acroporids were once the most abundant and most important species on Caribbean coral reefs in terms of accretion of reef structure, characterizing the ''palmata'' and ''cervicornis'' zones in the classical descriptions of Caribbean reefs (Goreau, 1959). The three species (*O. annularis, O. faveolata,* and *O. franski*) in the *Orbicella* star coral species complex have also been dominant components on Caribbean coral reefs, characterizing the ''buttress zone'' and ''annularis zone.'' After the die-off of *Acropora* spp., the star coral species complex became the major reef-builder in the greater Caribbean due to their large size.

Most reef-building coral species are colonial, producing colonies made up of polyps that are connected through tissue and skeleton. In a colonial species, a single larva will develop into a discrete unit (the primary polyp) that then produces modular units of itself (*i.e.,* genetically-identical copies, or clones, of the primary polyp). Each polyp consists of a column with mouth and tentacles on the upper side growing on top of a calcium carbonate skeleton that the polyps produced through the process of calcification. Colony growth is achieved mainly through the addition of more cloned polyps. The colony can continue to exist even if numerous polyps die or if the colony is broken apart or otherwise damaged. The five corals are all colonial species, although polyp size, colony size, and colony morphology vary considerably by species, and can also vary based on environmental variables in different habitats. Colonies can produce clones, most commonly through fragmentation or budding (described in more detail below). The five corals are all clonal species with the ability to produce colonies of cloned polyps as well as clones of entire colonies. The way they produce colony-level clones varies by species. For example, branching species are much more likely than encrusting species to produce clones via fragmentation.

Corals use a number of reproductive strategies that have been researched extensively; however, many individual species' reproductive modes remain poorly described. Most coral species use both sexual and asexual propagation. Sexual reproduction in corals is primarily through gametogenesis (*i.e.,* the development of eggs and sperm within the polyps near the base). Some coral species have separate sexes (gonochoric), while others are hermaphroditic (individuals simultaneously containing both sexes), and others are a combination of both (Richmond, 1997). Strategies for fertilization are either by brooding (internal fertilization) or broadcast spawning (external fertilization). Asexual reproduction in coral species usually occurs by fragmentation, when colony pieces or fragments are dislodged from larger colonies to establish new colonies, or by the budding of new polyps within a colony.

Depending on the mode of fertilization, coral larvae (called planulae) undergo development either mostly within the mother colony (brooders) or outside of the mother colony, adrift in the ocean (broadcast spawners). In either mode of larval development, larvae presumably experience considerable mortality (up to 90 percent or more) from predation or other factors prior to settlement and metamorphosis (Goreau *et al.,* 1981). Such mortality cannot be directly observed, but is inferred from the large number of eggs and sperm spawned versus the much smaller number of recruits observed later. Coral larvae are relatively poor swimmers; therefore, their dispersal distances largely depend on the duration of the pelagic phase and the speed and direction of water currents transporting the larvae.

All three species of the *Orbicella* star coral species complex are hermaphroditic broadcast spawners, spawning over a 3-night period, 6 to 8 nights following the full moon in late August, September, or early October (Levitan *et al.,* 2004). Fertilization success measured in the field was generally below 15 percent for all three species and correlated to the number of colonies concurrently spawning (Levitan *et al.,* 2004). The minimum colony size at first reproduction for the *Orbicella* species complex is 83 cm^2 (Szmant-Froelich, 1985). Successful recruitment by the *Orbicella* species has seemingly always been rare with many studies throughout the Caribbean reporting negligible to no recruitment (Bak and Engel, 1979; Hughes and Tanner, 2000; Rogers *et al.,* 1984; Smith and Aronson, 2006).

Dendrogyra cylindrus is a gonochoric (having separate sexes) broadcast spawning species with relatively low annual egg production for its size. The combination of gonochoric spawning with persistently low population densities is expected to yield low rates of successful fertilization and low larval supply. Spawning has been observed several nights after the full moon of August in the Florida Keys (Neely *et al.,* 2013; Waddell and Clarke, 2008). In Curaçao, *D. cylindrus* was observed to spawn over a 3-night period, 2–5 nights after the full moons in August and September (Marhaver *et al.,* 2015). Lab-reared embryos developed into swimming planulae larvae within 16 hours after spawning and were competent to settle relatively soon afterward (Marhaver *et al.,* 2015). Despite the short duration from spawn to settlement competency in the lab, sexual recruitment of this species is low, and there are no reported juvenile colonies in the Caribbean (Bak and Engel, 1979; Chiappone, 2010; Rogers *et al.,* 1984). *Dendrogyra cylindrus* can propagate by fragmentation following storms or other physical disturbance (Hudson and Goodwin, 1997). Recent investigations determined that there is no genetic differentiation along the Florida Reef Tract, meaning that all colonies belong to a single mixed population (Baums *et al.,* 2016). The same study found that all sampled colonies from Curaçao belonged to a single population that was distinct from the Florida population. Similar studies have not been conducted elsewhere in the species' range.

Mycetophyllia ferox is a hermaphroditic brooding species producing larvae during the winter months (Szmant, 1986). Brooded larvae are typically larger than broadcast spawned larvae and are expected to have higher rates of survival once settled. However, recruitment of *M. ferox* appears to be very low, even in studies from the 1970s (Dustan, 1977; Rogers and Garrison, 2001).

Spatial and temporal patterns of coral recruitment are affected by substrate availability and community structure, grazing pressure, fecundity, mode and timing of reproduction, behavior of larvae, hurricane disturbance, physical

oceanography, the structure of established coral assemblages, and chemical cues. Additionally, several other factors may influence reproductive success and reproductive isolation, including external cues, genetic precision, and conspecific signaling.

Like most corals, the threatened Caribbean corals require hard, consolidated substrate, including attached, dead coral skeleton, for their larvae to settle. The settlement location on the substrate must be free of macroalgae, turf algae, or sediment for larvae to attach and begin growing a colony. Further, the substrate must provide a habitat where burial by sediment or overgrowth by competing organisms (*i.e.,* algae) will not occur. In general, on proper stimulation, coral larvae settle and metamorphose on appropriate hard substrates. Some evidence indicates that chemical cues from crustose coralline algae (CCA), microbial films, and other reef organisms or acoustic cues from reef environments stimulate planulae's settlement behaviors. Calcification of the newly-settled larva begins with the forming of the basal plate. Buds formed on the initial corallite develop into daughter corallites. Once larvae have metamorphosed onto appropriate hard substrate, metabolic energy is diverted to colony growth and maintenance. Because newly settled corals barely protrude above the substrate, juveniles need to reach a certain size to limit damage or mortality from threats such as grazing, sediment burial, and algal overgrowth. In some species, it appears there is virtually no limit to colony size beyond the structural integrity of the colony skeleton, as polyps apparently can bud indefinitely.

Polyps are the building blocks of colonies, and colony growth occurs both by increasing the number of polyps, as well as extending the supporting skeleton under each polyp. Reef-building corals combine calcium and carbonate ions derived from seawater into crystals that form their skeletons. Skeletal expansion rates vary greatly by taxa, morphology, location, habitat and other factors. For example, in general, branching species (*e.g.,* most *Acropora* species) have much higher skeletal extension rates than massive species (*e.g., Orbicella* species). The energy required to produce new polyps and build calcium carbonate skeleton is provided by the symbiotic relationship corals have with photosynthetic zooxanthellae. Therefore, corals need light for their zooxanthellae to photosynthesize and provide the coral with food, and thus also require low turbidity for energy, growth, and survival. Lower water clarity sharply reduces photosynthesis in zooxanthellae and results in reductions in adult colony calcification and survival (79 FR 53852, September 10, 2014). Some additional information on the biological requirements for reproduction, settlement, and growth is provided below in the *Physical or Biological Features Essential to Conservation* section.

Coral reefs are fragile ecosystems that exist in a narrow band of environmental conditions that allow the skeletons of reef-building coral species to grow quickly enough for reef accretion to outpace reef erosion. High-growth conditions for reef-building corals include clear, warm waters with abundant light, and low levels of nutrients, sediments, and freshwater.

There are several categories of coral reefs: fringing reefs, barrier reefs, patch reefs, platform reefs, and atolls. Despite the differences between the reef categories, most fringing reefs, barrier reefs, atolls, and platform reefs consist of a reef slope, a reef crest, and a back-reef, which in turn are typically characterized by distinctive habitats. The characteristics of these habitat types vary greatly by reef categories, locations, latitudes, frequency of disturbance, *etc.,* and there is also much habitat variability within each habitat type. Temporal variability in coral habitat conditions is also very high, both cyclically (*e.g.,* from tidal, seasonal, annual, and decadal cycles) and episodically (*e.g.,* storms, temperature anomalies, *etc.*). Together, all these factors contribute to the habitat heterogeneity of coral reefs.

The five corals vary in their recorded depth ranges and habitat types. Additionally, each species has different depth ranges depending on the geographic location. All five corals generally have overlapping ranges and occur throughout the wider-Caribbean. The major variance in their distributions occurs at the northern-most extent of their ranges in FGBNMS in the northwest Gulf of Mexico. As described below, critical habitat can be designated only in areas under U.S. jurisdiction, thus we provide the species' distribution in U.S. waters.

Critical Habitat Identification and Designations

The purpose of designating critical habitat is to identify the areas that are essential to the species' recovery. Once critical habitat is designated, it can contribute to the conservation of listed species in several ways, including by identifying areas where Federal agencies can focus their section 7(a)(1) conservation programs, and helping focus the efforts of other conservation partners, such as States and local governments, nongovernmental organizations, and individuals (81 FR 7414, February 11, 2016). Designating critical habitat also provides significant regulatory protection by ensuring that Federal agencies consider the effects of their actions in accordance with section 7(a)(2) of the ESA and avoid or modify those actions that are likely to destroy or adversely modify critical habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions are not likely to jeopardize the continued existence of ESA-listed species. Critical habitat requirements do not apply to citizens engaged in activities that do not involve a Federal agency. However, section 3(5)(C) of the ESA clarifies that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

Our step-wise approach for identifying potential critical habitat areas for the threatened corals was to determine: (1) the geographical area occupied by each coral at the time of listing; (2) the physical or biological features essential to the conservation of the corals; (3) whether those features may require special management considerations or protection; (4) the specific areas of the occupied geographical area where these features occur; and, (5) whether any unoccupied areas are essential to the conservation of any of the corals.

Geographical Area Occupied by the Species

''Geographical area occupied'' in the definition of critical habitat is defined as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02). The ranges of the five threatened corals span the wider-Caribbean, and specifically include marine waters around Florida, Puerto Rico, USVI and Navassa in the United States (79 FR 53851, September 10, 2014). We did not consider geographical areas outside of the United States, because we cannot designate critical habitat areas outside of U.S. jurisdiction (50 CFR 424.12(g)).

Physical or Biological Features Essential to Conservation

Within the geographical area occupied, critical habitat consists of specific areas on which are found those PBFs essential to the conservation of the species and that may require special management considerations or protection. PBFs essential to the conservation of the species are defined as the features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02).

One of the first steps in recovery planning we completed after listing these coral species was to develop a Recovery Outline that contains a Recovery Vision, which describes what the state of full recovery looks like for the species. We identified the following Recovery Vision for the five corals listed in 2014: populations of the five threatened Caribbean corals should be present across their historical ranges, with populations large enough and genetically diverse enough to support successful reproduction and recovery from mortality events and dense enough to maintain ecosystem function (*https://www.fisheries.noaa.gov/resource/document/5-caribbean-coral-species-recovery-outline*). Recovery of these species will require conservation of the coral reef ecosystem through threats abatement to ensure a high probability of survival into the future (NMFS, 2015). The key conservation objective that facilitates this Recovery Vision, and that can be assisted through these critical habitat designations, is supporting successful reproduction and recruitment, and survival and growth of all life stages, by abating threats to the corals' habitats. In the final listing rule, we identified the major threats contributing to the five corals' extinction risk: ocean warming, disease, ocean acidification, trophic effects of reef fishing, nutrient enrichment, and sedimentation. Five of the six major threats (*i.e.,* all but disease) impact corals in part by changing the corals' habitat, making it unsuitable for them to carry out the essential functions at all life stages. Although they were not considered to be posing a major threat at the time of listing, we also identified contaminants as a potential threat to each of these corals (79 FR 53852, September 10, 2014). Thus, we identify ocean warming, ocean acidification, trophic effects of reef fishing, nutrient enrichment, sedimentation, and contaminants as the threats to the five corals' habitat that are impeding their recovery. Protecting essential features of the corals' habitat from these threats will facilitate the recovery of these threatened species.

There are many physical and biological features that are important in supporting the corals' habitat; therefore, we focused on a composite habitat feature that supports their conservation through its relevance to the major threats and threats impeding recovery. The essential feature we ultimately identified is sites with a complex combination of substrate and water column characteristics that support normal functions of all life stages of the corals. Because corals are sessile for almost their entire life cycle, they carry out most of their demographic functions in one location. Thus, we have identified sites with a combination of certain substrate and water column characteristics as the essential feature. Specifically, these sites have attributes that determine the quality of the appropriate attachment substrate, in association with warm, aragonite-supersaturated, oligotrophic, clear marine water, which are essential to reproduction and recruitment, survival, and growth of all life stages of all five species of coral. These sites can be impacted by ocean acidification and ocean warming, trophic effects of reef fishing, nutrient enrichment, sedimentation, and contamination.

Based on the best scientific information available we identified the following essential physical feature for the five corals:

Sites that support the normal function of all life stages of the corals, including reproduction, recruitment, and maturation. These sites are natural, consolidated hard substrate or dead coral skeleton free of algae and sediment at the appropriate scale at the point of larval settlement or fragment reattachment, and the associated water column. Several attributes of these sites determine the quality of the area and influence the value of the associated feature to the conservation of the species:

(1) Substrate with presence of crevices and holes that provide cryptic habitat, the presence of microbial biofilms, or presence of crustose coralline algae;

(2) Reefscape (all the visible features of an area of reef) with no more than a thin veneer of sediment and low occupancy by fleshy and turf macroalgae;

(3) Marine water with levels of temperature, aragonite saturation, nutrients, and water clarity that have been observed to support any demographic function; and

(4) Marine water with levels of anthropogenically-introduced (from humans) chemical contaminants that do not preclude or inhibit any demographic function.

Some new information relevant to the essential feature has been added to the Final Information Report and this final rule. The new information did not result in any changes to the definition of the essential feature from the proposed rule, although this final rule includes minor clarifying edits in the definition, as described in the Summary of Changes from Proposed Rule section.

As described in detail in the Final Information Report, all corals require exposed natural consolidated hard substrate for the settlement and recruitment of larvae or asexual fragments. Recruitment substrate provides the physical surface and space necessary for settlement of coral larvae, and a stable environment for metamorphosis of the larvae into the primary polyp, growth of juvenile and adult colonies, and re-attachment of fragments. The substrate must be available at appropriate physical and temporal scales for attachment to occur. In other words, the attachment location must be available at the physical scale of the larva or fragment, and at the temporal scale of when the larva or fragment is ''seeking'' recruitment. Larvae can also settle and attach to consolidated dead coral skeleton (Grober-Dunsmore *et al.,* 2006; Jordán-Dahlgren, 1992).

A number of features have been shown to influence coral larval settlement. Positive cues include the presence of particular species of crustose coralline algae (Morse and Morse, 1996; Ritson-Williams *et al.,* 2010), microbial biofilms (Sneed *et al.,* 2014; Webster *et al.,* 2004), and cryptic habitat such as crevices and holes (Edmunds *et al.,* 2004; Edwards *et al.,* 2014; Nozawa, 2012). Features that negatively affect settlement include presence of sediment, turf algae, sediment bound in turf algae, and macroalgae (Birrell *et al.,* 2005; Kuffner *et al.,* 2006; Richmond *et al.,* 2018; Speare *et al.,* 2019; Vermeij *et al.,* 2009). While sediment, turf algae, and macroalgae are all natural features of the coral reef ecosystem, it is the relative

proportion of free space versus occupied space that influences recruitment; recruitment rate is positively correlated with free space (Connell *et al.,* 1997). The recruitment substrate feature is adversely affected by four of the major threats to the five corals: ocean acidification, trophic effects of reef fishing, nutrient enrichment, and sedimentation.

The dominance of fleshy macroalgae as major space-occupiers on many Caribbean coral reefs impedes the recruitment of new corals. A shift in benthic community structure over recent decades from the dominance of stony corals to fleshy algae on Caribbean coral reefs is generally attributed to the greater persistence of fleshy macroalgae under reduced grazing regimes due to human overexploitation of herbivorous fishes (Edwards *et al.,* 2014; Hughes, 1994; Jackson *et al.,* 2014) and the regional mass mortality of the herbivorous long-spined sea urchin in 1983–84 (Hughes *et al.,* 1987). As overall coral cover has declined, the absolute area occupied by macroalgae has increased and herbivore grazing capacity is spread more thinly across a larger relative amount of space (Williams *et al.,* 2001). A recent study found that when herbivorous fish biomass was relatively high, macroalgae declined and juvenile coral density increased (Steneck 2019). Further, impacts to water quality (principally nutrient input) coupled with low herbivore grazing are also believed to enhance fleshy macroalgal productivity. Fleshy macroalgae are able to colonize dead coral skeleton and other available substrate, preempting space available for coral recruitment (McCook *et al.,* 2001; Pastorok and Bilyard, 1985). The increasing frequency of coral mortality events, such as the 2014–2016 global bleaching event, continues to increase the amount of dead skeleton available to be colonized by algae in the absence of coral recruitment.

The persistence of fleshy macroalgae under reduced grazing regimes also negatively impacts CCA growth, potentially reducing settlement cues, which may reduce settlement of coral larvae (Sharp *et al.,* 2010). Most CCA are susceptible to fouling by fleshy algae, particularly when herbivores are absent (Steneck, 1986). Patterns observed in St. Croix and USVI, also indicate a strong positive correlation between CCA abundance and herbivory (Steneck and Testa, 1997). Both turf and macroalgal cover increases and CCA cover decreases with reductions in herbivory, which may last for a period of time even when herbivores are reintroduced (de Ruyter van Steveninck and Bak, 1986; Liddell and Ohlhorst, 1986; Miller *et al.,* 1999). The ability of fleshy macroalgae to affect growth and survival of CCA has indirect, yet important, impacts on the ability of coral larvae to successfully settle and recruit.

In addition to the direct impacts of ocean acidification on the corals from reduced aragonite saturation state (discussed later in this section), significant impacts to recruitment habitat are also expected. Kuffner *et al.* (2007) and Jokiel *et al.* (2008) showed dramatic declines in the growth rate of CCA and other reef organisms, and an increase in the growth of fleshy algae at atmospheric CO_2 levels expected later this century. The decrease in CCA growth, coupled with rapid growth of fleshy algae, will result in less available habitat and more competition for settlement and recruitment of new coral colonies.

Several studies show that coral recruitment tends to be greater when macroalgal biomass is low (Birrell *et al.,* 2008a; Birrell *et al.,* 2005; Birrell *et al.,* 2008b; Connell *et al.,* 1997; Edmunds *et al.,* 2004; Hughes, 1985; Kuffner *et al.,* 2006; Rogers *et al.,* 1984; Vermeij, 2006). In addition to preempting space for coral larvae settlement, many fleshy macroalgae produce secondary metabolites with generalized toxicity that also may inhibit larval settlement, recruitment, and survival (Kuffner and Paul, 2004; Kuffner *et al.,* 2006; Paul *et al.,* 2011). Furthermore, algal turfs can trap sediments (Kendrick, 1991; Nugues and Roberts, 2003a; Purcell and Bellwood, 2001; Purcell, 2000; Steneck and Testa, 1997; Wilson and Harrison, 2003), which can act in combination to hinder coral settlement (Birrell *et al.,* 2005; Nugues and Roberts, 2003a). These turf algae-sediment mats also can suppress coral growth under high sediment conditions (Nugues and Roberts, 2003b) and may gradually kill the marginal tissues of stony corals with which they come into contact (Dustan, 1977). There is also evidence that benthic cyanobacterial mats are becoming more prevalent and can also inhibit coral recruitment (Benjarano 2018).

Coral recruitment habitat is also adversely impacted by sediment cover, itself. Sediments enter the reef environment through many processes that are natural or anthropogenic in origin, including coastal erosion, coastal development, resuspension of bottom sediments, terrestrial erosion and run-off, in-water construction, dredging for coastal construction projects and navigation purposes, and in-water and beach placement of dredge spoils. The rate of sedimentation affects reef distribution, community structure, growth rates, and coral recruitment (Dutra *et al.,* 2006). Accumulation of sediment can smother living corals, cover dead coral skeleton, and exposed hard substrate (Erftemeijer *et al.,* 2012; Fabricius, 2005). Sediment accumulation on dead coral skeletons and exposed hard substrate reduces the amount of available substrate for coral larvae settlement and fragment reattachment (Rogers, 1990). The location of larval settlement must be free of sediment for attachment to occur (Harrington *et al.,* 2004; Mundy and Babcock, 1998).

The depth of sediments over hard substrate affects the duration that the substrate may be unavailable for settlement. The deeper the sediment, the longer it may take for natural waves and currents to remove the sediment from the settlement substrate. Lirman *et al.* (2003) found sediment depth next to live coral colonies was approximately 1 cm deep and significantly lower than the mean sediment depth collected haphazardly on the reef. Sediment deposition threshold criteria have recently been proposed for classifying sediment impacts to reef habitats based on threshold values in peer-reviewed studies and new modeling approaches (Nelson *et al.,* 2016). Nelson *et al.* (2016) suggest that sediment depth greater than 1 cm represents a significant impact to corals, while sediment between 0.5 and 1 cm depth represents a moderate impact, with the ability to recover. Nelson *et al.* (2016) identify sediment depth less than 0.5 cm as posing minimal stress to corals and settlement habitat.

Sediment grain size also affects the severity of impacts to corals and recruitment substrate. Fine grain sediments have greater negative effects to live coral tissue and to recruitment substrate (Erftemeijer *et al.,* 2012). Accumulation of sediments is also a major cause of mortality in coral recruits (Fabricius *et al.,* 2003). In some instances, if mortality of coral recruits does not occur under heavy sediment conditions, then settled coral planulae may undergo reverse metamorphosis and die in the water column (Te, 1992). Sedimentation, therefore, impacts the health and survivorship of all life stages (*i.e.,* adults, fragments, larvae, and recruits) of corals, in addition to adversely affecting recruitment habitat.

The literature provides several recommendations on maximum sedimentation rates for coral reefs (*i.e.,* levels that managers should strive to stay under). De'ath and Fabricius (2008) and The Great Barrier Reef Marine Park Authority (GBRMPA) (2010)

recommend that sedimentation on the Great Barrier Reef (GBR) be less than a mean annual rate of 3 mg/cm²/day, and less than a daily maximum of 15 mg/cm²/day. Rogers (1990) recommends that sedimentation rates on coral reefs globally be less than a mean maximum of 10 mg/cm²/day to maintain healthy corals, and also notes that moderate to severe effects on corals are generally expected at mean maximum sedimentation rates of 10 to 50 mg/cm²/day, and severe to catastrophic effects at >50 mg/cm²/day. Similarly, Erftemeijer *et al.* (2012) suggest that moderate to severe effects to corals are expected at mean maximum sedimentation rates of >10 mg/cm²/day, and catastrophic effects at >50 mg/cm²/day. Nelson *et al.* (2016) suggest that sediment depths of >0.5 cm result in substantial stress to most coral species, and that sediment depths of >1.0 cm are lethal to most coral species. The above generalizations are for coral reef communities and ecosystems, rather than individual species.

Sublethal effects of sediment to corals potentially occur at much lower levels than mortality. Sublethal effects include reduced growth, lower calcification rates and reduced productivity, bleaching, increased susceptibility to diseases, physical damage to coral tissue and reef structures (breaking, abrasion), and reduced regeneration from tissue damage (see reviews by Fabricius *et al.,* 2005; Erftemeijer *et al.,* 2012; Browne *et al.,* 2015; and Rogers, 1990). Erftemeijer *et al.* (2012) states that sublethal effects for coral species that are sensitive, intermediate, or tolerant to sediment (*i.e.,* most reef-building coral species) occur at mean maximum sedimentation rates of between <10 and 200 mg/cm²/day, depending on species, exposure duration, and other factors.

Artificial substrates and frequently disturbed ''managed areas'' are not essential to coral conservation. Only natural substrates provide the quality and quantity of recruitment habitat necessary for the conservation of threatened corals. Artificial substrates are generally less functional than natural substrates in terms of supporting healthy and diverse coral reef ecosystems (Edwards and Gomez, 2007; USFWS, 2004). Artificial substrates are manmade or introduced substrates that are not naturally occurring to the area. Examples include, but are not necessarily limited to, fixed and floating structures, such as aids-to-navigation (AToNs), jetties, groins, breakwaters, seawalls, wharves, boat ramps, fishpond walls, pipes, wrecks, mooring balls, docks, aquaculture cages, and other artificial structures. The essential feature does not include any artificial substrate. In addition, there are some natural substrates that, because of their consistently disturbed nature, also do not provide the quality of substrate necessary for the conservation of threatened corals. While these areas may provide hard substrate for coral settlement and growth over short periods, the periodic nature of direct human disturbance renders them poor environments for coral growth and survival over time (*e.g.,* they can become covered with sediment). Therefore, they are not essential to the conservation of the species. Specific areas that may contain these disturbed natural substrates are described in the *Specific Areas Containing the Essential Features* section of this rule.

The substrate characterized previously must be associated with water that also supports all life functions of corals that are carried out at the site. Water quality conditions fluctuate greatly over various spatial and temporal scales in natural reef environments (Kleypas *et al.,* 1999). However, certain levels of particular parameters (*e.g.,* water clarity, water temperature, aragonite saturation) must occur on average to provide the conditions conducive to coral growth, reproduction, and recruitment. Corals may tolerate and survive in conditions outside these levels, depending on the local conditions to which they have acclimatized and the intensity and duration of any deviations from conditions conducive to a particular coral's growth, reproduction, and recruitment. Deviations from tolerance levels of certain parameters result in direct negative effects on all life stages.

As described in the Final Information Report, corals thrive in warm, clear, nutrient-poor marine waters with calcium carbonate concentrations that allow for symbiont photosynthesis, coral physiological processes, and skeleton formation. The water must also have low to no levels of contaminants (*e.g.,* heavy metals, chemicals) that would interfere with normal functions of all life stages. Water quality that supports normal functions of corals is adversely affected by ocean warming, ocean acidification, nutrient enrichment, sedimentation, and contamination.

Seawater temperature is a particularly important limiting factor of coral habitat. Corals occur in a fairly-wide temperature range across geographic locations (15.7 °C–35.5 °C weekly average and 21.7–29.6 °C annual average; Guan *et al.,* 2015), but only thrive in areas with mean temperatures in a fairly-narrow range (typically 25 °C–29 °C) as indicated by the formation of coral reefs (Brainard *et al.,* 2011; Kleypas *et al.,* 1999; Stoddart, 1969; Vaughan, 1919). Short-term exposure (days) to temperature increases of a few degrees (*i.e.,* 3 °C–4 °C increase above climatological mean maximum summer temperature) or long-term exposure (several weeks) to minor temperature increases (*i.e.,* 1 °C–2 °C above mean maximum summer temperature) can cause significant thermal stress and mortality to most coral species (Berkelmans and Willis, 1999; Jokiel and Coles, 1990; Donner, 2005; Donner 2009).

Ocean warming is one of the most significant threats to the five ESA-listed Caribbean corals considered in this rule (Brainard *et al.,* 2011). Mean seawater temperatures in reef-building coral habitat in both the Caribbean and Indo-Pacific have increased during the past few decades, and are predicted to continue to rise between now and 2100 (IPCC, 2013). The primary observable coral response to ocean warming is bleaching of adult coral colonies, wherein corals expel their symbiotic zooxanthellae in response to stress (Brown, 1997). For many corals, an episodic increase of only 1 °C–2 °C above the normal local seasonal maximum ocean temperature can induce bleaching (Hoegh-Guldberg *et al.,* 2007; Jones, 2008; Whelan *et al.,* 2007). Corals can withstand mild to moderate bleaching; however, severe, repeated, or prolonged bleaching can lead to colony death (Brown, 1997; Whelan *et al.,* 2007). Increased sea surface temperatures are occurring more frequently and leading to multiple mass bleaching events (Hughes *et al.,* 2017), which are reoccurring too rapidly for coral populations to rebound in between (Hughes *et al.,* 2018).

Coles and Brown (2003) defined a general bleaching threshold for reef-building corals as increases in seawater temperatures of 1–3 °C above maximum annual mean temperatures at a given location. Great Barrier Reef Marine Park Authority (2010) defined a general ''trigger value'' for bleaching in reef-building corals as increases in seawater temperatures of no more than 1 °C above maximum annual mean temperatures at a given location. Because duration of exposure to elevated temperatures determines the extent of bleaching, several methods have been developed to integrate duration into bleaching thresholds, including the number of days, weeks, or months of the elevated temperatures (Berkelmans, 2002; Eakin *et al.,* 2009; Goreau and Hayes, 1994; Podesta and Glynn, 1997). NOAA's Coral Reef Watch Program utilizes the

Degree Heating Week method (Glynn & D'Croz, 1990; Eakin *et al.* 2009), which defines a general bleaching threshold for reef-building corals as seawater temperatures of 1°C above the maximum monthly mean at a given location for 4 consecutive weeks (*https://coralreefwatch.noaa.gov/*).

These general thresholds were developed for coral reef communities and ecosystems, rather than individual species. Many of these studies are community or ecosystem-focused and do not account for species-specific responses to changes in seawater temperatures, and instead are focused on long-term climatic changes and large-scale impacts (*e.g.,* coral reef distribution, persistence).

In addition to coral bleaching, other effects of ocean warming detrimentally affect virtually every life-history stage of reef-building corals. Impaired fertilization and developmental abnormalities (Negri and Heyward, 2000), mortality, and impaired settlement success (Nozawa and Harrison, 2007; Putnam *et al.,* 2008; Randall and Szmant, 2009) have all been documented. Increased seawater temperature also may act synergistically with coral diseases to reduce coral health and survivorship (Bruno and Selig, 2007). Coral disease outbreaks often have either accompanied or immediately followed bleaching events (Brandt and McManus, 2009; Jones *et al.,* 2004a; Lafferty *et al.,* 2004; Miller *et al.,* 2009; Muller *et al.,* 2008). Outbreaks also follow seasonal patterns of high seawater temperatures (Sato *et al.,* 2009; Willis *et al.,* 2004).

In summary, temperature deviations from local averages prevent or impede successful completion of all life history stages of the listed coral species. Identifying temperatures at which the conservation value of habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, and other factors.

Carbonate ions (CO_3^{2-}) are used by many marine organisms, including corals, to build calcium carbonate skeletons. The mineral form of calcium carbonate used by corals to form their skeletons is aragonite. The more carbonate ions dissolved in seawater, the easier it is for corals to build their aragonite skeletons. The metric used to express the relative availability of calcium and carbonate ions is the aragonite saturation state (Ω_{arg}). Thus, the lower the Ω_{arg} of seawater, the lower the abundance of carbonate ions, and the more energy corals have to expend for skeletal calcification, and vice versa (Cohen and Holcomb, 2009). At saturation states between 1 and 20, marine organisms can create calcium carbonate shells or skeletons using a physiological calcifying mechanism and the expenditure of energy. The aragonite saturation state varies greatly within and across coral reefs and through daily cycles with temperature, salinity, pressure, and localized biological processes such as photosynthesis, respiration, and calcification by marine organisms (Gray *et al.,* 2012; McMahon *et al.,* 2013; Shaw *et al.,* 2012b)).

Coral reefs form in an annually-averaged saturation state of 4.0 or greater for optimal calcification, and an annually-averaged saturation state below 3.3 will result in reduced calcification at rates insufficient to maintain net positive reef accretion, resulting in loss of reef structure (Guinotte *et al.,* 2003; Hoegh-Guldberg *et al.,* 2007). Guinotte *et al.* (2003) classified the range of aragonite saturation states between 3.5–4.0 as ''adequate'' and < 3 as ''extremely marginal.'' Thus, an aragonite saturation state between 3 and 4 is likely necessary for coral calcification. But, generally, seawater Ω_{arg} should be 3.5 or greater to enable maximum calcification of reef-building corals, and average Ω_{arg} in most coral reef areas is currently in that range (Guinotte *et al.,* 2003). Further, Kleypas *et al.* (1999) concluded that a general threshold for Ω_{arg} occurs near 3.4, because only a few reefs occur where saturation is below this level. Guan *et al.* (2015) found that the minimum aragonite saturation observed where coral reefs currently occur is 2.82; however, it is not known if those locations hosted live, accreting corals.

Ocean acidification is a term referring to changes in ocean carbonate chemistry, including a drop in the pH of ocean waters, that is occurring in response to the rise in the quantity of atmospheric CO_2 and the partial pressure of CO_2 (pCO_2) absorbed in oceanic waters (Caldeira and Wickett, 2003). As pCO_2 rises, oceanic pH declines through the formation of carbonic acid and subsequent reaction with water resulting in an increase of free hydrogen ions. The free hydrogen ions react with carbonate ions to produce bicarbonate, reducing the amount of carbonate ions available, and thus reducing the aragonite saturation state.

A variety of laboratory studies conducted on corals and coral reef organisms (Langdon and Atkinson, 2005) consistently show declines in the rate of coral calcification and growth with rising pCO_2, declining pH, and declining carbonate saturation state. Laboratory experiments have also shown that skeletal deposition and initiation of calcification in newly settled corals is reduced by declining aragonite saturation state (Albright *et al.,* 2008; Cohen *et al.,* 2009). Field studies from a variety of coral locations in the Caribbean, Indo-Pacific, and Red Sea have shown a decline in linear extension rates of coral skeleton under decreasing aragonite saturation state (Bak *et al.,* 2009; De'ath *et al.,* 2009; Schneider and Erez, 2006; Tanzil *et al.,* 2009). In addition to effects on growth and calcification, recent laboratory experiments have shown that increased pCO_2 also substantially impairs fertilization and settlement success in *Acropora palmata* (Albright *et al.,* 2010). Reduced calcification and slower growth will mean slower recovery from breakage, whether natural (hurricanes and storms) or human (breakage from vessel groundings, anchors, fishing gear, *etc.*), or mortality from a variety of disturbances. Slower growth also implies even higher rates of mortality for newly settled corals due to the longer time it will take to reach a colony size that is no longer vulnerable to overgrowth competition, sediment smothering, and incidental predation. Reduced calcification and slower growth means more time to reach reproductive size and reduces sexual and asexual reproductive potential. Increased pCO_2 coupled with increased sea surface temperature can lead to even lower rates of calcification, as found in the meta-analysis by Kornder *et al.* (2018).

In summary, aragonite saturation reductions prevent or impede successful completion of all life history stages of the listed coral species. Identifying the declining aragonite saturation state at which the conservation value of habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, and other environmental and physiological factors.

Nitrogen and phosphorous are two of the main nutrients that affect the suitability of the water column in coral reef habitats (Fabricius *et al.,* 2005; Fabricius, 2005). These two nutrients occur as different compounds in coral reef habitats and are necessary in low levels for normal reef function. Dissolved inorganic nitrogen and dissolved inorganic phosphorus in the forms of nitrate (NO_3^-) and phosphate (PO_4^{3-}) are particularly important for photosynthesis, with dissolved organic nitrogen also providing an important source of nitrogen, and are the dominant forms of nitrogen and phosphorous in coral reef waters.

Excessive nutrients affect corals through two main mechanisms: direct

effects on coral physiology, such as reduced fertilization and growth (Harrison and Ward, 2001; Ferrier-Pages *et al.,* 2000), and indirect effects through nutrient-stimulation of other community components (*e.g.,* macroalgae seaweeds, turfs/filamentous algae, cyanobacteria, and filter feeders) that compete with corals for space on the reef (79 FR 53851, September 10, 2014). As discussed previously, the latter also affects the quality of recruitment substrate. The physiological response a coral exhibits to an increase in nutrients mainly depends on concentration and duration. A short duration of a high increase in a nutrient may result in a severe adverse response, just as a chronic, lower concentration might. Increased nutrients can result in adverse responses in all life stages and affect most physiological processes, resulting in reduced number and size of gametes (Ward and Harrison, 2000), reduced fertilization (Harrison and Ward, 2001), reduced growth, mortality (Ferrier-Pages *et al.,* 2000; Koop *et al.,* 2001), increased disease progression (Vega Thurber *et al.,* 2013; Voss and Richardson, 2006), tissue loss (Bruno *et al.,* 2003), and bleaching (Kuntz *et al.,* 2005; Wiedenmann *et al.,* 2012).

Most coral reefs occur where annual mean nutrient levels are low. Kleypas *et al.* (1999) analyzed dissolved nutrient data from nearly 1,000 coral reef sites, finding mean values of 0.25 micromoles per liter (µmol/l) for NO_{3-}, and 0.13 µmol/l for PO_4. Over 90 percent of the sites had mean NO_3 values of <0.6 µmol/l, and mean PO_4 values of <0.2 µmol/l (Kleypas *et al.,* 1999). Several authors, including Bell and Elmetri (1995) and Lapointe (1997) have proposed threshold values of 1.0 µmol/l for NO_3, and 0.1–0.2 µmol/l for PO_4, beyond which reefs are assumed to be eutrophic. However, concentrations of dissolved nutrients are poor indicators of coral reef status, and the concept of a simple threshold concentration that indicates eutrophication has little validity (McCook, 1999). One reason for that is because corals are exposed to nutrients in a variety of forms, including dissolved nitrogen (*e.g.,* NO_3), dissolved phosphorus (*e.g.,* $PO4_3$), particulate nitrogen (PN), and particulate phosphate (PP). Since the dissolved forms are assimilated rapidly by phytoplankton, and the majority of nitrogen and phosphorus discharged in terrestrial runoff is in the particulate forms, PN and PP are the most common bio-available forms of nutrients for corals on coastal zone reefs (Cooper *et al.,* 2008). De'ath and Fabricius (2008) and GBRMPA (2010) provide general recommendations on maximum annual mean values for PN and PP of 1.5 µmol/l PN and 0.09 µmol/l PP for coastal zone reefs. These generalizations are for coral reef communities and ecosystems, rather than individual species.

As noted above, identifying nutrient concentrations at which the conservation value of habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, acclimatization to localized nutrient regimes, and other factors.

Water clarity or transparency is a key factor for marine ecosystems and it is the best explanatory variable for a range of bioindicators of reef health (Fabricius *et al.,* 2012). Water clarity affects the light availability for photosynthetic organisms and food availability for filter feeders. Corals depend upon their symbiotic algae for nutrition and thus depend on light availability for algal photosynthesis. Reduced water clarity is determined by the presence of particles of sediment, organic matter, and/or plankton in the water, and so is often associated with elevated sedimentation and/or nutrients. Water clarity can be measured in multiple ways, including percent of solar irradiance at depth, Secchi depth (the depth in the water column at which a black and white disk is no longer visible), total suspended solids (TSS), and Nephelometric Turbidity Unit (NTU) (measure of light scatter based on particles in the water column). Reef-building corals naturally occur across a broad range of water clarity levels from very turbid waters on enclosed reefs near river mouths (Browne *et al.,* 2012) to very clear waters on offshore barrier reefs, and many intermediate habitats such as open coastal and mid-shelf reefs (GBRMPA, 2010). Coral reefs appear to thrive in extremely clear areas where Secchi depth is ≥ 15 m or light scatter is < 1 NTU (De'ath and Fabricius, 2010). Typical levels of TSS in reef environments are less than 10 mg/L (Rogers, 1990). The minimum light level for reef development is about 6–8 percent of surface irradiance (Fabricius *et al.,* 2014).

For a particular coral colony, tolerated water clarity levels likely depend on several factors, including species, life history stage, spatial variability, and temporal variability. For example, colonies of a species occurring on fringing reefs around high volcanic islands with extensive groundwater inputs are likely to be better acclimatized or adapted to higher turbidity than colonies of the same species occurring on offshore barrier reefs or around atolls with very little or no groundwater inputs. In some cases, corals occupy naturally turbid habitats (Anthony and Larcombe, 2000; McClanahan and Obura, 1997; Te, 2001) where they may benefit from the reduced amount of UV radiation to which they are exposed (Zepp *et al.,* 2008).

Reductions in water clarity affect light availability for corals. As turbidity and nutrients increase, thus decreasing water clarity, reef community composition shifts from coral-dominated to macroalgae-dominated, and ultimately to heterotrophic animals (Fabricius *et al.,* 2012). Light penetration is diminished by suspended abiotic and biotic particulate matter (esp. clay and silt-sized particles) and some dissolved substances (Fabricius *et al.,* 2014). The availability of light decreases directly as a function of particle concentration and water depth, but also depends on the nature of the suspended particles. Fine clays and organic particles are easily suspended from the sea floor, reducing light for prolonged periods, while undergoing cycles of deposition and resuspension. Suspended fine particles also carry nutrients and other contaminants (Fabricius *et al.,* 2013). Increased nutrient runoff into semi-enclosed seas accelerates phytoplankton production to the point that it also increases turbidity and reduces light penetration, and can also settle on colony surfaces (Fabricius, 2005). In areas of nutrient enrichment, light for benthic organisms can be additionally severely reduced by dense stands of large fleshy macroalgae shading adjacent corals (Fabricius, 2005).

The literature provides several recommendations on maximum turbidity levels for coral reefs (*i.e.,* levels that managers should strive to stay under). GBRMPA (2010) recommends minimum mean annual water clarity, or ''trigger values'', in Secchi distances for the GBR depending on habitat type: for enclosed coastal reefs, 1.0–1.5 m; for open coastal reefs and mid-shelf reefs, 10 m; and for offshore reefs, 17 m. De'ath and Fabricius (2008) recommend a minimum mean annual water clarity trigger value in Secchi distance averaged across all GBR habitats of 10 m. Bell and Elmetri (1995) recommend a maximum value of 3.3 mg/L TSS across all GBR habitats. Thomas *et al.* (2003) recommend a maximum value of 10 mg/L averaged across all Papua New Guinea coral reef habitats. Larcombe *et al.* (2001) recommend a maximum value of 40 mg/L TSS for GBR ''marginal reefs'', *i.e.,* reefs close to shore with high natural turbidity levels. Guan *et al.*

(2015) recommend a minimum light intensity (µmol photons second/m²) of 450 µmol photons second/m² globally for coral reefs. The above generalizations are for coral reef communities and ecosystems, rather than individual species.

A coral's response to a reduction in water clarity is dependent on the intensity and duration of the particular conditions. For example, corals exhibited partial mortality when exposed to 476 mg/L TSS (Bengtsson *et al.,* 1996) for 96 hours, but had total mortality when exposed to 1000 mg/L TSS for 65 hours (Thompson and Bright, 1980). Depending on the duration of exposure, most coral species exhibited sublethal effects when exposed to turbidity levels between 7 and 40 NTU (Erftemeijer *et al.,* 2012). The most tolerant coral species exhibited decreased growth rates when exposed to 165 mg/L TSS for 10 days (Rice and Hunter, 1992). By reducing water clarity, turbidity also reduces the maximum depth at which corals can live, making deeper habitat unsuitable (Fabricius, 2005). Existing data suggest that coral reproduction and settlement are more highly sensitive to changes in water clarity than adult survival, and these functions are dependent on clear water. Suspended particulate matter reduces fertilization and sperm function (Ricardo *et al.,* 2015), and strongly inhibits larvae survival, settlement, recruitment, and juvenile survival (Fabricius, 2005).

In summary, water clarity deviations from local averages prevent or impede successful completion of all life history stages of the listed coral species. Identifying turbidity levels at which the conservation value of habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, acclimatization to localized nutrient regimes, and other factors.

The water column may include levels of anthropogenically-introduced chemical contaminants that prevent or impede successful completion of all life history stages of the listed coral species. For the purposes of this rule, ''contaminants'' is a collective term to describe a suite of anthropogenically-introduced chemical substances in water or sediments that may adversely affect corals. The study of the effects of contaminants on corals is a relatively new field and information on sources and ecotoxicology is incomplete. The major groups of contaminants that have been studied for effects to corals include heavy metals (also called trace metals), pesticides, and hydrocarbons. Other organic contaminants, such as chemicals in personal care products, polychlorinated biphenyl, and surfactants, have also been studied. Contaminants may be delivered to coral reefs via point or non-point sources. Specifically, contaminants enter the marine environment through wastewater discharge, shipping, industrial activities, and agricultural and urban runoff. These contaminants can cause negative effects to coral reproduction, development, growth, photosynthesis, and survival.

Heavy metals (*e.g.,* copper, cadmium, manganese, nickel, cobalt, lead, zinc, and iron) can be toxic at concentrations above naturally-occurring levels. Heavy metals are persistent in the environment and can bioaccumulate. Metals are adsorbed to sediment particles, which can result in their long distance transport away from sources of pollution. Corals incorporate metals in their skeleton and accumulate them in their soft tissue (Al-Rousan *et al.,* 2012; Barakat *et al.,* 2015). Although heavy metals can occur in the marine environment from natural processes, in nearshore waters they are mostly a result of anthropogenic sources (*e.g.,* wastewater, antifouling and anticorrosive paints from marine vessels and structures, land filling and dredging for coastal expansion, maritime activities, inorganic and organic pollutants, crude oil pollution, shipping processes, industrial discharge, agricultural activities), and are found near cities, ports, and industrial developments.

The effects of copper on corals include physiological impairment, impaired photosynthesis, bleaching, reduced growth, and DNA damage (Bielmyer *et al.,* 2010; Schwarz *et al.,* 2013). Adverse effects to fertilization, larval development, larval swimming behavior, metamorphosis, and larval survival have also been documented (Kwok and Ang, 2013; Negri and Hoogenboom, 2011; Puisay *et al.,* 2015; Reichelt-Brushett and Hudspith, 2016; Rumbold and Snedaker, 1997). Copper toxicity was found to be higher when temperatures are elevated (Negri and Hoogenboom, 2011). Nickel and cobalt can also have negative effects on corals, such as reduced growth and photosynthetic rates (Biscere *et al.,* 2015), and reduced fertilization success (Reichelt-Brushett and Hudspith, 2016). Chronic exposure of corals to higher levels of iron may significantly reduce growth rates (Ferrier-Pages *et al.,* 2001). Further, iron chloride has been found to cause oxidative DNA damage to coral larvae (Vijayavel *et al.,* 2012).

Polycyclic aromatic hydrocarbons (PAHs) are found in fossil fuels, such as oil and coal, and can be produced by the incomplete combustion of organic matter. PAHs disperse through non-point sources such as road run-off, sewage, and deposition of particulate air pollution. PAHs can also disperse from point sources such as oil spills and industrial sites. Studies have found adverse effects of oil pollution on corals that include growth impairments, mucus production, and decreased reproduction, especially at increased temperatures (Kegler *et al.,* 2015). Hydrocarbons have also been found to affect early life stages of corals. Oil-contaminated seawater reduced settlement of *O. faveolata* and *Agaricia humilis* and was more severe than any direct or latent effects on survival (Hartmann *et al.,* 2015). Natural gas (water accommodated fraction) exposure resulted in abortion of larvae during early embryogenesis and early release of larvae during late embryogenesis, with higher concentrations of natural gas yielding higher adverse effects (Villanueva *et al.,* 2011). Exposure to oil, dispersants, and a combination of oil and dispersant significantly decreased settlement and survival of *Porites astreoides* and *Orbicella faveolata* larvae (Goodbody-Gringley *et al.,* 2013).

Anthracene (a PAH that is used in dyes, wood preservatives, insecticides, and coating materials) exposure to apparently healthy fragments and diseased fragments (Caribbean yellow band disease) of *O. faveolata* reduced activity of enzymes important for protection against environmental stressors in the diseased colonies (Montilla *et al.,* 2016). The results indicated that diseased tissues might be more vulnerable to exposure to PAHs such as anthracene compared to healthy corals. PAH concentrations similar to those present after an oil spill inhibited metamorphosis of *Acropora tenuis* larvae, and sensitivity increased when larvae were co-exposed to PAHs and ''shallow reef'' ultraviolet (UV) light levels (Negri *et al.,* 2016).

Pesticides include herbicides, insecticides, and antifoulants used on vessels and other marine structures. Pesticides can affect non-target marine organisms like corals and their zooxanthellae. Diuron, an herbicide, decreased photosynthesis in zooxanthellae that had been isolated from the coral host and grown in culture (Shaw *et al.,* 2012a). Irgarol, an additive in copper-based antifouling paints, significantly reduced settlement in *Porites hawaiiensis* (Knutson *et al.,* 2012). *Porites astreoides* larvae exposed to two major mosquito pesticide ingredients, naled and permethrin, for

18–24 hours showed differential responses. Concentrations of 2.96 µg/L or greater of naled significantly reduced larval survivorship, while exposure of up to 6.0 µg/L of permethrin did not result in reduced larval survivorship. Larval settlement, post-settlement survival, and zooxanthellae density were not impacted by any treatment (Ross *et al.,* 2015).

Benzophenone-2 (BP–2) is a chemical additive to personal care products (*e.g.,* sunscreen, shampoo, body lotions, soap, detergents), product coatings (oil-based paints, polyurethanes), acrylic adhesives, and plastics that protects against damage from UV light. It is released into the ocean through municipal and boat/ship wastewater discharges, landfill leachates, residential septic fields, and unmanaged cesspits (Downs *et al.,* 2014). BP–2 is a known endocrine disruptor and a DNA mutagen, and its effects are worse in the light. It caused deformation of scleractinian coral *Stylophora pistillata* larvae, changing them from a motile planktonic state to a deformed sessile condition at low concentrations (Downs *et al.,* 2014). It also caused increasing larval bleaching with increasing concentration (Downs *et al.,* 2014).

Benzophenone-3 (BP–3; oxybenzone) is an ingredient in sunscreen and personal care products (*e.g.,* hair cleaning and styling products, cosmetics, insect repellent, soaps) that protects against damage from UV light. It enters the marine environment through swimmers and municipal, residential, and boat/ship wastewater discharges and can cause DNA mutations. Oxybenzone is a skeletal endocrine disruptor, and it caused larvae of *S. pistillata* to encase themselves in their own skeleton (Downs *et al.,* 2016). Exposure to oxybenzone transformed *S. pistillata* larvae from a motile state to a deformed, sessile condition (Downs *et al.,* 2016). Larvae exhibited an increasing rate of coral bleaching in response to increasing concentrations of oxybenzone (Downs *et al.,* 2016).

Polychlorinated biphenyls (PCBs) are environmentally stable, persistent organic contaminants that have been used as heat exchange fluids in electrical transformers and capacitors and as additives in paint, carbonless copy paper, and plastics. They can be transported globally through the atmosphere, water, and food chains. A study of the effects of the PCB, Aroclor 1254, on the *Stylophora pistillata* found no effects on coral survival, photosynthesis, or growth; however, the exposure concentration and duration may alter the expression of certain genes involved in various important cellular functions (Chen *et al.,* 2012).

Surfactants are used as detergents and soaps, wetting agents, emulsifiers, foaming agents, and dispersants. Linear alkylbenzene sulfonate (LAS) is one of the most common surfactants in use. Biodegradation of surfactants can occur within a few hours up to several days, but significant proportions of surfactants attach to suspended solids and remain in the environment. This sorption of surfactants onto suspended solids depends on environmental factors such as temperature, salinity, or pH. Exposure of *Pocillopora verrucosa* to LAS resulted in tissue loss on fragments (Kegler *et al.,* 2015). The combined effects of LAS exposure with increased temperature (+3 °C, from 28 to 31 °C) resulted in greater tissue loss than LAS exposure alone (Kegler *et al.,* 2015).

In summary, there are multiple chemical contaminants that prevent or impede successful completion of all life history stages of the listed coral species. Identifying contaminant levels at which the conservation value of habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, and other factors.

As described above, the best-available information shows coral reefs form on solid substrate, but only within a narrow range of water column conditions that on average allow the deposition rates of corals to exceed the rates of physical, chemical, and biological erosion (*i.e.,* conducive conditions, Brainard *et al.,* 2005). However, as with all ecosystems, water column conditions are dynamic and vary over space and time. Therefore, we also describe environmental conditions in which coral reefs currently exist globally, thus indicating the conditions that may be tolerated by corals and allow at least for survival. To the extent tolerance conditions deviate in duration and intensity from conducive conditions, they may not support coral reproduction and recruitment, and reef growth, and thus would impair the recovery of the species. Further, annually and spatially averaged-tolerance ranges provide the limits of the environmental conditions in which coral reefs exist globally (Guan *et al.,* 2015), but these conditions do not necessarily represent the conditions that may be tolerated by individual coral species. Individual species may or may not be able to withstand conditions within or exceeding the globally-averaged tolerance ranges for coral reefs, depending on the individual species' biology, local average conditions to which the species are acclimatized, and intensity and duration of exposure to adverse conditions. In other words, changes in the water column parameters discussed above that exceed the tolerance ranges may induce adverse effects in a particular species. Thus, the concept of individual species' tolerance limits is a different aspect of water quality conditions compared to conditions that are conducive for formation and growth of reef structures.

These values presented in the summaries above constitute the best available information at the time of this rulemaking. It is possible that future scientific research will identify more species-specific values for some of these parameters that become more applicable to the five listed coral species, though it is also possible that future species-specific research will document that conducive or tolerance ranges for the five Caribbean corals fall within these ranges. Because the ESA requires us to use the best scientific information available in conducting consultations under section 7, we will incorporate any such new scientific information into consultations when evaluating potential impacts to the critical habitat.

Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species may be designated as critical habitat only if they contain essential features that may require special management considerations or protection (16 U.S.C. 1532(5)(A)(i)(II). Special management considerations or protection are any methods or procedures useful in protecting physical or biological features for the conservation of listed species (50 CFR 424.02). In determining whether the essential physical or biological features ''may require'' special management considerations or protection, it is necessary only to find that there is a possibility that the features may require special management considerations or protection in the future; it is not necessary to find that such management is presently or immediately required. *Home Builders Ass'n of N. California* v. *U.S. Fish and Wildlife Serv.,* 268 F. Supp. 2d 1197, 1218 (E.D. Cal. 2003).

The essential feature we have identified is particularly susceptible to impacts from human activity because of the relatively shallow water depth range (less than 295 ft (90 m)) the corals inhabit. The proximity of this habitat to coastal areas subjects this feature to impacts from multiple activities, including, but not limited to, coastal and in-water construction, dredging and disposal activities, beach nourishment,

stormwater run-off, wastewater and sewage outflow discharges, point and non-point source discharges of contaminants, and fishery management. Further, the global oceans are being impacted by climate change from greenhouse gas emissions, particularly the tropical oceans in which the Caribbean corals occur (van Hooidonk *et al.,* 2014). The impacts from these activities, combined with those from natural factors (*e.g.,* major storm events), significantly affect habitat for all life stages for these threatened corals. We conclude that the essential feature is currently and will likely continue to be negatively impacted by some or all of these factors.

Greenhouse gas emissions (*e.g.,* fossil fuel combustion) lead to global climate change and ocean acidification. These activities adversely affect the essential feature by increasing sea surface temperature and decreasing the aragonite saturation state. Coastal and in-water construction, channel dredging, and beach nourishment activities can directly remove the essential feature by dredging it or by depositing sediments on it, making it unavailable for settlement and recruitment of coral larvae or fragments. These same activities can impact the essential feature by creating turbidity during operations. Stormwater run-off, wastewater and sewage outflow discharges, and point and non-point source contaminant discharges can adversely impact the essential feature by allowing nutrients and sediments, as well as contaminants, from point and non-point sources, including sewage, stormwater and agricultural runoff, river discharge, and groundwater, to alter the natural levels in the water column. The same activities can also adversely affect the essential feature by increasing the growth rates of macroalgae, which preempts available recruitment habitat. Fishery management can adversely affect the essential feature if it allows for the reduction in the number of herbivorous fishes available to control the growth of macroalgae on the substrate.

Given these ongoing threats throughout the corals' habitat, we find that the essential feature may require special management considerations.

Specific Areas Containing the Essential Feature

The definition of critical habitat requires us to identify specific areas on which are found the physical or biological features essential to the species' conservation that may require special management considerations or protection. Our regulations state that critical habitat will be shown on a map, with more-detailed information discussed in the preamble of the rulemaking documents in the **Federal Register**, which will reference each area by the State, county, or other local governmental unit in which it is located (50 CFR 424.12(c)). Our regulations also state that when several habitats, each satisfying requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)).

For each of the five coral species, boundaries of specific areas were determined by each species' commonly occupied minimum and maximum depth ranges within each coral's range at the time of listing. Across all 5 coral species, a total of 28 specific areas were identified as being under consideration for critical habitat designation. There are five or six specific areas per species, depending on whether the species occurs in FGBNMS; one area each in Florida, Puerto Rico, St. Thomas and St. John, USVI, St. Croix, USVI, FGB, and Navassa Island. Within each of the geographic areas, the individual species' specific areas are largely-overlapping. For example, in Puerto Rico, there are five largely-overlapping specific areas, one for each species, that surround each of the islands. The difference between each of the areas is the particular depth contours that were used to create the boundaries. For example, *Dendrogyra cylindrus'* specific area in Puerto Rico extends from the 1-m contour to the 25-m contour, which mostly overlaps the *Orbicella annularis* specific area that extends from the 0.5-m contour to the 20-m contour. Overlaying all of the specific areas for each species results in the maximum geographic extent of these critical habitat designations, which cover 1.6 to 295 ft (0.5–90 m) water depth around all the islands of Puerto Rico, USVI, and Navassa, 53 ft to 295 ft (16–90 m) in FGB, and 1.6 to 131 ft (0.5–40 m) from St. Lucie Inlet, Martin County to Dry Tortugas, Florida. The minimum depth in FGBNMS was updated from 17 m to 16 m for *Orbicella annularis, O. faveolata,* and *O. franksi* based on public comment (see the response to Comment 4 above). The maximum depth was updated from 90 m to 40 m in Florida for *O. faveolata, O. franksi,* and *Mycetophyllia ferox* based on public comment and new information (Reed, 2021).

To map these specific areas we reviewed available data on species occurrence, bathymetry, substrate, and water quality. We used the highest resolution bathymetric data available from multiple sources depending on the geographic location. In Florida and the FGB, we used contours created from National Ocean Service Hydrographic Survey Data and NOAA ENCDirect bathymetric point data (NPS) and contours created from NOAA's Coastal Relief Model. We also used bathymetry collected with multi-beam sonar in the FGB (USGS, 2002). In Puerto Rico, contours were derived from the National Geophysical Data Center's (NGDC) 2005 U.S. Coastal Relief Model. In USVI, we used contours derived from NOAA's 2004–2015 Bathymetric Compilation. In Navassa, contours were derived from NOAA's NGDC 2006 bathymetric data. These bathymetric data (*i.e.,* depth contours) are used, with other geographic or management boundaries, to draw the boundaries of each specific area on the maps in this final critical habitat designation.

Within the areas bounded by depth and species occurrence, we evaluated available data on the essential feature. For substrate, we used information from the NCCOS Benthic Habitat Mapping program, which provides data and maps at *http://products.coastalscience.noaa.gov/collections/benthic/default.aspx,* summarized in the Coral Reef Data Explorer at *http://maps.coastalscience.noaa.gov/coralreef/#,* and the Unified Florida Reef Tract Map found at *http://geodata.myfwc.com/datasets/6090f952e3ee4945b53979f18d5ac3a5_9.* Using Geographic Information System (GIS) software, we extracted all habitat classifications that could be considered potential recruitment habitat, including hardbottom and coral reef. The benthic habitat information assisted in identifying any major gaps in the distribution of the substrate essential feature. The data show that hard substrate is unevenly distributed throughout the ranges of the species. However, there are large areas where benthic habitat characterization data are still lacking, particularly deeper than 99 ft (30 m). Because the species occurs in these areas, we made the reasonable assumption that the substrate feature does exist in those areas, though in unknown quantities. The available data also represent a snapshot in time, while the exact location of the habitat feature may change over time (*e.g.,* natural sediment movement covering or exposing hard substrate).

There are areas within the geographical and depth ranges of the species that contain natural hard substrates that, due to their consistently disturbed nature, do not provide the quality of substrate essential for the conservation of threatened corals. These disturbances may be naturally occurring

or caused by human activities, as described below. While these areas may provide hard substrate for coral settlement and growth over short periods, the periodic nature of direct human disturbance renders them poor habitat for coral growth and survival over time. These ''managed areas,'' for the purposes of this final rule, are specific areas where the substrate has been persistently disturbed by planned management activities authorized by local, state, or Federal governmental entities at the time of critical habitat designation, and expectations are that the areas will continue to be periodically disturbed by such management activities. Examples include, but are not necessarily limited to, dredged navigation channels, vessel berths, and active anchorages. These managed areas were not proposed for designation as critical habitat, and they are not included in the final designations. GIS data of the locations of some managed areas were available and extracted from the maps of the specific areas being considered for critical habitat designation. These data were not available for every managed area; however, regardless of whether the managed area is extracted from the maps depicting the specific areas being designated as critical habitat, no ''managed areas'' are part of the specific areas that contain the essential feature.

NMFS is aware that dredging may result in sedimentation impacts beyond the actual dredge channel. Where these impacts are persistent, expected to recur whenever the channel is dredged, and are of such a level that the areas in question have already been made unsuitable for coral, these persistently impacted areas are considered part of the managed areas and are thus not part of the specific areas that contain the essential feature.

The nearshore surf zones of Martin, Palm Beach, Broward, and Miami-Dade Counties are also consistently disturbed by naturally-high sediment movement, suspension, and deposition levels. Hard substrate areas found within these nearshore surf zones are ephemeral in nature and are frequently covered by sand, and the threatened coral species have never been observed there. Thus, this area (water in depths from 0 ft to 6.5 ft (0 m to 2 m) offshore St. Lucie Inlet to Government Cut) does not contain the essential feature and is not considered part of the specific areas under consideration for critical habitat. The shallow depth limit (*i.e.,* inshore boundary) was identified based on the lack of these or any reef building corals occurring in this zone, indicating conditions are not suitable for their settlement and recruitment into the population. These conditions do not exist in the area south of Government Cut, nor in the nearshore zones around the islands of Puerto Rico and the U.S. Virgin Islands. In these areas, the hydrodynamics allow for the growth of some (*e.g., Orbicella* spp.) of the threatened coral in the shallow depths.

Due to the ephemeral nature of conditions within the water column and the various scales at which water quality data are collected, this aspect of the essential feature is difficult to map at fine spatial or temporal scales. However, annually-averaged plots of temperature, aragonite saturation, nitrate, phosphate, and light, at relatively large spatial scale (*e.g.,* $1° \times 1°$ grid) are available from Guan *et al.* (2015), using 2009 data for some parameters, and updated with newer data from the World Ocean Atlas (2013) for temperature and nutrients. Those maps indicate that conditions that support coral reef growth, and thus coral demographic functions, occur throughout the specific areas under consideration.

Based on the available data, we identified 28 mostly-overlapping specific areas that contain the essential feature. The specific areas, or units, can generally be grouped as the: (1) Florida units, (2) Puerto Rico units, (3) St. Thomas/St. John units (STT/STJ), (4) St. Croix units, (5) Navassa units, and (6) FGB units. Within each group of units, each species has its own unique unit that is specific to its geographic and depth distributions. Therefore, within a group there are five mostly-overlapping units—one for each species. The exception is that there are only three completely-overlapping units in the FGB group, because only the three species of *Orbicella* occur there. The essential feature is unevenly distributed throughout these 28 units. Within these units there exists a mosaic of habitats at relatively small spatial scales, some of which naturally contain the essential features (*e.g.,* coral reefs) and some of which do not (*e.g.,* seagrass beds). Further, within these units, managed areas and naturally disturbed areas, as described above, also exist. Due to the spatial scale at which the essential feature exists interspersed with these other habitats and disturbed areas, we are not able to more discretely delineate the specific areas of critical habitat.

Unoccupied Critical Habitat Areas

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied by the species at the time of listing if the areas are determined by the Secretary to be essential for the conservation of the species.

In considering whether any unoccupied areas are essential to the threatened coral species, we considered the nature of the threats to the species and their geographic distributions. The threats to these five corals are generally the same threats affecting coral reefs throughout the world (*e.g.,* climate change, fishing, and land-based sources of pollution) and are fully described in the final listing rule (79 FR 53852, September 10, 2014). Specifically, ocean warming, disease, and ocean acidification are the three most significant threats that will impact the potential for recovery of all the listed coral species. Because the primary threats are global in nature, adapting to changing conditions will be critical to the species' conservation and recovery.

We issued guidance in June 2016 on the treatment of climate change uncertainty in ESA decisions, which addresses critical habitat specifically (*https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act-guidance-policies-and-regulations*). The guidance states that, when designating critical habitat, NMFS will consider proactive designation of unoccupied habitat as critical habitat when there are adequate data to support a reasonable inference that the habitat is essential for the conservation of the species because of the function(s) it is likely to serve as climate changes. As noted above, we applied the 2019 regulations to evaluate the appropriateness of designating unoccupied critical habitat in the proposed rule. Those regulations state that we will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied would be inadequate to ensure the conservation of the species (50 CFR 424.12(b)(2)). However, as noted previously, on July 5, 2022, the United States District Court for the Northern District of California issued an order vacating the regulations finalized in 2019 (84 FR 44976, August 27, 2019), and this order was subsequently temporarily stayed on September 21, 2022, by the U.S Court of Appeals for the Ninth Circuit. Thus, while the 2019 regulations are currently in effect and were applied in this rulemaking, we also considered the pre-2019 regulations and the climate change guidance to determine whether our conclusions would differ. As explained below, we conclude that our determination with respect to unoccupied areas would not have been any different. However, because of the ongoing litigation related to the 2019

regulations, we also explain why application of the pre-2019 regulations results in the same conclusion.

All five corals occur in the Caribbean, an area predicted to have more rapid and severe impacts from climate change as compared to other tropical locations (van Hooidonk *et al.,* 2014). Shifting into previously unoccupied habitats that become more suitable as other parts of their range become less suitable may be a strategy these corals employ in the future to adapt to changing conditions. However, due to the nature of the Caribbean basin, there is little opportunity for range expansion. The only area of potential expansion is north up the Florida coast. Several of the five coral species have different northern limits to their current range, with *Orbicella faveolata's* limit at St. Lucie Inlet, Martin County, Florida, being the farthest north and at the limit of coral reef formation in Florida for these species. A northern range expansion along Florida's coast beyond this limit is unlikely due to lack of evidence of historical reef growth in these areas under warmer climates. Further, northern expansion is inhibited by hydrographic conditions (Walker and Gilliam, 2013). The other corals could theoretically expand into the area between their current northern extents to the limit of reef formation. However, temperature is not likely the factor limiting occupation of those areas, given the presence of other reef-building corals. Thus, there are likely other non-climate-related factors limiting the northern extent of the corals' ranges.

Because the occupied critical habitat we have identified includes specific areas that extend throughout the historical and current range of the listed species, we find that the designations are adequate to provide for the conservation of the five corals. Further, there is no basis to conclude that any specific unoccupied areas are essential to the conservation of the five corals, as described above. Therefore, applying either the 2019 regulations or pre-2019 regulations, we have determined that it is not appropriate to designate any unoccupied areas as critical habitat for the five corals.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a conservation benefit to the species for which critical habitat is designated. Pursuant to our regulations at 50 CFR 424.12(h) we consider the following when determining whether such a benefit is provided:

(1) The extent of the area and features present;

(2) The type and frequency of use of the area by the species;

(3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and

(4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

NASKW is the only installation controlled by the DoD, specifically the Department of the Navy (Navy), that coincides with any of the areas meeting the definition of critical habitat for four of the listed coral species. On September 21, 2015, the Navy requested in writing that the areas covered by the 2014 INRMP for NASKW not be designated as critical habitat, pursuant to ESA section 4(a)(3)(B)(i), and provided the INRMP for our review.

The NASKW INRMP covers the lands and waters—generally out to 50 yards (45.7 m)—adjacent to NASKW, including several designated restricted areas (see INRMP figures C–1 through C–14). The total area of the waters covered by the INRMP that overlaps with areas identified as critical habitat is approximately 800 acres (324 hectares). Within this area, four of the threatened corals (*D. cylindrus, O. annularis, O. faveolata, and O. franksi*) and the essential feature are present in densities and proportions similar to those throughout the rest of the nearshore habitat in the Florida Keys. The species use this area in the same way that they do all areas identified as critical habitat—to carry out all life functions. As detailed in Chapter 4 and Appendix C of the INRMP, the plan provides benefits to the threatened corals and existing *Acropora* critical habitat through the following NASKW broad programs and activities: (1) erosion control—which will prevent sediments from entering into the water; (2) Boca Chica Clean Marina Designation—which eliminates or significantly reduces the release of nutrients and contaminants; (3) stormwater quality improvements—which prevent or reduce the amount of nutrients, sediments, and contaminants; and (4) wastewater treatment—which reduces the release of nutrients and contaminants consistent with Florida Surface Water Quality Standards. Within these categories, there are 15 specific management activities and projects that provide benefit to the corals and their habitat (Table 4–2 of the INRMP). These types of best management practices have been ongoing at NASKW since 1983 and are likely to continue into the future. Further, the plan specifically provides assurances that all NASKW staff have the authority and funding (subject to appropriations) to implement the plan. The plan also provides assurances that the conservation efforts will be effective through annual reviews conducted by state and Federal natural resource agencies. These activities provide a benefit to the species and the identified essential feature in the critical habitat by reducing sediment and nutrient discharges into nearshore waters, which addresses some of the particular conservation and protection needs that critical habitat would afford. These activities are similar to those that we describe below as project modifications for avoiding or reducing adverse effects to critical habitat. Therefore, were we to consult on the activities in the INRMP that may affect critical habitat, we would likely not require any project modifications based on best management practices in the INRMP. Further, the INRMP includes provisions for monitoring and evaluating conservation effectiveness, which will ensure continued benefits to the species. Annual reviews of the INRMP for 2011–2015 found that the INRMP executions, including actions that minimize or eliminate land-based sources of pollution, ''satisfied'' or ''more than satisfied'' conservation objectives. Based on these considerations, we conclude the NASKW INRMP provides a conservation benefit to the threatened corals. Therefore, pursuant to section 4(a)(3)(B)(i) of the ESA, we determined that the INRMP provides a benefit to those threatened corals, and we are not designating critical habitat within the boundaries covered by the INRMP.

Application of ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires that we consider the economic impact, impact on national security, and any other relevant impact, of designating any particular area as critical habitat. Additionally, the Secretary has the discretion to consider excluding any particular area from critical habitat if she determines, based upon the best scientific and commercial data available, the benefits of exclusion (that is, avoiding some or all of the impacts

that would result from designation) outweigh the benefits of designation. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The ESA provides the Services with broad discretion in how to consider impacts. (See, H.R. Rep. No. 95–1625, at 17, reprinted in 1978 U.S.C.C.A.N. 9453, 9467 (19780). Economics and any other relevant impact shall be considered by the Secretary in setting the limits of critical habitat for such a species. The Secretary is not required to give economics or any other relevant impact predominant consideration in his specification of critical habitat. The consideration and weight given to any particular impact is completely within the Secretary's discretion. Courts have noted the ESA does not contain requirements for any particular methods or approaches. (See, *e.g., Bldg. Indus. Ass'n of the Bay Area et al.* v. *U.S. Dept. of Commerce et al.,* No. 13–15132 (9th Cir., July 7, 2015), upholding district court's ruling that the ESA does not require the agency to follow a specific methodology when designating critical habitat under section 4(b)(2)). However, we recognize that our determination about whether to exclude any particular area from critical habitat is reviewable under the Administrative Procedure Act. (See *Weyerhaeuser Co.* v. *U.S. Fish & Wildlife Service,* 139 S. Ct. 361 (2018)). For this rule, we followed the same basic approach to describing and evaluating impacts as we have for several recent critical habitat rulemakings, as informed by our Policy Regarding Implementation of Section 4(b)(2) of the ESA (81 FR 7226, February 11, 2016).

The following discussion of impacts is summarized from our Final Information Report, which identifies the economic, national security, and other relevant impacts that we projected would result from including each of the specific areas in the critical habitat designations. We considered these impacts when deciding whether to exercise our discretion to propose excluding particular areas from the designations. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that is more appropriate to particular impacts or available information.

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat, and that they consult with NMFS in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the requirement to avoid jeopardy to listed corals. When the same modification would be required due to impacts to both the species and critical habitat, there would be no additional or incremental impact attributable to the critical habitat designation beyond the administrative impact associated with conducting the critical habitat analysis. Relevant, existing regulatory protections are referred to as the ''baseline'' for the analysis and are discussed in the Final Information Report. In this case, notable baseline protections include the ESA listings of the threatened corals, and the existing critical habitat for elkhorn and staghorn corals (73 FR 72210, November 26, 2008).

The Final Information Report describes the projected future Federal activities that would trigger section 7 consultation requirements if they are implemented in the future, because they may affect the essential feature and consequently may result in economic costs or negative impacts. The report also identifies the potential national security and other relevant impacts that may arise due to the critical habitat designations, such as positive impacts that may arise from conservation of the species and its habitat, state and local protections that may be triggered as a result of designation, and education of the public to the importance of an area for species conservation.

Economic Impacts

Economic impacts of the critical habitat designations result through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. The economic impacts of consultation may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits resulting from consultation are described later. We conducted an analysis of the economic impacts of designating particular areas to the relevant economic or geopolitical areas (*e.g.,* Florida county, Puerto Rico-Metro, USVI island) to assist in projecting the extent to which discrete areas may be impacted.

We updated the economic impact analysis after publication of the proposed rule to include the most current information available; however, this did not alter the critical habitat designations being finalized in this rule. The framework of the updated economic impact analysis remains the same as in the Draft Information Report. To identify the types and geographic distribution of activities that may trigger section 7 consultation for the five corals' critical habitat, we first reviewed section 7 consultation history from 2010 to 2020 for activities consulted on in the areas being designated as critical habitat for the five corals. Of these, the consultation history included 4 programmatic, 41 formal, and 341 informal consultations that fall within the boundaries of and may affect the final critical habitat for the 5 corals. In particular, we reviewed the historical formal consultations that may affect the final critical habitat area for the five corals in detail to assist in understanding the impacts the activities may have on the final critical habitat, and potential project modifications. In addition to reviewing the consultation history, we conducted targeted outreach to key stakeholders and Federal agencies, including the U.S. Army Corps of Engineers (USACE), and state and local permitting agencies to identify activities potentially subject to consultation. Outreach included interviews with the Florida Department of Environmental Protection (FLDEP), Puerto Rico Department of Natural and Environmental Resources (DNER), and USVI Department of Planning and Natural Resources (DPNR), Office of National Marine Sanctuaries, as well as county planning agencies.

Based on this information, the types of activities that have the potential to affect the essential features for the five corals and involve a Federal nexus include the following (in order of the most frequently occurring within critical habitat units):

- Coastal and In-water Construction (*e.g.,* docks, seawalls, piers, marinas, port expansions, anchorages, pipelines/cables, bridge repairs, aids to navigation, *etc.*).
- Channel Dredging (maintenance dredging of existing channels, new channel dredging, and offshore disposal of dredged material).

- Beach Nourishment/Shoreline Protection (placement of sand onto eroding beaches from onshore or offshore borrow sites).
- Water Quality Management (revision of national and state water quality standards, issuance of National Pollutant Discharge Elimination System (NPDES) permits and Total Maximum daily load (TMDL) standards, registrations of pesticides).
- Protected Area Management (development of management plans for national parks, marine sanctuaries, wildlife refuges, *etc.*).
- Fishery Management (development of fishery management plans).
- Aquaculture (development of aquaculture facilities).
- Military Activities (all activities undertaken by the Department of Defense, such as training exercises).
- Oil & Gas and Renewable Energy Development (development of oil, gas, or renewable energy, such as wind power, in the marine environment). Specifically, the Bureau of Ocean Energy Management recently gained authority to conduct wind leasing activities in waters offshore U.S. Territories, but where such developments may occur remains uncertain.

The vast majority (approximately 88 percent) of historical consultations occurring within the critical habitat areas were informal. The limited subset of formal and programmatic consultations (45 actions) was primarily associated with construction activities, beach nourishment/shoreline stabilization, and fishery management activities. Activities for which formal and programmatic consultations were conducted were all located in areas less than 30 meters deep (*i.e.,* within already designated *Acropora* critical habitat), except for fishery management plans, which were relevant to all depths. Activities were distributed across most of the designated critical habitat units.

As discussed in more detail in our Final Information Report, all categories of activities identified as having the potential to affect the essential feature also have the potential to affect the threatened Caribbean corals. To estimate the economic impacts of critical habitat designation, our analysis compares the state of the world with and without the designation of critical habitat for the five corals. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already afforded the critical habitat as a result of the listing of the five corals as threatened species and as a result of other Federal, state, and local regulations or protections, notably the previous designation of critical habitat for the two Caribbean acroporids. The ''with critical habitat'' scenario describes the state of the world with the critical habitat designations. The incremental impacts that will be associated specifically with these critical habitat designations are the difference between the two scenarios. Baseline protections exist in large areas proposed for designation; however, there is uncertainty as to the degree of protection that these protections provide. In particular:

- The five corals are present in each of the critical habitat areas, and are already expected to receive significant protections related to the listing of the species under the ESA that may also protect the critical habitat. However, there is uncertainty regarding whether a particular species may be present within a particular project site, due to their patchy distribution throughout their habitat.
- The 2008 *Acropora* critical habitat designation overlaps significantly with the specific areas under consideration, and the overlap includes the areas where the vast majority of projects and activities potentially affected are projected to occur. The existing *Acropora* critical habitat designation shares the substrate aspect of the essential feature with this designation for the five corals, but not the water quality components. The activities that may affect the critical habitat water column feature are the same as those that would affect the *Acropora* critical habitat substrate feature, with the exception of activities that would increase water temperature.

Incremental impacts result from changes in the management of projects and activities, above and beyond those changes resulting from existing required or voluntary conservation efforts undertaken due to other Federal, state, and local regulations or guidelines (baseline requirements). The added administrative costs of considering critical habitat in section 7 consultation and the additional impacts of implementing conservation efforts (*i.e.,* reasonable and prudent alternatives in the case of an adverse modification finding) resulting from the designation of critical habitat are the direct, incremental compliance costs of designating critical habitat.

Designation of critical habitat for the five coral species is unlikely to result in any new section 7 consultations. Given the protections afforded through the listing of the five corals, and the fact that the critical habitat identified for these species overlaps, in part, with *Acropora* critical habitat, section 7 consultations are already likely to occur for activities with a Federal nexus throughout the critical habitat areas. However, there may be incremental costs associated with those consultations as a result of administrative and project modification costs.

Significant uncertainty exists with respect to the levels and locations of future projects and activities that may require section 7 consultation considering critical habitat for the five corals. Absent better information, our analysis bases forecasts of future section 7 consultations on historical information. This may overstate impacts to the extent NMFS handles more consultations on a programmatic basis in the future, or it may understate impacts if more formal consultations are required as a result of critical habitat designation. However, this analysis provides a measure of costs likely to occur in a given area, based on the best information available.

While the historical consultation rate (see Table 1) is likely to be an imperfect predictor of the number of future actions, the designation of critical habitat for the five corals is not expected to result in any new section 7 consultations that would not have already been expected to occur absent designation (*i.e.,* triggered solely by the designation of critical habitat). This is because, given the listing of the five corals, and the fact that the final critical habitat overlaps with other listed species (*e.g.,* green, hawksbill, leatherback, and loggerhead sea turtles) and critical habitats where most activities are occurring, section 7 consultations are already likely to occur for activities with a Federal nexus throughout the final critical habitat. However, the need to evaluate impacts to the final critical habitat in future consultations will add an incremental administrative burden in consultations in areas outside of designated *Acropora* critical habitat and consultations that affect water temperature.

TABLE 1—FORECAST INCREMENTAL SECTION 7 CONSULTATIONS BY UNIT AND CONSULTATION TYPE
[2022–2031]

Unit	Programmatic consultations	Formal consultations	Informal consultations	Total
Florida	1.0	0.5	13.0	14.5
Puerto Rico	0.0	1.0	15.0	16.0
STT/STJ	0.0	0.0	2.0	2.0
St. Croix	0.0	0.0	1.0	1.0
Navassa	0.0	0.0	0.0	0.0
FGB	1.0	0.5	0.0	1.5
Total	2.0	2.0	31.0	35.0
% of Total	6%	6%	88%	100%

The administrative effort required to address adverse effects to the critical habitat is assumed to be the same, on average, across activities regardless of the type of activity (*e.g.,* beach nourishment versus channel dredging). Informal consultations are expected to require comparatively low levels of administrative effort, while formal and programmatic consultations are expected to require comparatively higher levels of administrative effort. For all formal and informal consultations, we anticipate that incremental administrative costs will be incurred by NMFS, a Federal action agency, and potentially a third party (*e.g.,* applicant, permittee). For programmatic consultations, we anticipate that costs will be incurred by NMFS and a Federal action agency. Incremental administrative costs per consultation effort are expected on average to be $9,800 for programmatic, $5,300 for formal consultations, and $2,600 for informal consultations. We estimate the incremental administrative costs of section 7 consultation by applying these per consultation costs to the forecast number of consultations. We anticipate that there will be 2 programmatic consultations, 2 formal consultations, and 31 informal consultations over a 10-year period, which will require incremental administrative effort. Incremental administrative costs are expected to total approximately $76,000 over the next 10 years, an annualized cost of $11,000 (discounted at 7 percent). The incremental administrative costs are driven by future consultations that will require new analysis for the five corals critical habitat in areas outside *Acropora* critical habitat (*i.e.,* deeper than 30 m and in some discrete geographies).

To evaluate incremental project modification costs, information is required regarding the extent to which the forecast activities that may require project modifications are expected to occur outside of those areas subject to sufficient baseline protection (*i.e.,* outside of *Acropora* critical habitat, and where the five corals are not present). The project modification recommendations that would result from the listing of the species (*i.e.,* to avoid jeopardy to the species) are likely to be similar to project modifications that would be undertaken to avoid adverse modification of critical habitat. Thus, incremental project modifications would only be expected to occur where the species are not present. However, information is not available to determine where the five corals may be identified as part of a project or activity survey within the boundaries of the final critical habitat. Treatment of this uncertainty is discussed below. As discussed earlier, *Acropora* critical habitat likely provides sufficient protection for the five corals critical habitat, with the exception of projects with temperature effects. As such, our analysis of incremental project modification costs focuses on the areas of critical habitat for the five corals that do not overlap *Acropora* corals critical habitat and those future consultations on federal actions that may result in increased water temperature. Overall, 28 consultations with potential project modifications and associated costs are projected to occur in areas outside of or not affect *Acropora* critical habitat (*e.g.,* consultations with temperature effects) over the next 10 years.

We recognize that uncertainty exists regarding whether, where, and how frequently surveys will identify the presence of the five coral species. Should one of the listed corals be present within the area of a future project that may also affect critical habitat, the costs of project modifications would not be attributable to the critical habitat. To reflect the uncertainty with respect to the likelihood that these consultations will require additional project modifications due to impacts to new critical habitat, we estimated a range of costs. The low-end estimate assumes that no incremental project modifications will occur because any project modifications would be required to address impacts to one of the five corals or to existing *Acropora* critical habitat in a project area. The high-end estimate reflects the conservative assumption that all the project modifications would be incremental because none of the five corals are present and the action would not affect existing *Acropora* critical habitat. Taking into consideration the types and cost estimates of the project modifications that may be required for predicted consultations identified, we estimate the high-end incremental costs of $690,000 over 10 years for an annualized cost of $87,000 (discounted at 7 percent). Similar to the projected administrative costs, the majority of the project modification costs are associated with coastal and in-water construction.

Total incremental costs resulting from the five corals' critical habitat are estimated to range from $76,000 to $690,000 over 10 years, or an annualized cost of $11,000 to $198,000 (discounted at 7 percent). The low-end costs are a result of the increased administrative effort to analyze impacts to the final critical habitat in future consultations that would not have affected *Acropora* critical habitat (*i.e.,* in areas outside the boundaries). The high-end costs are a result of the increased administrative effort (*i.e.,* low-end costs) plus the incremental project modification costs. Incremental project modification costs are a result of future consultations that would not have had effects on *Acropora* critical habitat. The high-end costs also assume that the project modifications would be solely due to the final critical habitat. However, this is likely an overestimate because an undetermined number of future consultations will have the same

project modification as a result of avoiding adverse effects to one or more of the five corals. Nearly 90 percent of total high-end incremental costs result from project modifications, primarily for coastal and in-water construction and beach nourishment activities.

Table 2 and Table 3 present total low and high-end incremental costs by activity type, respectively. Coastal and in-water construction accounts for the highest costs, ranging from $42,000 to $530,000 over ten years (discounted at 7 percent). The high-end projection represents approximately 78 percent of total costs.

TABLE 2—LOW-END TOTAL INCREMENTAL COSTS (ADMINISTRATIVE) BY ACTIVITY, 2022–2031
[$2021, 7 percent discount rate]

Unit	Coastal & in-water const. (USACE)	Beach nourish-ment (USACE)	Channel dredging (USACE)	Water quality mgmt. (EPA)	Energy dev. (BOEM)	Military (NAVY)	Total	Coastal & in-water const. (USACE)	Beach nourish-ment (USACE)	Channel dredging (USACE)	Water quality mgmt. (EPA)	Energy dev. (BOEM)	Military (NAVY)	Total
FL	$13,400	$6,600	$0	$6,300	$1,700	$3,300	$31,700	$1,900	$950	$0	$890	$240	$470	$4,400
PR	23,000	1,700	5,000	1,700	0	0	32,000	3,300	240	720	240	0	0	4,500
STT/STJ	3,300	0	0	0	0	0	3,300	470	0	0	0	0	0	470
STX	1,700	0	0	0	0	0	1,700	240	0	0	0	0	0	240
Nav	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FGB	0	0	0	0	7,900	0	7,900	0	0	0	0	1,100	0	1,100
Total	42,000	8,300	5,000	7,900	9,600	3,300	76,000	5,900	1,200	720	1,100	1,400	470	11,000

Note: The estimates may not sum to the totals reported due to rounding.

TABLE 3—HIGH-END TOTAL INCREMENTAL COSTS (ADMINISTRATIVE AND PROJECT MODIFICATION) BY ACTIVITY, 2022–2031
[$2021, 7 percent discount rate]

Unit	Coastal & in-water const. (USACE)	Beach nourish-ment (USACE)	Channel dredging (USACE)	Water quality mgmt. (EPA)	Energy dev. (BOEM)	Military (NAVY)	Total	Coastal & in-water Const. (USACE)	Beach nourish-ment (USACE)	Channel dredging (USACE)	Water quality mgmt. (EPA)	Energy dev. (BOEM)	Military (NAVY)	Total
FL	$170,000	$85,000	$0	$6,300	$1,700	$3,300	$270,000	$24,000	$12,000	$0	$890	$240	$470	$38,000
PR	300,000	21,000	25,000	1,700	0	0	350,000	43,000	3,000	3,500	240	0	0	49,000
STT/STJ	43,000	0	0	0	0	0	43,000	6,100	0	0	0	0	0	6,100
STX	21,000	0	0	0	0	0	21,000	3,000	0	0	0	0	0	3,000
Nav	0	0	0	0	0	0	0	0	0	0	0	0	0	0
FGB	0	0	0	0	7,900	0	7,900	0	0	0	0	1,100	0	1,100
Total	530,000	110,000	25,000	7,900	9,600	3,300	690,000	76,000	15,000	3,500	1,100	1,400	470	98,000

Note: The estimates may not sum to the totals reported due to rounding.

National Security Impacts

Our critical habitat impacts analyses recognize that impacts to national security result only if a designation would trigger future ESA section 7 consultations because a proposed military activity ''may affect'' the critical habitat. Anticipated interference with mission-essential training or testing or unit readiness, through the additional commitment of resources to an adverse modification analysis and expected requirements to modify the action to prevent adverse modification of critical habitat, has been identified as an impact of critical habitat designations. Our impacts analyses also recognize that whether national security impacts result from the designation depends on whether future consultations would be required under the jeopardy standard, due to the coral being present, regardless of the critical habitat designation, and whether the designation would add new burdens beyond those related to the consultation on effects to the corals.

As described previously, we identified DoD military operations as a category of activity that has the potential to affect the essential feature of the critical habitat identified for the five corals. However, most of the actions we have consulted on in the past would not result in incremental impacts in the future, because the consultations would be required to address impacts to either the five corals or the substrate feature of *Acropora* critical habitat. Based on our review of historical consultations, only those activities that would be conducted in the South Florida Ocean Measuring Facility operated by the Navy near Dania, Florida would involve incremental impacts due to the critical habitat designations, and thus only consultations on naval activities in this particular area could result in national security impacts.

In 2015, we requested the DoD provide us with information on military activities that may affect the proposed critical habitat and whether the proposed critical habitat would have a national security impact due to the requirement to consult on those activities. The Navy responded that activities associated with the designated restricted area managed by the South Florida Ocean Measuring Facility (SFOMF–RA), defined in 33 CFR 334.580, and located offshore of Dania, Florida, may affect the critical habitat. This assertion is supported by two previous consultations on cable-laying activities in the SFOMF–RA over the past 10 years.

The SFOMF–RA contains underwater cables and benthic sensor systems that enable real-time data acquisition from Navy sensor systems used in Navy exercises. The previous consultations, in 2011 and 2013, were for the installation of new cables. These consultations did not affect any coral species, because the cables were routed to avoid the corals. These consultations did not consider effects to *Acropora* critical habitat because the area was excluded from the 2008 *Acropora* critical habitat designation based on national security impacts. However, installation of the cables would have affected the substrate feature. Because the installation of new cables in the future may affect the critical habitat substrate feature, and the area was excluded from *Acropora* critical habitat, an incremental impact to the Navy due to critical habitat designation for the five coral species is probable. The impact would result from the added administrative effort to consider impacts to the coral critical habitat and project modifications to avoid adverse effects to the substrate aspect of the essential feature.

The Navy has conducted extensive benthic surveys in the SFOMF–RA and has mapped the locations of all listed corals. Thus, they would be able to avoid impacts to the listed corals from the installation of new cables. However, if the cables were laid over the critical habitat's substrate feature, the cable would make the substrate unavailable for settlement and recruitment. Thus, we would require consultation to evaluate impacts of this adverse effect to the essential feature. The administrative costs and project modification costs would be incremental impacts of the critical habitat. The Navy concluded that critical habitat designations at the SFOMF–RA would likely impact national security by diminishing military readiness through the requirement to consult on their activities within critical habitat beyond the requirement to consult on the threatened corals and through any additional project modifications.

In 2019, the Navy requested the exclusion of the Federal Danger Zones and Restricted Areas off NAS Key West designated in 33 CFR 334.610 and 33 CFR 334.620 in Navy's Key West Operations Area. However, at the time of the proposed rule, we were unable to make a determination and continued discussion with the Navy to identify the potential national security impacts in these areas.

In March 2021, the Navy provided a final report titled: Atlantic Fleet Training and Testing Activities, Caribbean Coral Critical Habitat Conference Package to assist in evaluating the impact of their activities that may affect the proposed critical habitat. With the exception of those activities, which occur on SFOMF–RA, based on the Navy's description and locations of the activities, standard operating procedures, and mitigation measures, we do not expect that the Navy would have to change their activities through project modifications in section 7 consultation based on the designation of critical habitat for the five corals.

Other Relevant Impacts

We identified two broad categories of other relevant impacts of this critical habitat designation: conservation benefits, both to the species and to society, and impacts on governmental or private entities that are implementing existing management plans that provide benefits to the listed species. Our Final Impacts Analysis discusses conservation benefits of designating the 28 specific areas, and the benefits of conserving the 5 corals to society, in both ecological and economic metrics.

Conservation Benefits

The primary benefit of critical habitat designation is the contribution to the conservation and recovery of the five corals. That is, in protecting the features essential to the conservation of the species, critical habitat directly contributes to the conservation and recovery of the species. Our analysis contemplated three broad categories of benefits of the critical habitat designation:

(1) Increased probability of conservation and recovery of the five corals: The most direct benefits of the critical habitat designation stem from the enhanced probability of conservation and recovery of the five corals. From an economics perspective, the appropriate measure of the value of this benefit is people's ''willingness-to-pay'' for the incremental change. While the existing economics literature is insufficient to provide a quantitative estimate of the extent to which people value incremental changes in recovery potential, the literature does provide evidence that people have a positive preference for listed species conservation, even beyond any direct (*e.g.,* recreation such as viewing the species while snorkeling or diving) or indirect (reef fishing that is supported by the presence of healthy reef ecosystems) use for the species.

(2) Ecosystem service benefits of coral reef conservation, in general: Overall, coral reef ecosystems, including those

comprising populations of the five corals, provide important ecosystem services of value to individuals, communities, and economies. These include recreational opportunities (and associated tourism spending in the regional economy), habitat and nursery functions for recreationally and commercially valuable fish species, shoreline protection in the form of wave attenuation and reduced beach erosion, and climate stabilization via carbon sequestration. Efforts to conserve the five corals also benefit the broader reef ecosystems, thereby preserving or improving these ecosystem services.

Critical habitat most directly influences the recovery potential of the species and protects coral reef ecosystem services by the protections afforded under section 7 of the ESA. That is, these benefits stem from implementation of project modifications undertaken to avoid destruction and adverse modification of critical habitat. Accordingly, critical habitat designation is most likely to generate benefits discussed in those areas expected to be subject to additional recommendations for project modifications (above and beyond any conservation measures that may be implemented in the baseline due to the listing status of the species or for other reasons).

(3) Education and Awareness Benefits: There is the potential for education and awareness benefits arising from the critical habitat designations. This potential stems from two sources: (1) entities that engage in section 7 consultation and (2) members of the general public interested in coral conservation. The former potential exists from parties who alter their activities to benefit the species or essential feature because they were made aware of the critical habitat designations through the section 7 consultation process. The latter may engage in similar efforts because they learned of the critical habitat designations through outreach materials. For example, we have been contacted by diver groups in the Florida Keys who are specifically seeking the two Caribbean acroporid corals on dives and reporting those locations to NMFS, thus assisting us in planning and implementing coral conservation and management activities. In our experience, designation raises the public's awareness that there are special considerations to be taken within the area.

Similarly, state and local governments may be prompted to enact laws or rules to complement the critical habitat designations and benefit the listed corals. Those laws would likely result in additional impacts of the designations. However, it is impossible to quantify the beneficial effects of the awareness gained through, or the secondary impacts from state and local regulations resulting from, the critical habitat designations.

Impacts to Governmental and Private Entities With Existing Management Plans Benefitting the Essential Features

Among other relevant impacts of the critical habitat designations we considered under section 4(b)(2) of the ESA are impacts on relationships with, or the efforts of, private and public entities involved in management or conservation efforts benefiting listed species. In some cases, the additional regulatory layer of a designation could negatively impact the conservation benefits provided to the listed species by existing or proposed management or conservation plans.

Existing management plans and associated regulations protect existing coral reef resources, but they do not specifically protect the substrate and water quality features for purposes of increasing listed coral abundance and eventual recovery. Thus, the five corals critical habitat designation would provide unique benefits for the corals, beyond the benefits provided by existing management plans. However, the identified areas contain not only the essential features, but also one or more of the five corals, and overlap with *Acropora* critical habitat. In addition, consultations related to protected area management over the next 10 years are not expected to result in incremental project modifications as these protected areas generally provide specific regulations to protect coral reefs. Hence, any section 7 impacts will likely be limited to administrative costs. Because we identified that resource management was a category of activities that may affect both the five corals and the critical habitat, these impacts would not be incremental. In addition, we found no evidence that relationships would be negatively affected or that negative impacts to other agencies' ability to provide for the conservation of the listed coral species would result from designation.

Discretionary Exclusions Under Section 4(b)(2)

We are not exercising our discretion to exclude areas based on economic impacts. Our conservative identification of the highest potential incremental economic impacts indicates that any such impacts will be relatively small—$11,000 to $98,000 annually. The incremental costs are split between the incremental administrative effort and incremental project modification costs for the relatively few (about 35) consultations over the next 10 years. Further, the analysis indicates that there is no particular area within the units that meet the definition of critical habitat where economic impacts would be particularly high or concentrated as compared to the human population and level of activities in each unit.

We are excluding one particular area on the basis of national security impacts. National security impacts would occur in the designated restricted area managed by the SFOMF–RA offshore Dania Beach, Florida, which coincides with all five threatened corals' proposed critical habitats. The area does support the essential feature and contains the five threatened Caribbean corals. The Navy concluded that critical habitat designations at the SFOMF–RA would likely impact national security by diminishing military readiness through the requirement to consult on their activities within critical habitat beyond the requirement to consult on the threatened corals and potentially result in additional project modifications. This is likely because the Navy, which has comprehensive maps of all threatened coral locations within the SFOMF–RA, would need to avoid impacts to the substrate aspect of the essential feature in addition to avoiding impacts to the listed corals themselves, should any new cables or sensors be installed. The Navy stated that impediments to SFOMF operations would adversely impact the Navy's ability to maintain an underwater stealth advantage of future classes of ships and submarines and impede our Nation's ability to address emergent foreign threats. The Navy stated that the critical habitat designations would hinder its ability to continue carrying out the unique submarine training provided by this facility, as no other U.S. facility has the capability to make the cable-to-shore measurements enabled at the SFOMF that satisfy its requirement to assure the newest submarines are not vulnerable to electromagnetic detection. The Navy advised the loss of this capability would directly impact new construction of submarines and submarines already in the fleet that are being readied for deployment. Therefore, SFOMF's activities are necessary to maintain proficiency in mission-essential tactics for winning wars, deterring aggression, and maintaining freedom of the seas. The excluded area comprises a very small portion of the areas that meet the definition of critical habitat. Navy regulations prohibit anchoring, trawling,

dredging, or attaching any object within the area; thus, the corals and their habitat will be protected from these threats. Further, the corals and their habitat will still be protected through ESA section 7 consultations that prohibit jeopardizing the species' continued existence and require modifications to minimize the impacts of incidental take. Further, we do not foresee other Federal activities that might adversely impact critical habitat that would be exempted from future consultation requirements due to this exclusion, since this area is under exclusive military control. Therefore, in our judgment, the benefit of designating the particular area of the SFOMF–RA as critical habitat is outweighed by the benefit of avoiding the impacts to national security the Navy would experience if it were required to consult based on critical habitat. Given the small area (5.5 mi^2 (14.2 km^2)) that meets the definition of critical habitat encompassed by this area, we conclude that exclusion of this area will not result in extinction of any of the five threatened Caribbean corals.

We are not excluding any other areas based on national security impacts. While the Navy requested the Federal Danger Zones and Restricted Areas off NAS Key West be excluded, we conclude it is unlikely that changes to the activities conducted in these areas would be required through project modifications because of section 7 consultation.

We are not excluding any particular area based on other relevant impacts. Other relevant impacts include conservation benefits of the designations, both to the species and to society. Because the feature that forms the basis of the critical habitat designations is essential to the conservation of the five threatened Caribbean corals, the protection of critical habitat from destruction or adverse modification may at minimum prevent loss of the benefits currently provided by the species and their habitat and may contribute to an increase in the benefits of these species to society in the future. While we cannot quantify or monetize the benefits, we conclude they are not negligible and would be an incremental benefit of these designations.

Critical Habitat Designations

Our critical habitat regulations state that we will show critical habitat on a map instead of using lengthy textual descriptions to describe critical habitat boundaries, with additional information discussed in the preamble of the rulemaking and in agency records (50 CFR 424.12(c)). When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)).

The habitat containing the essential feature and that may require special management considerations or protection is marine habitat of particular depths for each species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. The boundaries of each specific area for each coral species are determined by the species' commonly occupied minimum and maximum depth ranges (*i.e.,* depth contour) within their specific geographic distributions, as described in the literature and observed in monitoring data. All depths are relative to mean low water (MLW). Because the quality of the available GIS data varies based on collection method, resolution, and processing, the critical habitat boundaries are defined by the maps in combination with the textual information included in the final regulation. This textual information clarifies and refines the location and boundaries of each area. In particular, the textual information clarifies the boundaries of the critical habitat for each coral species based on a specific water-depth range. The textual information also lists certain particular areas that are not included in the critical habitat.

Critical Habitat Unit Descriptions

Table 4 describes each unit of critical habitat for each species. It contains the geographic extent and water depths of all occupied areas, which generally form the boundaries of each unit.

TABLE 4—DESCRIPTION AND EXTENT OF EACH CRITICAL HABITAT UNIT BY SPECIES

Species	Critical habitat unit name	Location	Geographic extent	Water depth range	Area (approx. rounded)
Orbicella annularis	OANN–1	Florida Florida	Lake Worth Inlet, Palm Beach County to Government Cut, Miami-Dade County. Government Cut, Miami-Dade County to Dry Tortugas.	2–20m (6.5–65.6 ft) 0.5–20m (1.6–65.6 ft)	7,000 km^2 (2,700mi^2)
	OANN–2	Puerto Rico	All islands	0.5–20m (1.6–65.6 ft)	2,100 km^2 (830mi^2)
	OANN–3	USVI	All islands of St. Thomas and St. John	0.5–20m (1.6–65.6 ft)	100 km^2 (40mi^2)
	OANN–4	USVI	All islands of St. Croix	0.5–20m (1.6–65.6 ft)	230 km^2 (89 mi^2)
	OANN–5	Navassa	Navassa Island	0.5–20m (1.6–65.6 ft)	0.13 km^2 (0.05 mi^2)
	OANN–6	FGB	East Flower Garden Bank and West Flower Garden Bank.	16–90m (53–295 ft)	88 km^2 (34 mi^2)
Orbicella faveolata	OFAV–1	Florida Florida	St. Lucie Inlet, Martin County to Government Cut, Miami-Dade County. Government Cut, Miami-Dade County to Dry Tortugas.	2–40m (6.5–131 ft) 0.5–40m (1.6–131 ft)	9,600 km^2 (3,700mi^2)
	OFAV–2	Puerto Rico	All islands of Puerto Rico	0.5–90m (1.6–295 ft)	5,500 km^2 (2,100mi^2)
	OANN–3	USVI	All islands of St. Thomas and St. John	0.5–90m (1.6–295 ft)	1,400 km^2 (520mi^2)
	OFAV–4	USVI	All islands of St. Croix	0.5–90m (1.6–295 ft)	360 km^2 (140mi^2)
	OFAV–5	Navassa	Navassa Island	0.5–90m (1.6–295 ft)	11 km^2 (4 mi^2)
	OFAV–6	FGB	East Flower Garden Bank and West Flower Garden Bank.	16–90m (53–295 ft)	88 km^2 (34 mi^2)
Orbicella franksi	OFRA–1	Florida Florida	St. Lucie Inlet, Martin County to Government Cut, Miami-Dade County. Government Cut, Miami-Dade County to Dry Tortugas.	2–40m (6.5–131 ft) 0.5–40m (1.6–131 ft)	9,200 km^2 (3,600mi^2)
	OFRA–2	Puerto Rico	All islands of Puerto Rico	0.5–90m (1.6–295 ft)	5,500 km^2 (2,100mi^2)
	OFRA–3	USVI	All islands of St. Thomas and St. John	0.5–90m (1.6–295 ft)	1,400 km^2 (520mi^2)
	OFRA–4	USVI	All islands of St. Croix	0.5–90m (1.6–295 ft)	360 km^2 (140mi^2)
	OFRA–5	Navassa	Navassa Island	0.5–90m (1.6–295 ft)	11 km^2 (4 mi^2)
	OFRA–6	FGB	East Flower Garden Bank and West Flower Garden Bank.	16–90m (53–295 ft)	88 km^2 (34 mi^2)

TABLE 4—DESCRIPTION AND EXTENT OF EACH CRITICAL HABITAT UNIT BY SPECIES—Continued

Species	Critical habitat unit name	Location	Geographic extent	Water depth range	Area (approx. rounded)
Dendrogyra cylindrus	DCYL–1	Florida	Lake Worth Inlet, Palm Beach County to Government Cut, Miami-Dade County.	2–25m (6.5–82 ft)	4,300 km^2 (1,700mi^2)
		Florida	Government Cut, Miami-Dade County to Dry Tortugas.	1–25m (3.3–82 ft)	
	DCYL–2	Puerto Rico	All islands	1–25m (3.3–82 ft)	2,800 km^2 (1,100mi^2)
	DCYL–3	USVI	All islands of St. Thomas and St. John	1–25m (3.3–82 ft))	170 km^2 (65mi^2)
	DCYL–4	USVI	All islands of St. Croix	1–25m (3.3–82 ft)	300 km^2 (120mi^2)
	DCYL–5	Navassa	Navassa Island	1–25m (3.3–82 ft))	0.5 km^2 (0.2mi^2)
Mycetophyllia ferox	MFER–1	Florida	Broward County to Dry Tortugas	5–40m (16.4–131 ft) ...	4,400 km^2 (1.700mi^2)
	MFER–2	Puerto Rico	All islands of Puerto Rico	5–90m (16.4–295 ft) ...	5,000 km^2 (1,900mi^2)
	MFER–3	USVI	All islands of St. Thomas and St. John	5–90m (16.4–295 ft) ...	1,300 km^2 (510mi^2)
	MFER–4	USVI	All islands of St. Croix	5–90m (16.4–295 ft) ...	310 km^2 (120mi^2)
	MFER–5	Navassa	Navassa Island	5–90m (16.4–295 ft) ...	11 km^2 (4mi^2)

Effects of Critical Habitat Designations

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with NMFS regarding any actions likely to jeopardize a species proposed for listing under the ESA, or likely to destroy or adversely modify proposed critical habitat, pursuant to section 7(a)(2).

A conference involves informal discussions in which NMFS may recommend conservation measures to minimize or avoid adverse effects. The discussions and conservation recommendations are documented in a conference report provided to the Federal agency. If requested by the Federal agency, a formal conference report may be issued, including a biological opinion prepared according to 50 CFR 402.14. A formal conference report may be adopted as the biological opinion when the species is listed or critical habitat designated, if no significant new information or changes to the action alter the content of the opinion.

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions that may affect a listed species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a letter of concurrence or in a biological opinion. If we conclude in the biological opinion that the agency action would likely result in the destruction or adverse modification of critical habitat, we would also identify any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where: (1) critical habitat is subsequently designated; or (2) new information or changes to the action may result in effects to critical habitat not previously considered in the biological opinion. Consequently, some Federal agencies may request reinitiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process include activities on Federal lands and activities on private or state lands requiring a permit from a Federal agency or being funded by a Federal agency. ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions that are not federally funded, authorized, or carried out.

Activities That May Be Affected

Section 4(b)(8) of the ESA requires that we describe briefly, and evaluate in any proposed or final regulation to designate critical habitat, those activities that may adversely modify such habitat or that may be affected by such designation. As described in our Final Information Report, a wide variety of Federal activities may require ESA section 7 consultation because they may affect the essential feature of critical habitat. Specific future activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat, in addition to their potential to affect and jeopardize the continued existence of listed species. For example, activities may adversely modify the substrate portion of the essential feature by removing or altering the substrate or adversely modify the water column portion of the essential feature by reducing water clarity through turbidity. These activities would require ESA section 7 consultation when they are authorized, funded, or carried out by a Federal agency. A private entity may also be affected by these proposed critical habitat designations if it is a proponent of a project that requires a Federal permit or receives Federal funding.

Categories of activities that may be affected by the designations include but are not limited to coastal and in-water construction, channel dredging, beach nourishment, shoreline protection, water quality management, energy development, and military activities. Questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat should be directed to us (see **FOR FURTHER INFORMATION CONTACT**). Identifying concentrations of water quality features at which the habitat for listed corals may be affected is inherently complex and influenced by taxa, exposure duration, and acclimatization to localized seawater regimes. Consequently, the actual responses of the critical habitat (and listed corals) to changes in the essential feature resulting from future Federal actions will be case and site-specific, and predicting such responses will require case and site-specific data and analyses.

Information Quality Act and Peer Review

The data and analyses supporting this action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554). On December 16, 2004, OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and went into effect on June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific information'' prior to public dissemination. ''Influential scientific information'' is defined as information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. Stricter standards were established for the peer review of highly influential scientific assessments, defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.

The information in the Draft Information Report supporting this critical habitat rule was considered influential scientific information and subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the information used to draft this document, and incorporated the peer review comments into the Draft Information Report prior to dissemination of the Final Information Report and completion of this rule. Comments received from peer reviewers are available on our website at *http://www.cio.noaa.gov/services_programs/prplans/ID346.html.*

References Cited

A complete list of all references cited in this rulemaking is available at *https://www.fisheries.noaa.gov/action/final-rule-designate-critical-habitat-threatened-caribbean-corals,* or upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

Takings (Executive Order 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of private property. A taking of property includes actions that result in physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this final rule would not have significant takings implications. A takings implication assessment is not required. These designations would affect only Federal agency actions (*i.e.,* those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designations does not affect landowner actions that do not require Federal funding or permits.

Regulatory Planning and Review (E.O.s 12866, 14094, 13563)

This rule has been determined to be significant for purposes of E.O. 12866 as amended by Executive Order 14094. Executive Order 14094, which amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O 13563, states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and be consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

A final impact analysis report, which has been prepared as part of the Final Information Report, considers the economic costs and benefits of this critical habitat designation and alternatives to this rulemaking as required under E.O. 12866. To review this report, see the **ADDRESSES** section above. Based on the economic impacts evaluation in the Final Information Report, total incremental costs resulting from the five corals' critical habitat are estimated to range from $76,000 to $690,000 over 10 years, an annualized cost of $11,000 to $98,000 (discounted at 7 percent). These same total incremental costs are $92,000 to $830,000 over 10 years discounted at 3 percent. The low-end costs are a result of the increased administrative effort to analyze impacts to the critical habitat in future consultations on activities that are not projected to affect *Acropora* critical habitat (*i.e.,* in areas outside the boundaries, projects with impacts to water temperature). The high-end costs are a result of the increased administrative effort (*i.e.,* low-end costs) plus the incremental project modification costs that stem solely from the critical habitat. Incremental project modification costs are a result of future consultations that are not projected to have effects on *Acropora* critical habitat. The high-end costs also assume that the project modifications will be solely a result of the critical habitat, and not the presence of the species. However, the high-end estimate is very likely an overestimate on incremental costs because an undetermined number of future consultations will have project modifications that address adverse effects to one or more of the five corals, as well as adverse effects to the new critical habitat. The final rule also provides unquantifiable conservation benefits in the following categories: (1) increased probability of conservation and recovery of the corals, (2) general ecosystem service benefits of coral reef conservation, and (3) education and awareness.

Federalism (Executive Order 13132)

Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this rule does not have significant federalism effects and that a federalism assessment is not required. The designation of critical habitat directly affects only the responsibilities of Federal agencies. As a result, this rule does not have substantial direct effects on the States or territories, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. State or local governments may be indirectly affected by this critical habitat designation if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In these cases, the State or local government agency may participate in the ESA section 7 consultation as a third party. One of the key conclusions of the economic impact analysis is that the incremental impacts of the critical habitat designation will likely be limited to additional administrative costs to NMFS and Federal agencies stemming from the

need to consider impacts to critical habitat as part of the forecasted section 7 consultations. The designation of critical habitat is not expected to have substantial indirect impacts on State or local governments.

Energy Supply, Distribution, and Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. OMB Guidance on Implementing E.O. 13211 (July 13, 2001) states that significant adverse effects could include any of the following outcomes compared to a world without the regulatory action under consideration: (1) reductions in crude oil supply in excess of 10,000 barrels per day; (2) reductions in fuel production in excess of 4,000 barrels per day; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million cubic feet per year; (5) reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed any of the thresholds above; (7) increases in the cost of energy production in excess of 1 percent; (8) increases in the cost of energy distribution in excess of 1 percent; or (9) other similarly adverse outcomes. A regulatory action could also have significant adverse effects if it: (1) adversely affects in a material way the productivity, competition, or prices in the energy sector; (2) adversely affects in a material way productivity, competition or prices within a region; (3) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency regarding energy; or (4) raises novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866 and 13211.

This rule will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

We prepared a final regulatory flexibility analysis (FRFA) pursuant to section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*). The FRFA analyzes the impacts to small entities that may be affected by the critical habitat designations, and it is included as Appendix B of the Final Information Report and is available upon request (see **ADDRESSES** section). The FRFA is summarized below, as required by section 603 of the RFA.

Our FRFA uses the best available information to identify the potential impacts of critical habitat on small entities. However, there are uncertainties that complicate quantification of these impacts, particularly with respect to the extent to which the quantified impacts may be borne by small entities. As a result, this FRFA employs a conservative approach (*i.e.,* more likely to overestimate than underestimate impacts to small entities) in assuming that the quantified costs that are not borne by the Federal Government are generally borne by small entities. This analysis focuses on small entities located in Broward, Martin, Miami-Dade, Monroe, and Palm Beach Counties in Florida; Puerto Rico; St. Thomas and St. John; and St. Croix.

The total maximum annualized impacts to small entities are estimated to be $88,000, which represents approximately 90 percent of the total quantified incremental impacts forecasted to result from the critical habitat designations. This impact assumes that all of the incremental project modification costs will be incurred by small entities. These impacts are anticipated to be borne by the small entities that obtain funds or permits from Federal agencies that consult with NMFS regarding the five coral species critical habitat in the next 10 years. Given the uncertainty regarding which small entities in a given industry will obtain funds or permits from Federal agencies that will need to consult with NMFS, this analysis estimates impacts to small entities under two different scenarios. These scenarios are intended to reflect the range of uncertainty regarding the number of small entities that may be affected by the designations and the potential impacts of critical habitat designations on their annual revenues within that range.

Under Scenario 1, this analysis assumes that all third parties participating in future consultations are small, and that incremental impacts are distributed evenly across all of these entities. Scenario 1 accordingly reflects a high estimate of the number of potentially affected small entities and a low estimate of the potential effect in terms of percent of revenue. This scenario, therefore, overstates the number of small entities likely to be affected by the rule and potentially understates the revenue effect. This analysis anticipates that 28 small entities engaged in coastal and in-water construction and dredging activities will collectively incur approximately $88,000 in annualized costs under Scenario 1. However, because these costs are shared among 28 entities, annualized impacts of the rule are estimated to make up less than 1 percent of annual revenues for each affected small entity.

Under Scenario 2, this analysis assumes costs associated with each consultation action are borne to a single small entity within an industry. This method understates the number of small entities affected but overstates the likely impacts on an entity. As such, this method arrives at a low estimate of potentially affected entities and a high estimate of potential effects on revenue, assuming that quantified costs represent a complete accounting of the costs likely to be borne by private entities. For the coastal and in-water construction and dredging industry, this scenario forecasts $88,000 in annualized impacts would be borne by a single small entity. Though this estimate is almost certainly an overstatement of the costs borne by a single small entity, the impact is nonetheless expected to result in impacts that are less than 5 percent of the average annual revenues for a small entity in this industry.

While these scenarios present a broad range of potentially affected entities and the associated revenue effects, we expect the actual number of small entities affected and revenue effects will be somewhere in the middle. In other words, some subset greater than 1 and less than 28 of the small entities will participate in section 7 consultations on the five corals and bear associated impacts annually. Regardless, our analysis demonstrates that, even if we assume a low-end estimate of affected small entities, the greatest potential revenue effect is still less than 5 percent.

Even though we cannot definitively determine the numbers of small and large entities that may be affected by this rule, there is no indication that affected project applicants would be only small entities or mostly small entities. It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities. However, as described in the Final Information Report, consultations and project modifications will be required based on the type of permitted action and its associated

impacts on the essential critical habitat feature. Because the costs of many potential project modifications that may be required to avoid adverse modification of critical habitat are unit costs (*e.g.,* per mile of shoreline, per cubic yard of sand moved), such that total project modification costs would be proportional to the size of the project, it is not unreasonable to assume that larger entities would be involved in implementing the larger projects with proportionally larger project modification costs.

No Federal laws or regulations duplicate or conflict with this rule. However, other aspects of the ESA may overlap with the critical habitat designations. For instance, listing of the threatened corals under the ESA requires Federal agencies to consult with NMFS to avoid jeopardy to the species, and large portions of the designations overlap with existing *Acropora* critical habitat. However, this analysis examines only the incremental impacts to small entities from this final rule's critical habitat designations.

The alternatives to the designations considered consisted of a no-action alternative and an alternative based on identical geographic designations for each of the five corals. The no-action, or no designation, alternative would result in no additional ESA section 7 consultations relative to the status quo of the species' listing. Critical habitat must be designated if prudent and determinable. NMFS determined that the critical habitat is prudent and determinable, and the ESA requires critical habitat designation in that circumstance. Further, we have determined that the physical feature forming the basis for our critical habitat designations is essential to the corals' conservation, and conservation of these species will not succeed without this feature being available. Thus, the lack of protection of the critical habitat feature from adverse modification could result in continued declines in abundance and lack of recovery of the five corals. We rejected this no action alternative because it does not provide the level of conservation necessary for the five Caribbean corals. In addition, declines in abundance of the five corals would result in loss of associated economic and other values these corals provide to society, such as recreational and commercial fishing and diving services and shoreline protection services. Thus, small entities engaged in some coral reef-dependent industries would be adversely affected by the continued declines in the five corals. As a result, the no action alternative is not necessarily a ''no cost'' alternative for small entities.

The identical geographic designation alternative would designate exactly the same geography for each of the five corals (*i.e.,* 0.5 to 90 m throughout the maximum geographic extent of all the corals' ranges collectively). This alternative would likely result in the same number and complexity of consultations as the proposed rule, because collectively all of the units in the proposed rule cover the same geography as the identical geographic designation alternative. However, this alternative does not provide the appropriate conservation benefits for each species, as it would designate areas in which one particular species may not exist (*e.g., Dendrogyra cylindrus* only occupies 1 to 25 m). Therefore, we rejected the identical geographic designation alternative because it does not provide the level of conservation necessary for the five Caribbean corals, and because it does not accurately reflect the habitats that are critical for each species. Furthermore, it would be overly burdensome to Federal action agencies to consider impacts to habitat in areas where the species do not occur.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on the enforceable policies of approved Florida, Puerto Rico, and USVI coastal zone management plans.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new or revised collection of information requirements. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This rule will not produce a Federal mandate. The designation of critical habitat does not impose a legally-binding duty on non-Federal government entities or private parties. The only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7 of the ESA. Non-Federal entities that receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, but the Federal agency has the legally binding duty to avoid destruction or adverse modification of critical habitat.

We do not anticipate that this rule will significantly or uniquely affect small governments. Therefore, a Small Government Action Plan is not required.

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

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government.

This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal Government in matters affecting tribal interests.

In developing this rule, we reviewed maps and did not identify any areas under consideration for critical habitat that overlap with Indian lands. Based on this, we found the critical habitat designations for threatened Caribbean corals do not have tribal implications.

Environmental Justice and Racial Equity (E.O.s 12898, 14096, 14019, 13985)

The designation of critical habitat is not expected to have a disproportionately high effect on minority populations or low-income populations. The purpose of this rule is to protect and conserve ESA-listed species through the designation of critical habitat and is expected to help promote a healthy environment; thus, we do not anticipate minority populations or low-income populations to experience disproportionate and adverse human health or environmental burdens. The designation of critical habitat is not expected to disproportionately affect minority populations, low-income populations, or populations otherwise adversely affected by persistent poverty or inequality. Further, it is not expected to create any barriers to opportunity for underserved communities. The proposed rule was widely distributed, including to the affected states and

territorial governments. We did not receive any public comments suggesting the designation would result in adverse effects on these communities.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 226

Endangered and threatened species.

Dated: July 31, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR parts 223 and 226 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102 amend the table in paragraph (e), under the heading ''Corals'' by revising the entries ''Coral, boulder star''; ''Coral, lobed star''; ''Coral, mountainous star''; ''Coral, pillar''; and ''Coral, rough cactus'' to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Corals					
*	*	*	*	*	*
Coral, boulder star	*Orbicella franksi*	Entire species.	79 FR 53852, Sept. 10, 2014	*[Insert 226.230]*	NA
*	*	*	*	*	*
Coral, lobed star	*Orbicella annularis*	Entire species.	79 FR 53852, Sept. 10, 2014	*[Insert 226.230]*	NA
Coral, mountainous star.	*Orbicella faveolata*	Entire species.	79 FR 53852, Sept. 10, 2014	*[Insert 226.230]*	NA
Coral, pillar	*Dendrogyra cylindrus* ..	Entire species.	79 FR 53852, Sept. 10, 2014	*[Insert 226.230]*	NA
Coral, rough cactus	*Mycetophyllia ferox*	Entire species.	79 FR 53852, Sept. 10, 2014	*[Insert 226.230]*	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.230 to read as follows:

§ 226.230 Critical habitat for the Caribbean Boulder Star Coral (Orbicella franksi), Lobed Star Coral (O. annularis), Mountainous Star Coral (O. faveolata), Pillar Coral (Dendrogyra cylindrus), and Rough Cactus Coral (Mycetophyllia ferox).

Critical habitat is designated in the following states and counties for the following species as depicted in the maps below and described in paragraphs (a) through (h) of this section. The maps can be viewed or obtained with greater resolution *https://www.fisheries.noaa.gov/action/final-rule-designate-critical-habitat-threatened-caribbean-corals* to enable a more precise inspection of critical habitat for *Orbicella franksi, O. annularis, O. faveolata, Dendrogyra cylindrus,* and *Mycetophyllia ferox.*

(a) *Critical habitat locations.* Critical habitat is designated for the following five Caribbean corals in the following states, counties, and offshore locations:

TABLE 1 TO PARAGRAPH (a)

Species	State—Counties
Orbicella annularis.	FL—Palm Beach, Broward, Miami-Dade, and Monroe; PR—All; USVI—All; Flower Garden Banks; Navassa Island.
O. faveolata ...	FL—Martin, Palm Beach, Broward, Miami-Dade, and Monroe; PR—All; USVI—All; Flower Garden Banks; Navassa Island.
O. franksi	FL—Palm Beach, Broward, Miami-Dade, and Monroe; PR—All; USVI—All; Flower Garden Banks; Navassa Island.
Dendrogyra cylindrus.	FL—Palm Beach, Broward, Miami-Dade, and Monroe; PR—All; USVI—All; Navassa Island.
Mycetophyllia ferox.	FL—Broward, Miami-Dade, and Monroe; PR—All; USVI—All; Navassa Island.

(b) *Critical habitat boundaries.* Except as noted in paragraphs (d) and (e) of this section, critical habitat for the five Caribbean corals is defined as all marine waters in the particular depth ranges relative to mean low water as depicted in the maps below and described in the Table of the locations of the critical habitat units for *Orbicella franksi, O. annularis, O. faveolata, Dendrogyra cylindrus,* and *Mycetophyllia ferox.* Depth contours or other identified boundaries on the maps form the boundaries of the critical habitat units. Specifically, the COLREGS Demarcation Lines (33 CFR 80), the boundary between the South Atlantic Fishery Management Council (SAFMC) and the

Gulf of Mexico Fishery Management Council (GMFMC; 50 CFR 600.105), the Florida Keys National Marine Sanctuary (15 CFR part 922 subpart P, appendix I), and the Caribbean Island Management Area (50 CFR part 622, appendix E), create portions of the boundaries in several units.

TABLE 2 TO PARAGRAPH (b)—TABLE OF THE LOCATIONS OF THE CRITICAL HABITAT UNITS FOR *Orbicella franksi, O. annularis, O. faveolata, Dendrogyra cylindrus,* AND *Mycetophyllia ferox*

Species	Critical habitat unit name	Location	Geographic extent	Water depth range
Orbicella annularis	OANN–1	Florida	Lake Worth Inlet, Palm Beach County to Government Cut, Miami-Dade County.	2–20 m(6.5–65.6 ft).
		Florida	Government Cut, Miami-Dade County to Dry Tortugas	0.5–20 m (1.6–65.6 ft).
	OANN–2	Puerto Rico	All islands	0.5–20 m (1.6–65.6 ft).
	OANN–3	USVI	All islands of St. Thomas and St. John	0.5–20 m (1.6–65.6 ft).
	OANN–4	USVI	All islands of St. Croix	0.5–20 m (1.6–65.6 ft).
	OANN–5	Navassa	Navassa Island	0.5–20 m (1.6–65.6 ft).
	OANN–6	FGB	East and West Flower Garden, Rankin, Geyer, and McGrail Banks	16–90 m (53–295 ft).
Orbicella faveolata	OFAV–1	Florida	St. Lucie Inlet, Martin County to Government Cut, Miami-Dade County	2–40 m (6.5–131 ft).
		Florida	Government Cut, Miami-Dade County to Dry Tortugas	0.5–40 m (1.6–131 ft).
	OFAV–2	Puerto Rico	All islands of Puerto Rico	0.5–90 m (1.6–295 ft).
	OANN–3	USVI	All islands of St. Thomas and St. John	0.5–90 m (1.6–295 ft).
	OFAV–4	USVI	All islands of St. Croix	0.5–90 m (1.6–295 ft).
	OFAV–5	Navassa	Navassa Island	0.5–90 m (1.6–295 ft).
	OFAV–6	FGB	East and West Flower Garden, Rankin, Geyer, and McGrail Banks	16–90 m (53–295 ft).
Orbicella franksi	OFRA–1	Florida	St. Lucie Inlet, Martin County to Government Cut, Miami-Dade County	2–40 m (6.5–131 ft).
		Florida	Government Cut, Miami-Dade County to Dry Tortugas	0.5–40 m (1.6–131 ft).
	OFRA–2	Puerto Rico	All islands of Puerto Rico	0.5–90 m (1.6–295 ft).
	OFRA–3	USVI	All islands of St. Thomas and St. John	0.5–90 m (1.6–295 ft).
	OFRA–4	USVI	All islands of St. Croix	0.5–90 m (1.6–295 ft).
	OFRA–5	Navassa	Navassa Island	0.5–90 m (1.6–295 ft).
	OFRA–6	FGB	East and West Flower Garden, Rankin, Geyer, and McGrail Banks	16–90 m (53–295 ft).
Dendrogyra cylindrus	DCYL–1	Florida	Lake Worth Inlet, Palm Beach County to Government Cut, Miami-Dade County.	2–25 m (6.5–82 ft).
		Florida	Government Cut, Miami-Dade County to Dry Tortugas	1–25 m (3.3–82 ft).
	DCYL–2	Puerto Rico	All islands	1–25 m (3.3–82 ft).
	DCYL–3	USVI	All islands of St. Thomas and St. John	1–25 m (3.3–82 ft).
	DCYL–4	USVI	All islands of St. Croix	1–25 m (3.3–82 ft).
	DCYL–5	Navassa	Navassa Island	1–25 m (3.3–82 ft).
Mycetophyllia ferox	MFER–1	Florida	Broward County to Dry Tortugas	5–40 m (16.4–131 ft).
	MFER–2	Puerto Rico	All islands of Puerto Rico	5–90 m (16.4–295 ft).
	MFER–3	USVI	All islands of St. Thomas and St. John	5–90 m (16.4–295 ft).
	MFER–4	USVI	All islands of St. Croix	2–40 m (6.5–131 ft).
	MFER–5	Navassa	Navassa Island	0.5–40 m (1.6–131 ft).

(c) *Essential feature.* The feature essential to the conservation of *Orbicella franksi, O. annularis, O. faveolata, Dendrogyra cylindrus,* and *Mycetophyllia ferox* is: Sites that support the normal function of all life stages of the corals, including reproduction, recruitment, and maturation. These sites are natural, consolidated hard substrate or dead coral skeleton, which is free of algae and sediment at the appropriate scale at the point of larval settlement or fragment reattachment, and the associated water column. Several attributes of these sites determine the quality of the area and influence the value of the associated feature to the conservation of the species:

(1) Substrate with the presence of crevices and holes that provide cryptic habitat, the presence of microbial biofilms, or presence of crustose coralline algae;

(2) Reefscape with no more than a thin veneer of sediment and low occupancy by fleshy and turf macroalgae;

(3) Marine water with levels of temperature, aragonite saturation, nutrients, and water clarity that have been observed to support any demographic function; and

(4) Marine water with levels of anthropogenically-introduced (from humans) chemical contaminants that do not preclude or inhibit any demographic function.

(d) *Areas not included in critical habitat.* Critical habitat does not include the following particular areas where they overlap with the areas described in paragraphs (a) through (c) of this section:

(1) Pursuant to ESA section 4(a)(3)(B)(i), all areas subject to the 2014 Naval Air Station Key West Integrated Natural Resources Management Plan.

(2) Pursuant to ESA section 3(5)(A)(i)(I), areas where the essential feature cannot occur;

(3) Pursuant to ESA section 3(5)(A)(i)(I), all managed areas that may contain natural hard substrate but do not provide the quality of substrate essential for the conservation of threatened corals. Managed areas that do not provide the quality of substrate essential for the conservation of the five Caribbean corals are defined as particular areas whose consistently disturbed nature renders them poor habitat for coral growth and survival over time. These managed areas include specific areas where the substrate has been disturbed by planned management authorized by local, state, or Federal governmental entities at the time of critical habitat designation, and will continue to be periodically disturbed by such management. Examples include, but are not necessarily limited to, dredged navigation channels, shipping basins, vessel berths, and active anchorages. Specific federally-authorized channels and harbors considered as managed areas not included in the designations are:

(i) St. Lucie Inlet.
(ii) Palm Beach Harbor.
(iii) Hillsboro Inlet.
(iv) Port Everglades.
(v) Baker's Haulover Inlet.
(vi) Miami Harbor.
(vii) Key West Harbor.
(viii) Arecibo Harbor.
(ix) San Juan Harbor.
(x) Fajardo Harbor.
(xi) Ponce Harbor.
(xii) Mayaguez Harbor.

(xiii) St. Thomas Harbor.

(xiv) Christiansted Harbor.

(4) Pursuant to ESA section 3(5)(A)(i), artificial substrates including but not limited to: fixed and floating structures, such as aids-to-navigation (AToNs), seawalls, wharves, boat ramps, fishpond walls, pipes, submarine cables, wrecks, mooring balls, docks, and aquaculture cages.

(e) *Areas excluded from critical habitat.* Pursuant to ESA section 4(b)(2), the following area is excluded from critical habitat where it overlaps with the areas described in paragraphs (a) through (c) of this section: the designated restricted area managed by the South Florida Ocean Measuring Facility, defined in 33 CFR 334.580.

(f) *Maps.* Critical habitat maps for the Caribbean Boulder Star Coral, Lobed Star Coral, Mountainous Star Coral, Pillar Coral, and Rough Cactus Coral.

Figure 1 Paragraph (f)

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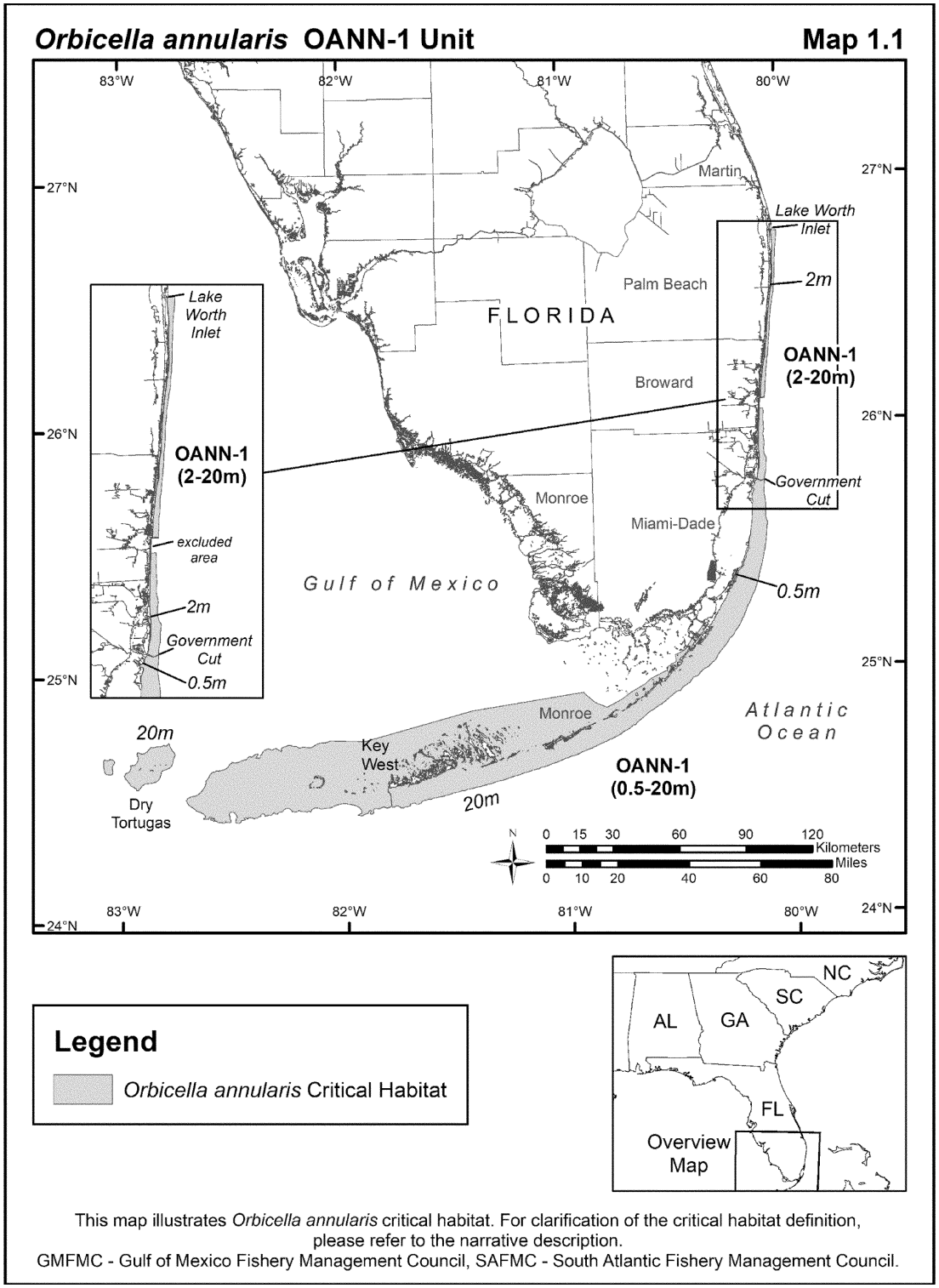


Figure 2 Paragraph (f)

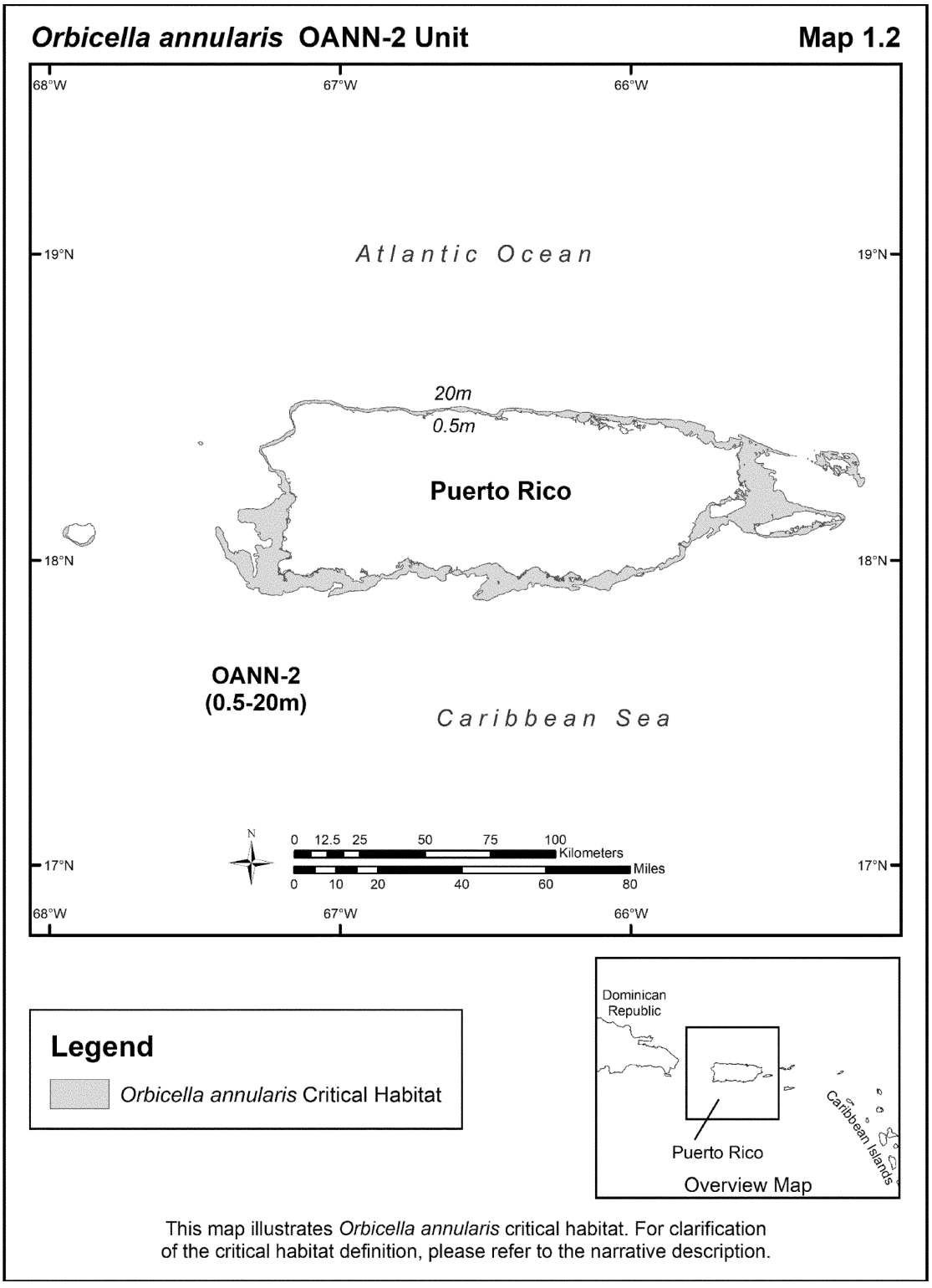


Figure 3 Paragraph (f)

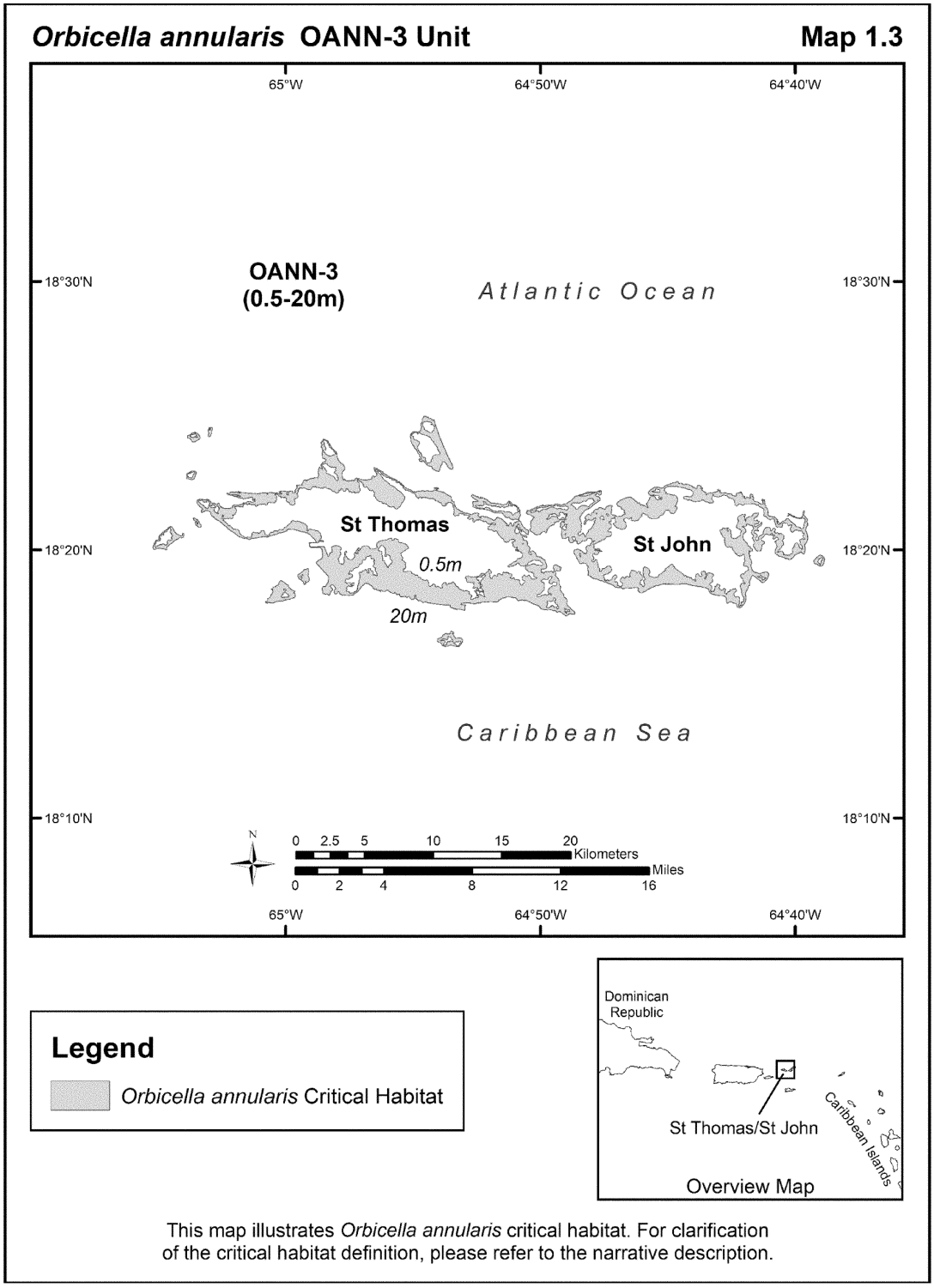


Figure 4 Paragraph (f)

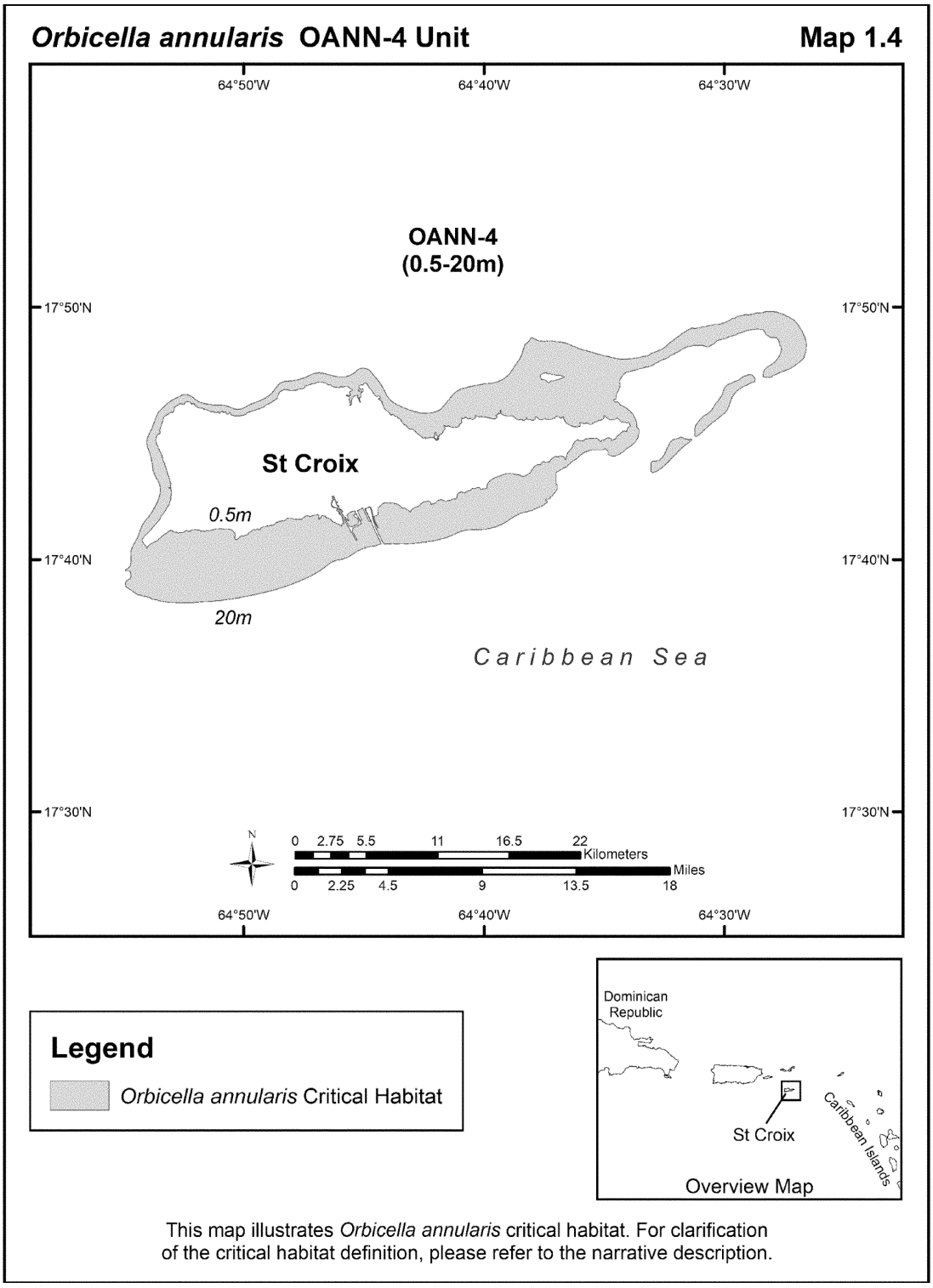
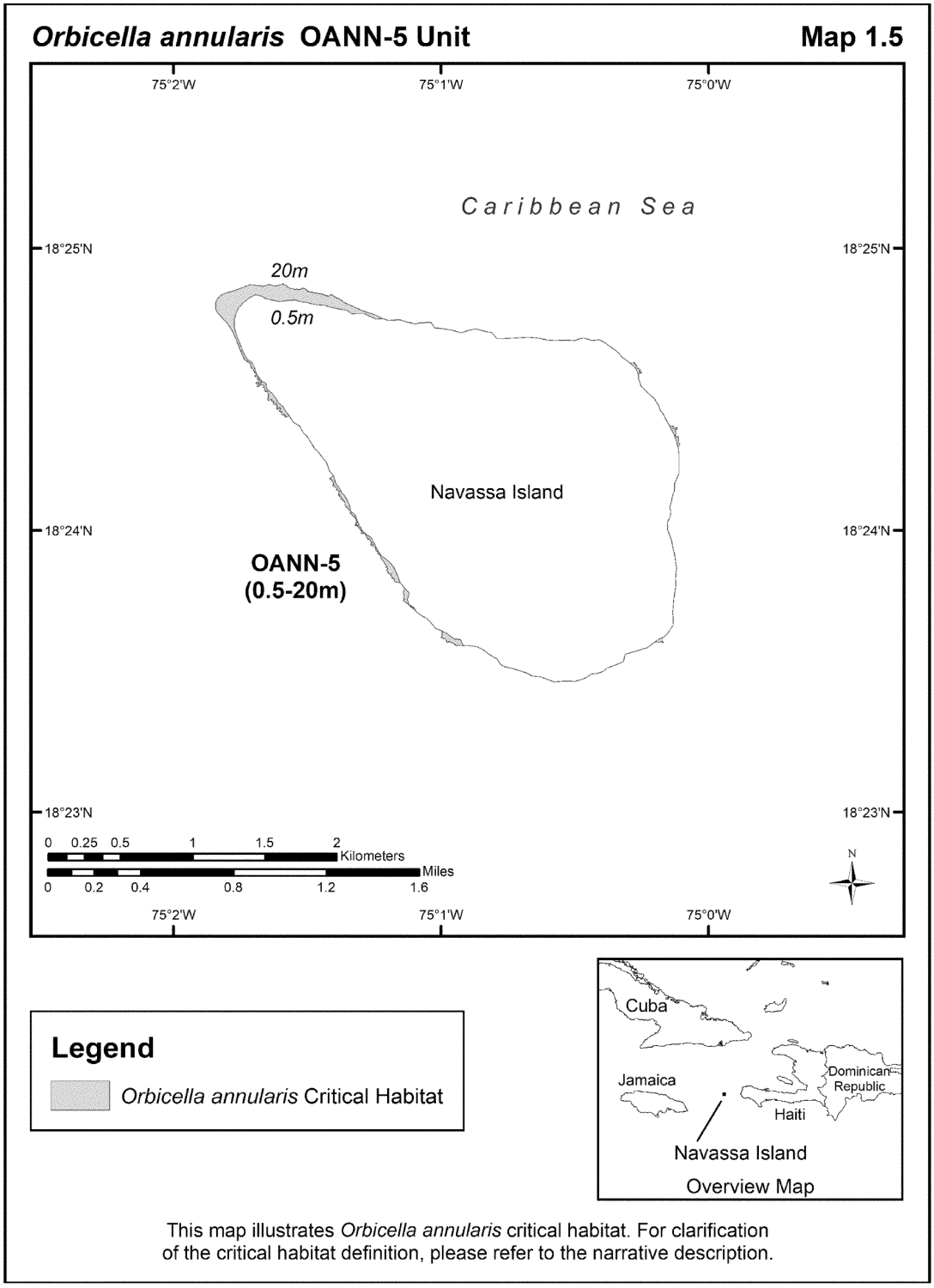


Figure 5 Paragraph (f)



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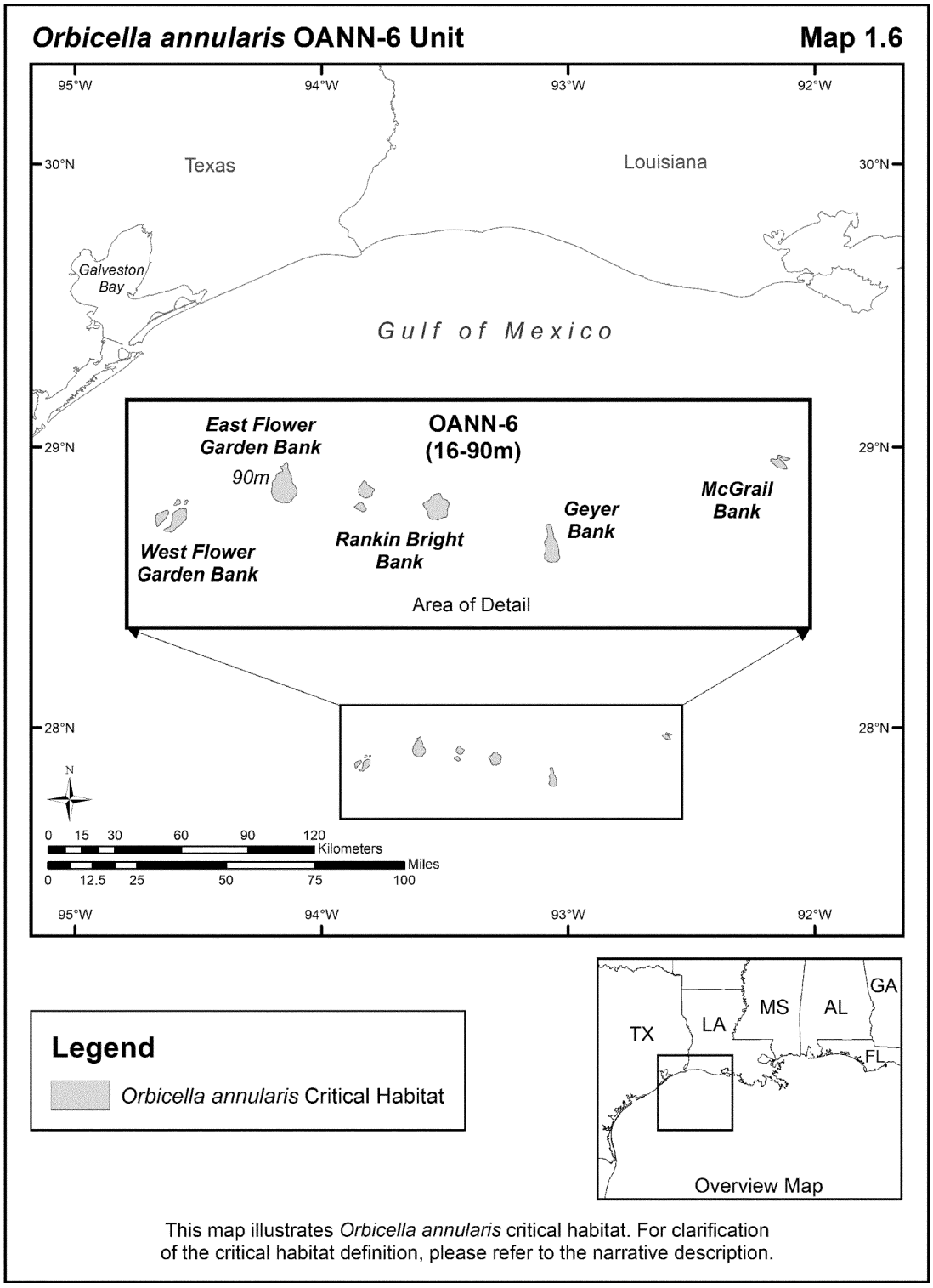

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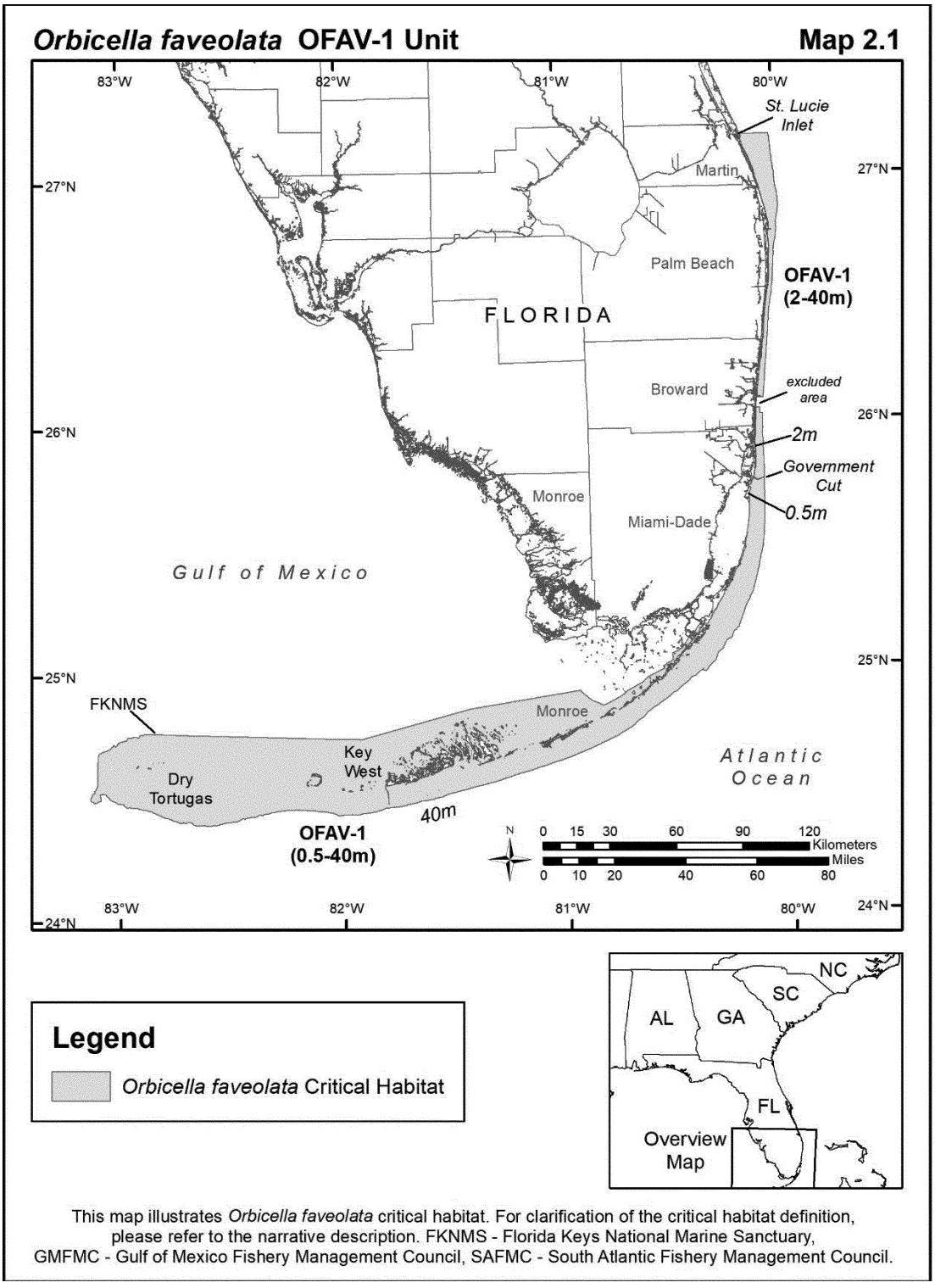

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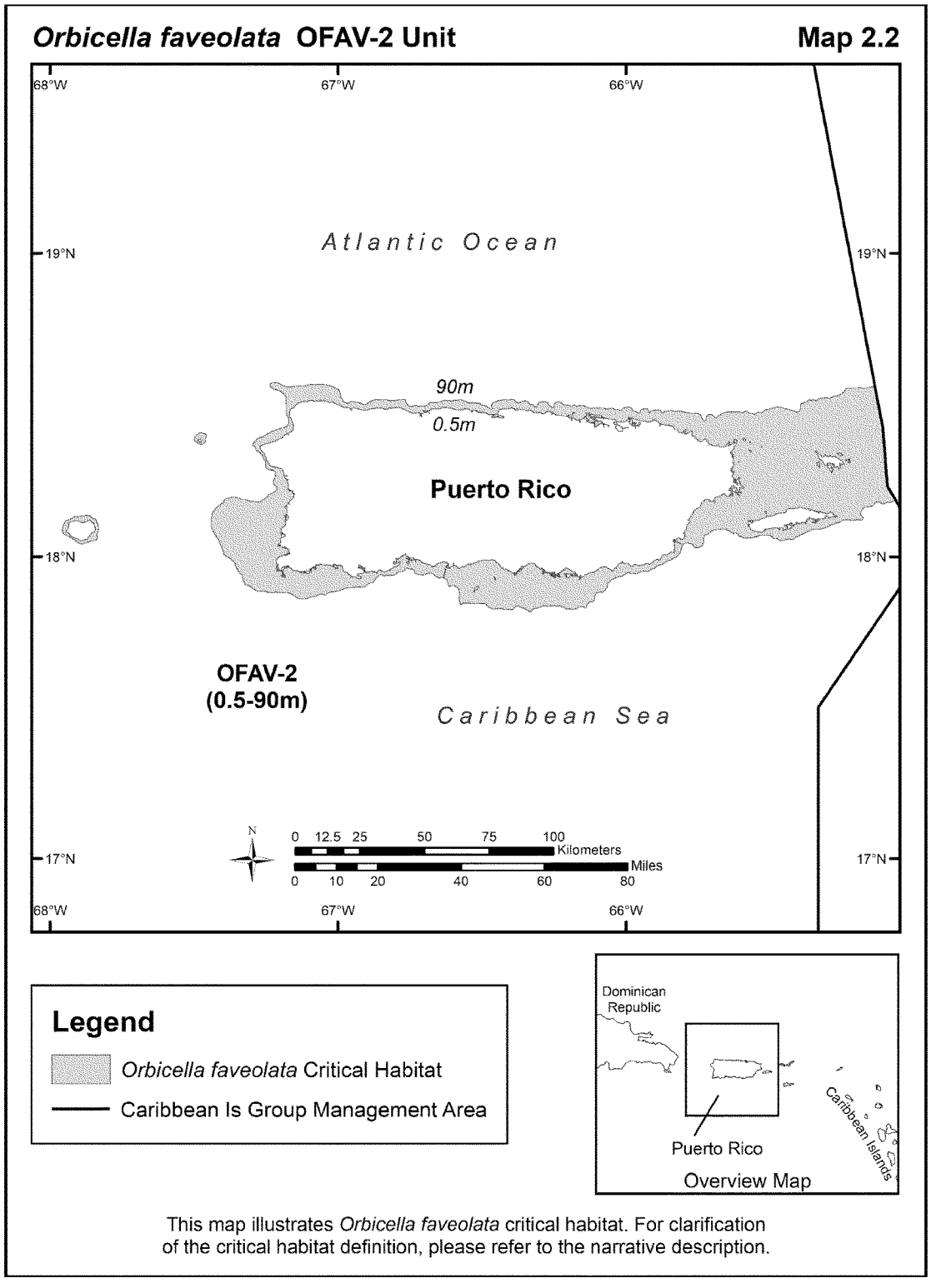

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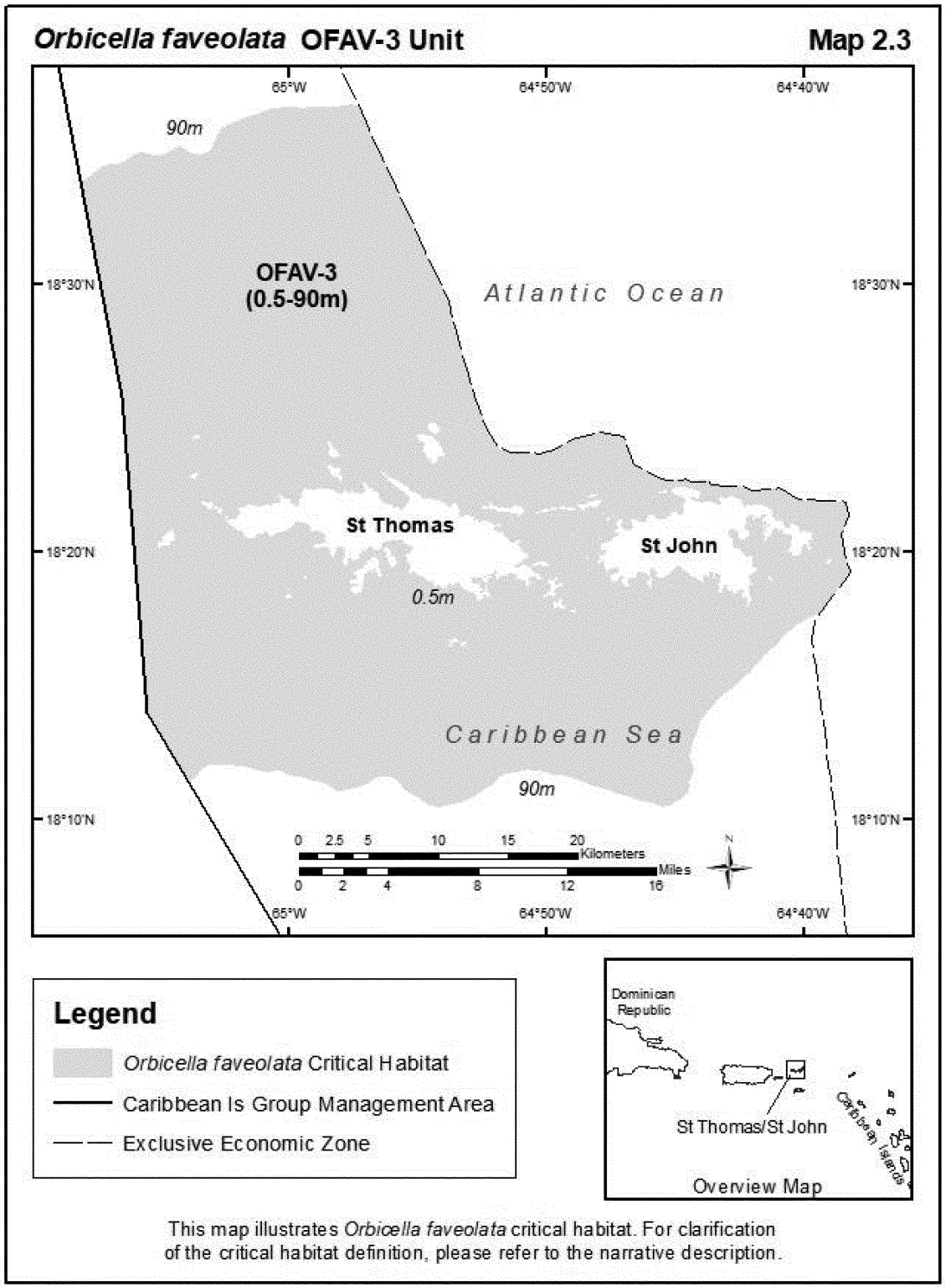

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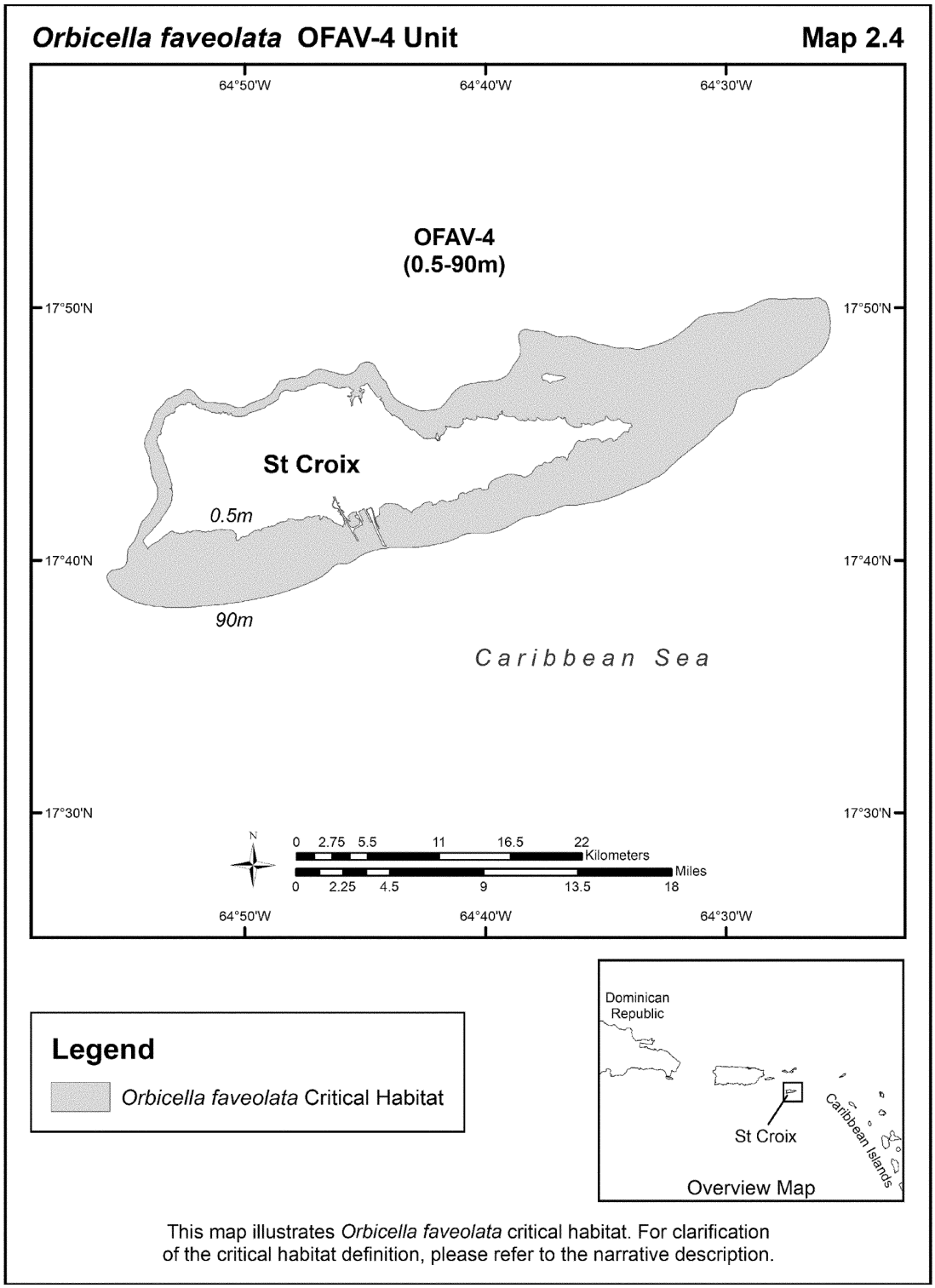

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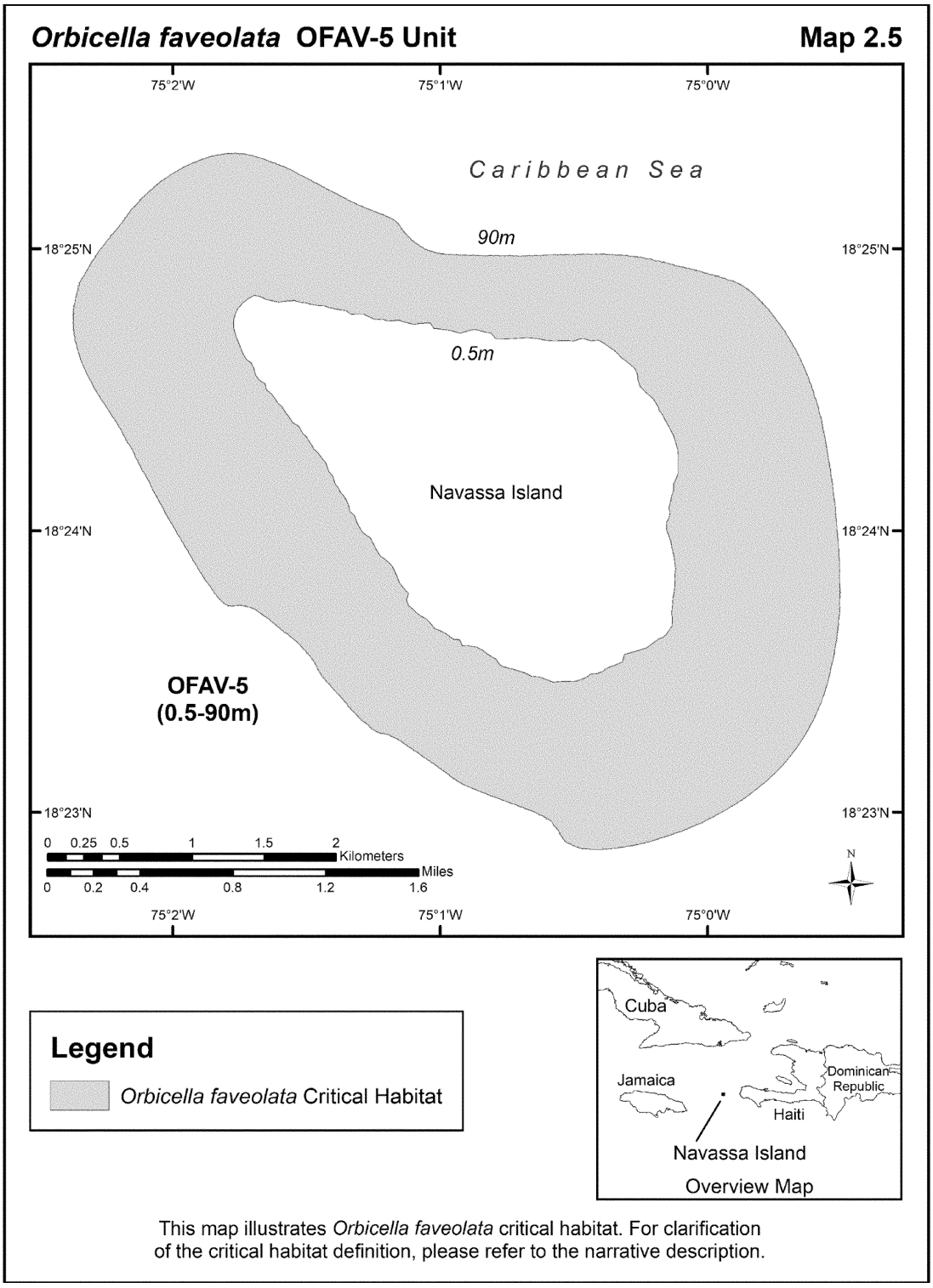

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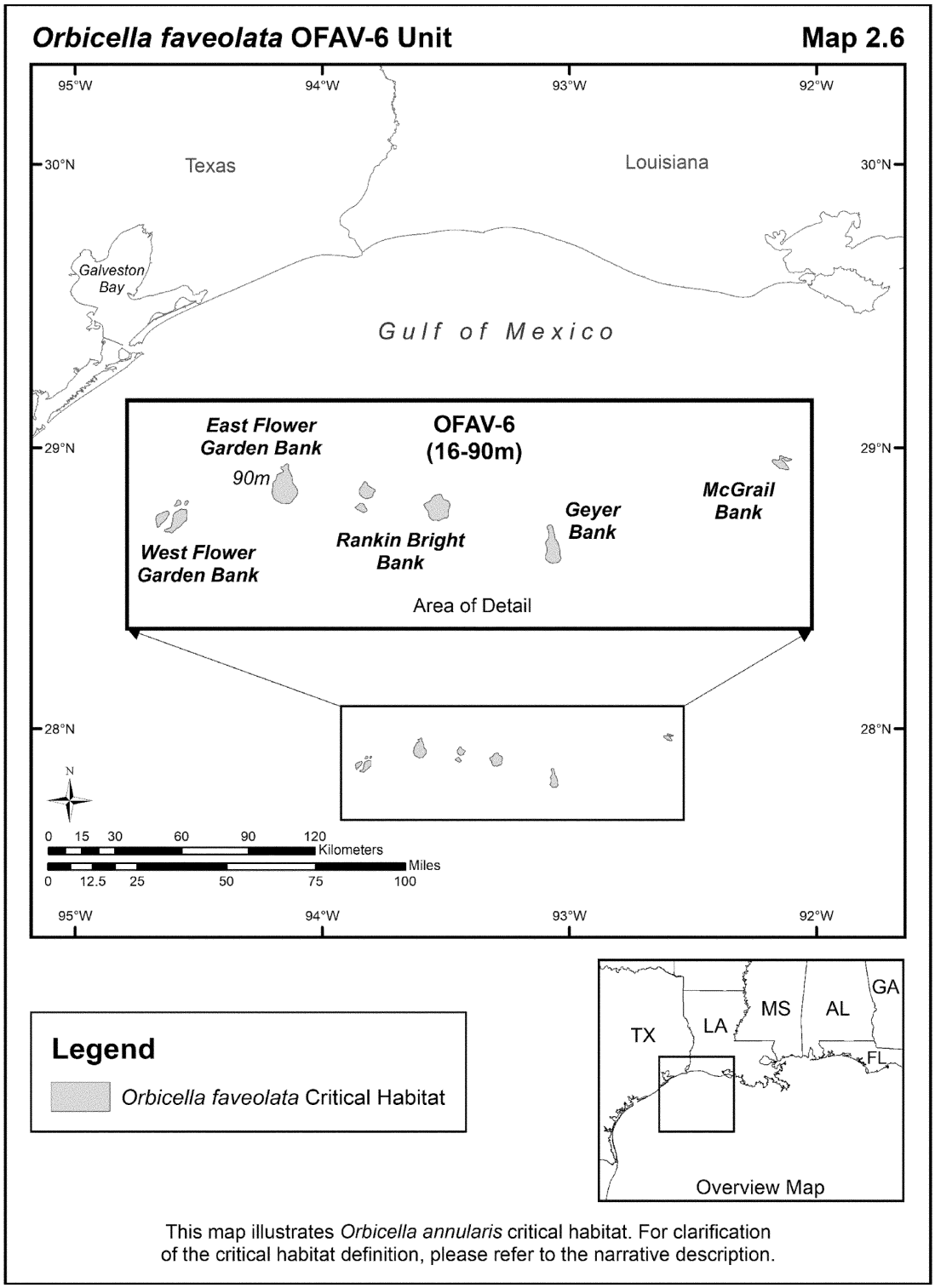

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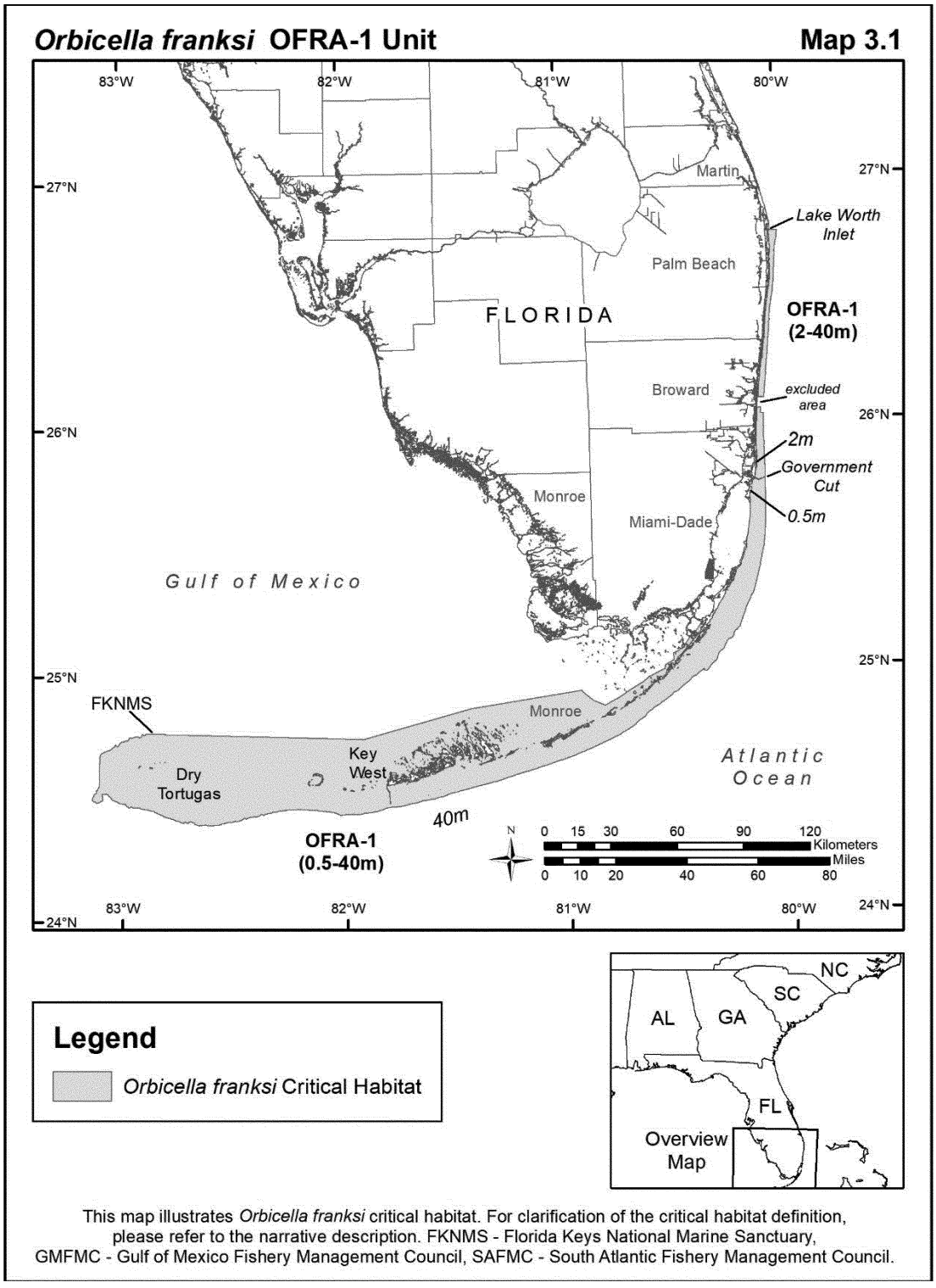

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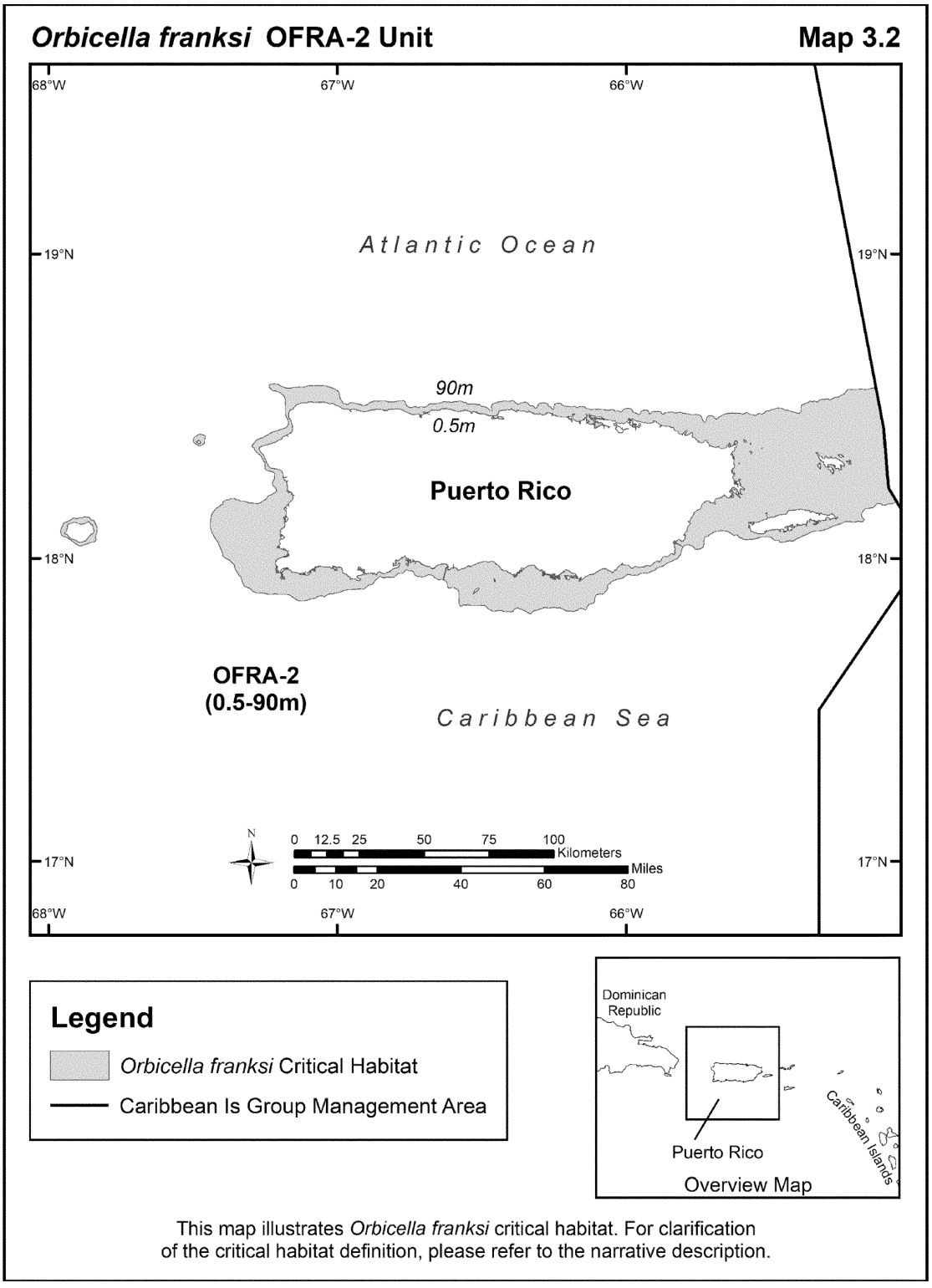

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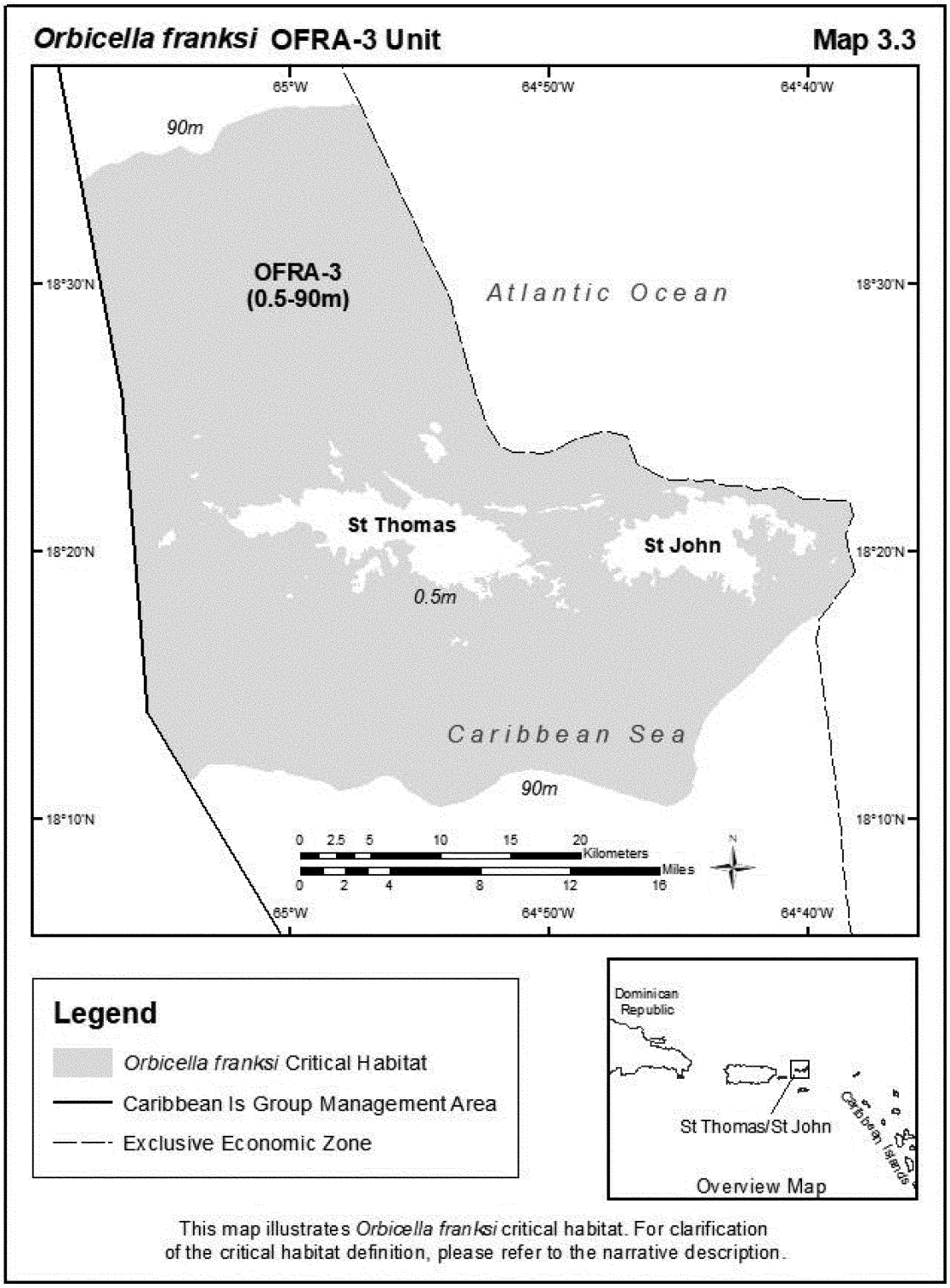

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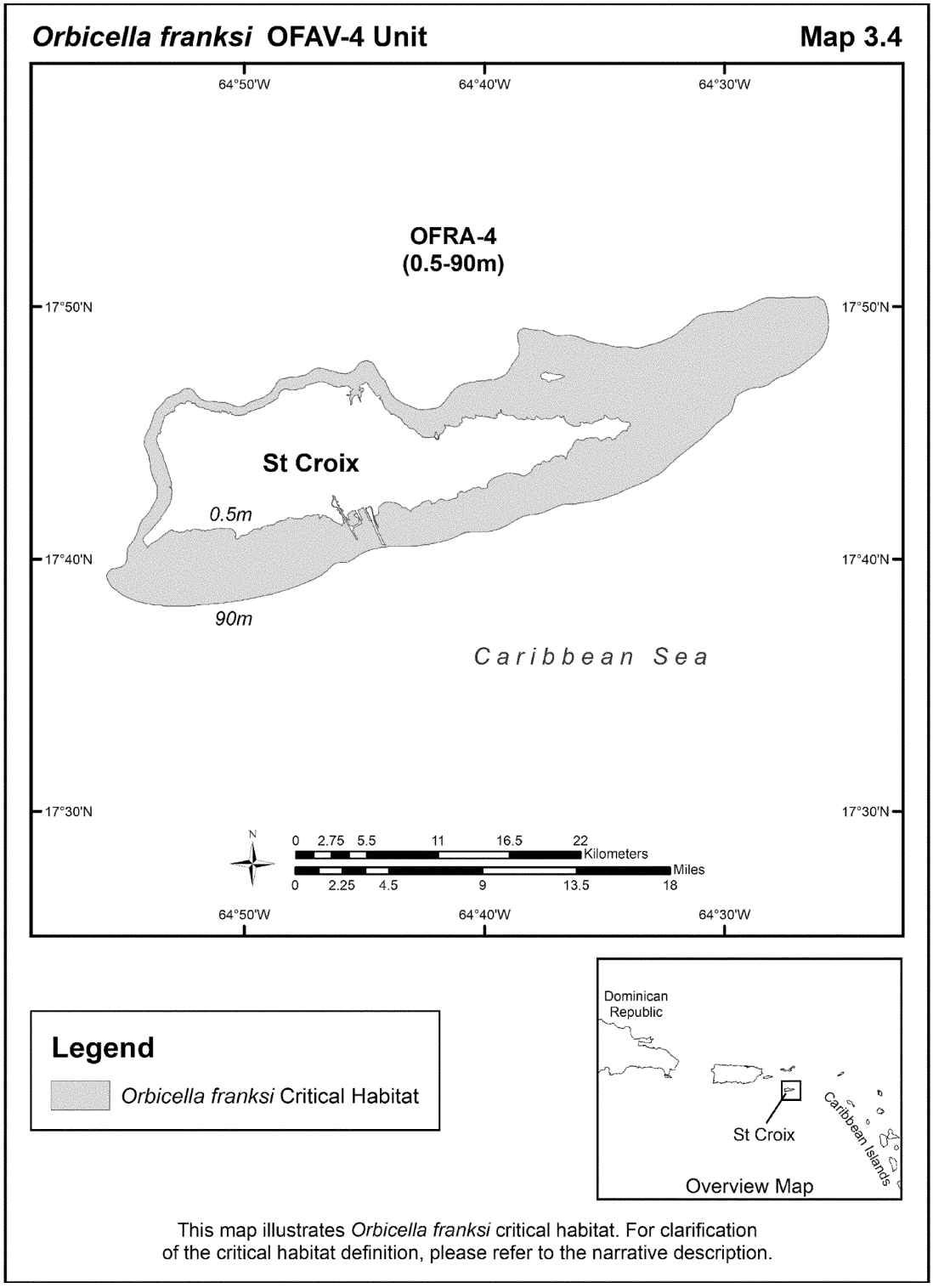

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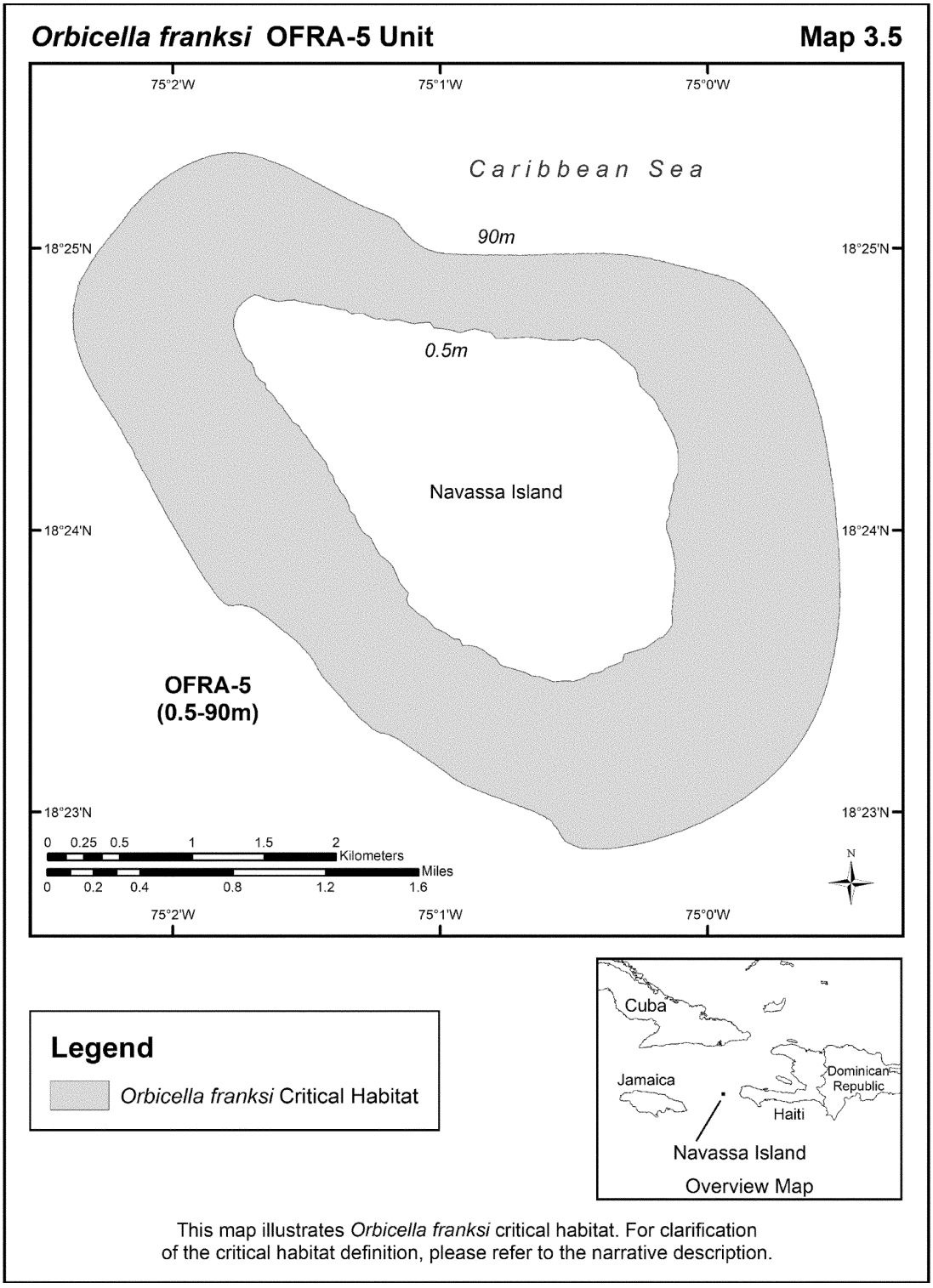

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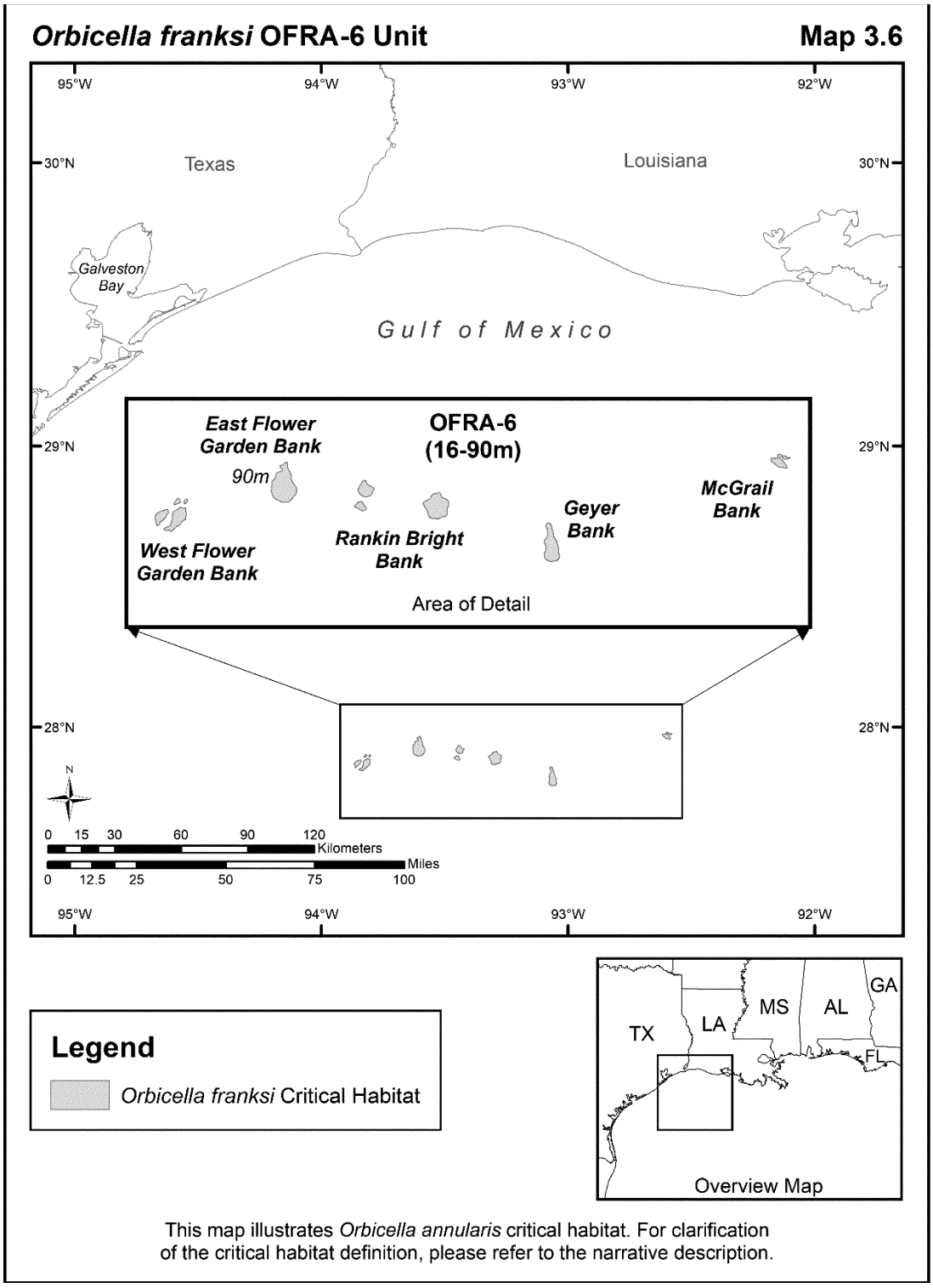

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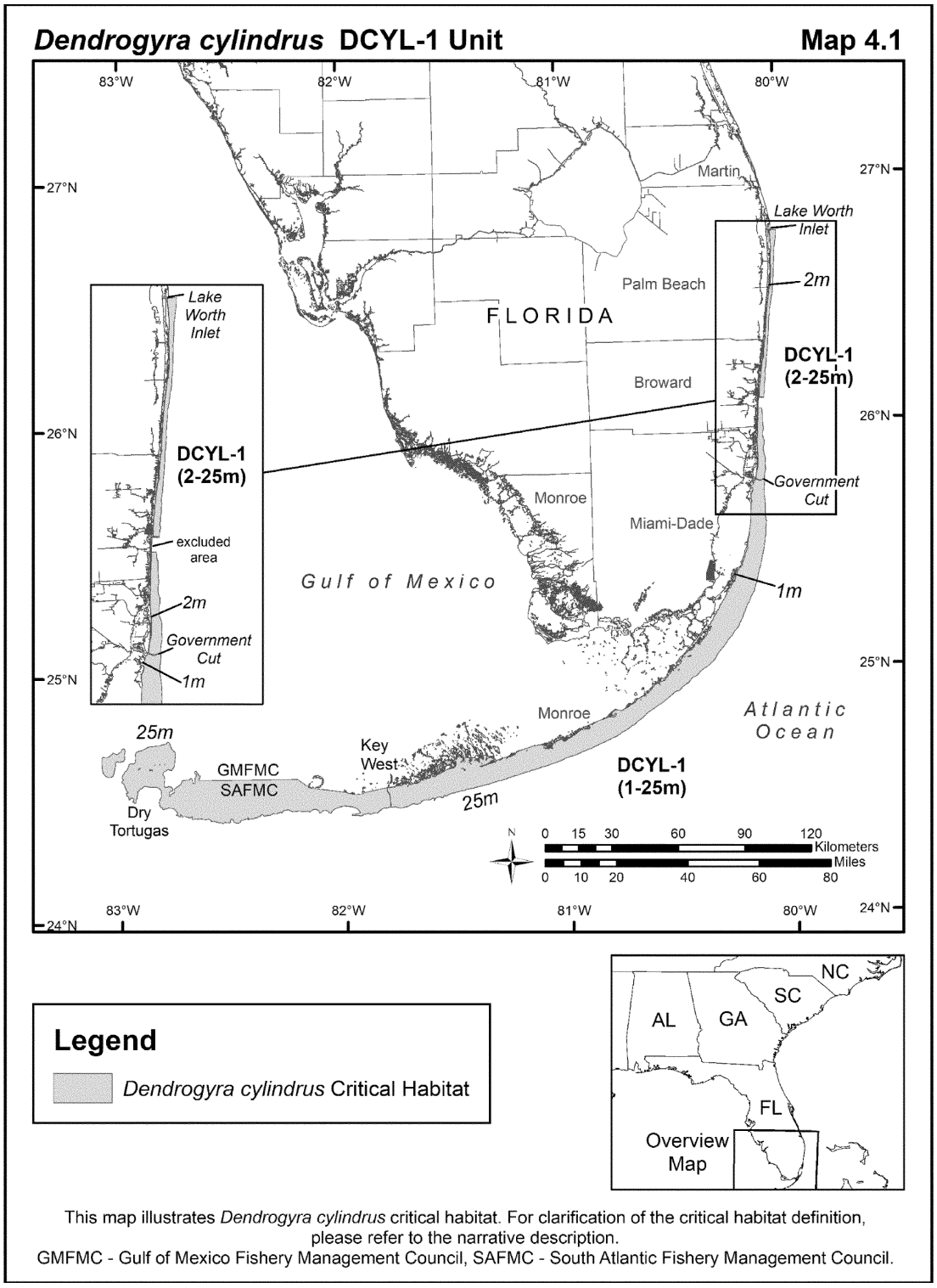

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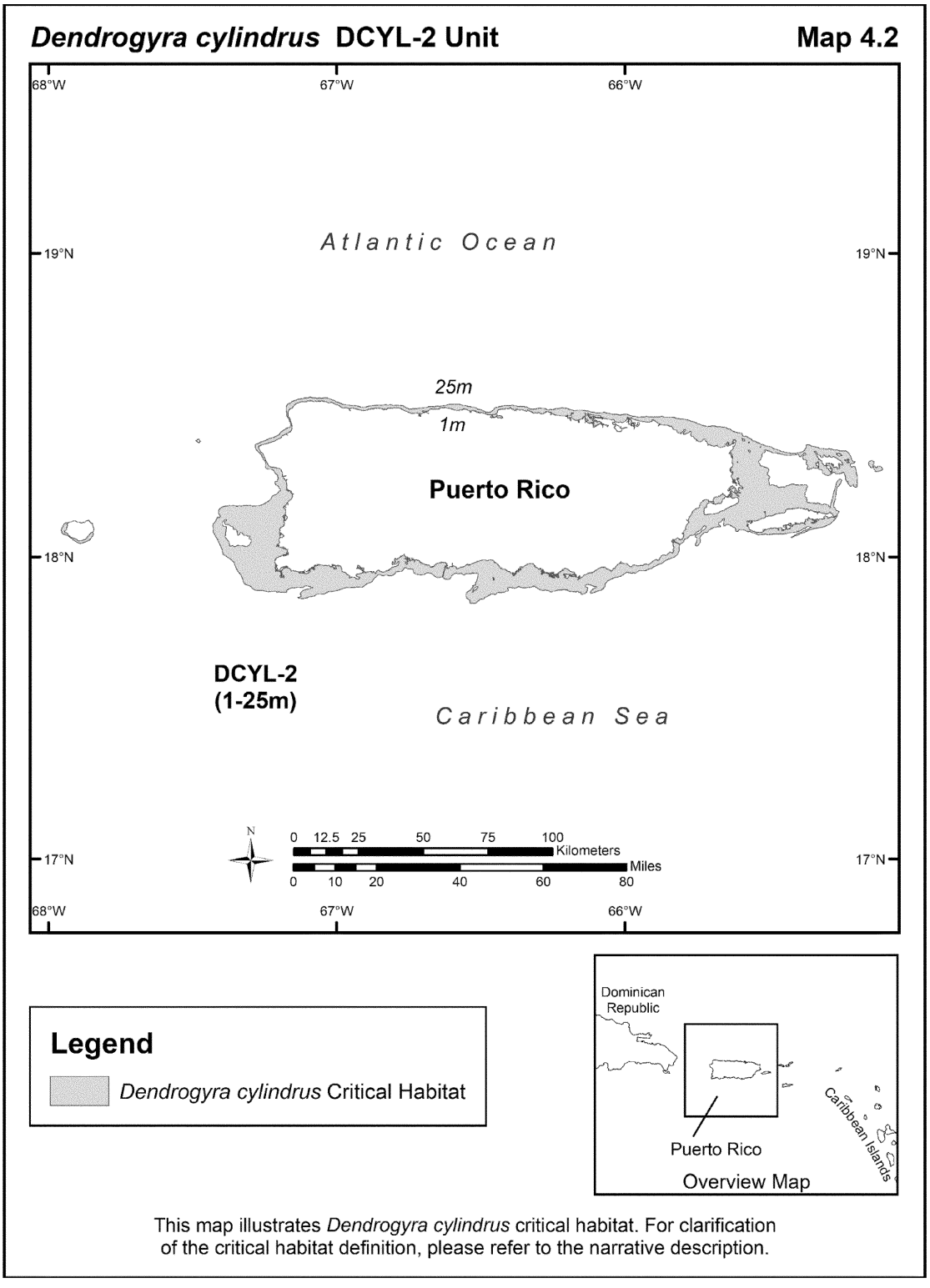

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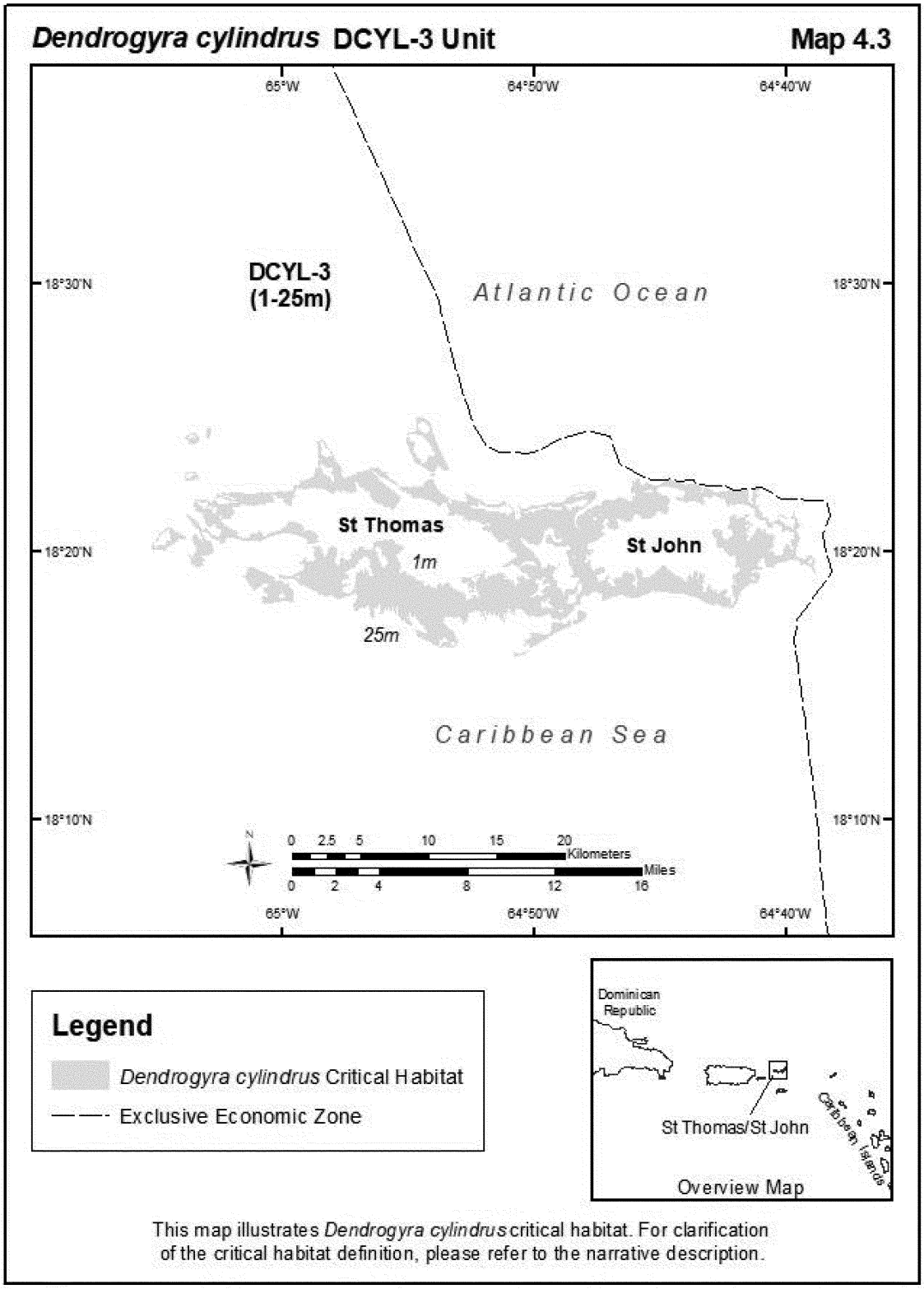

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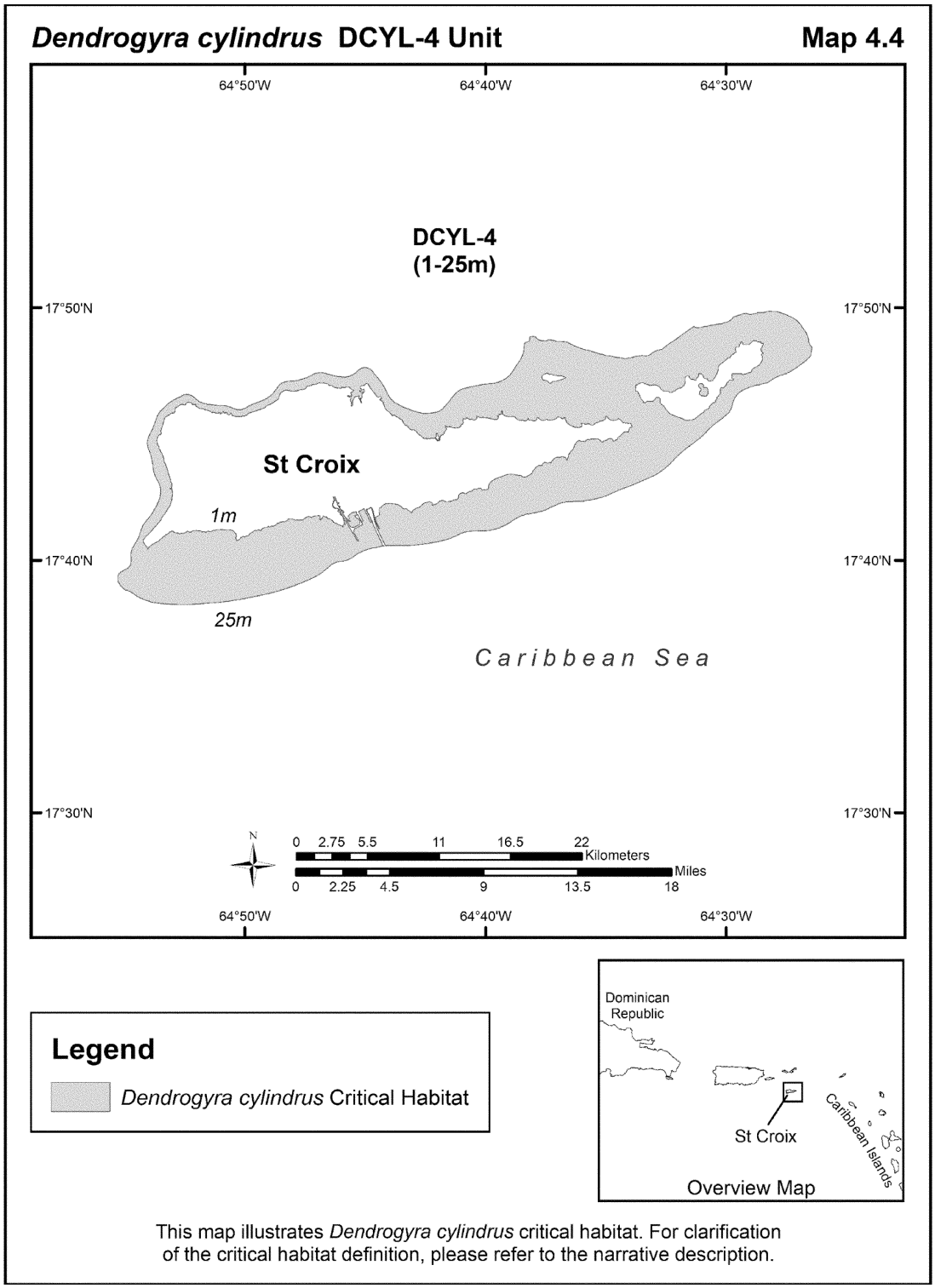

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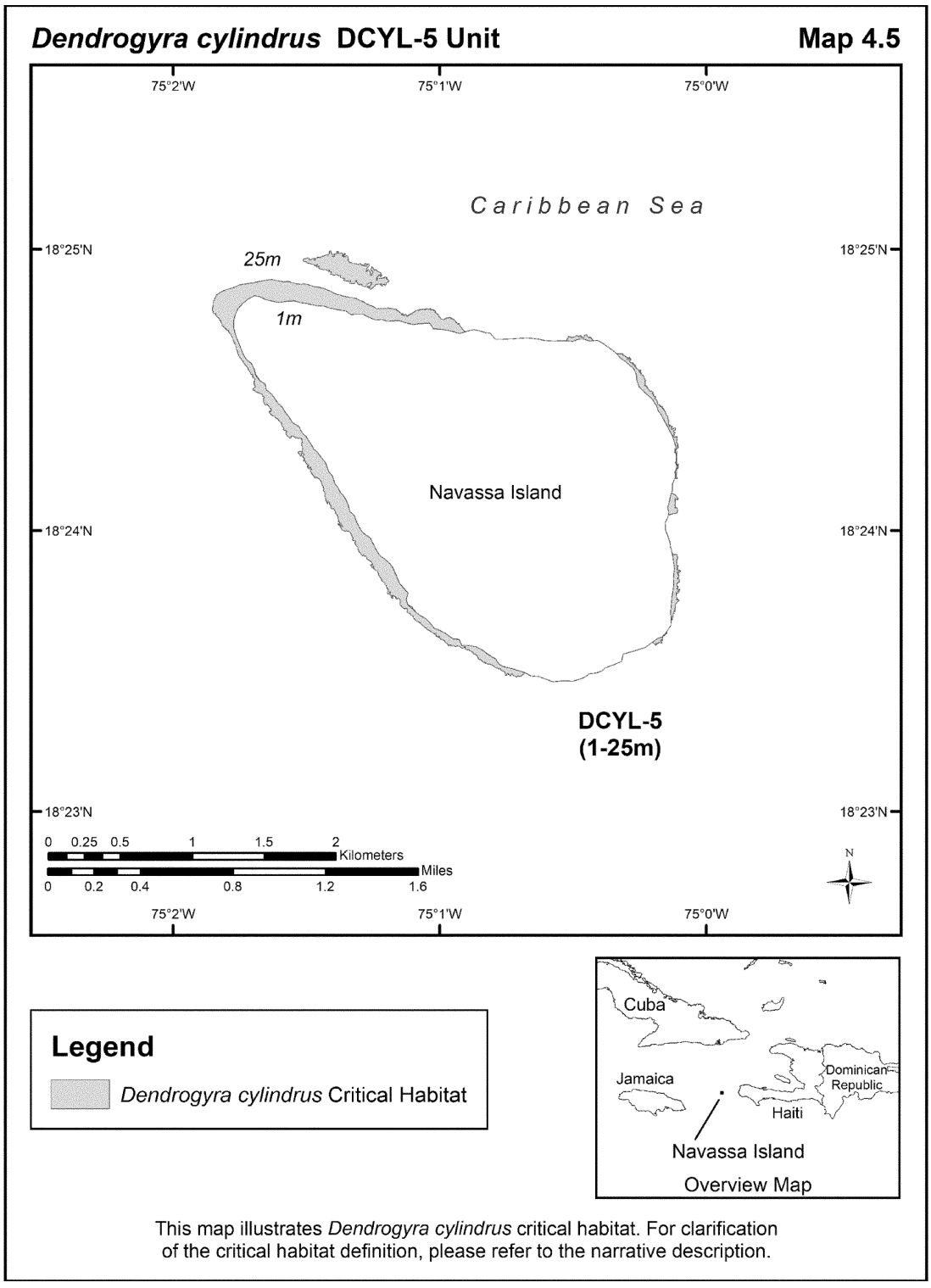
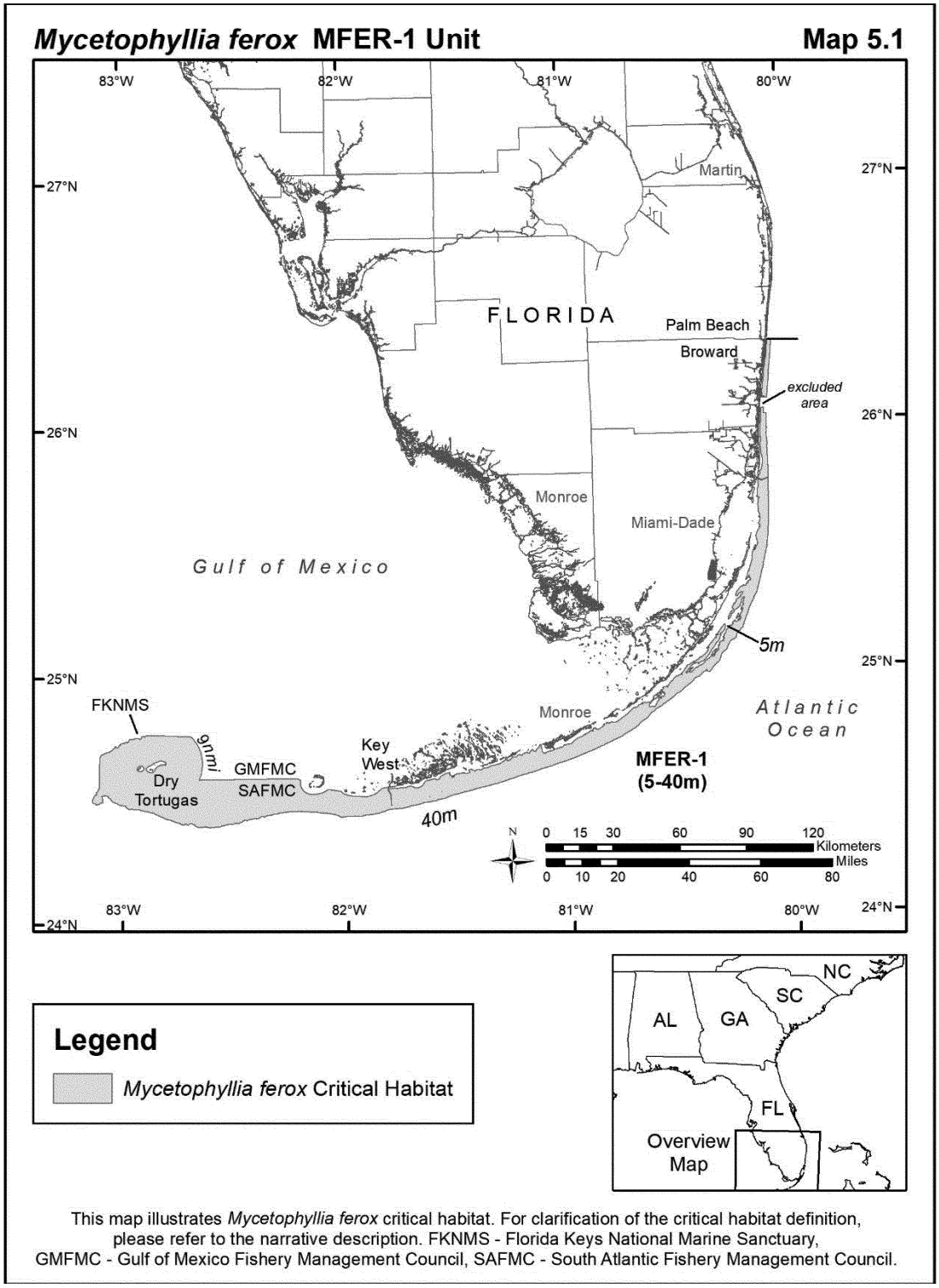
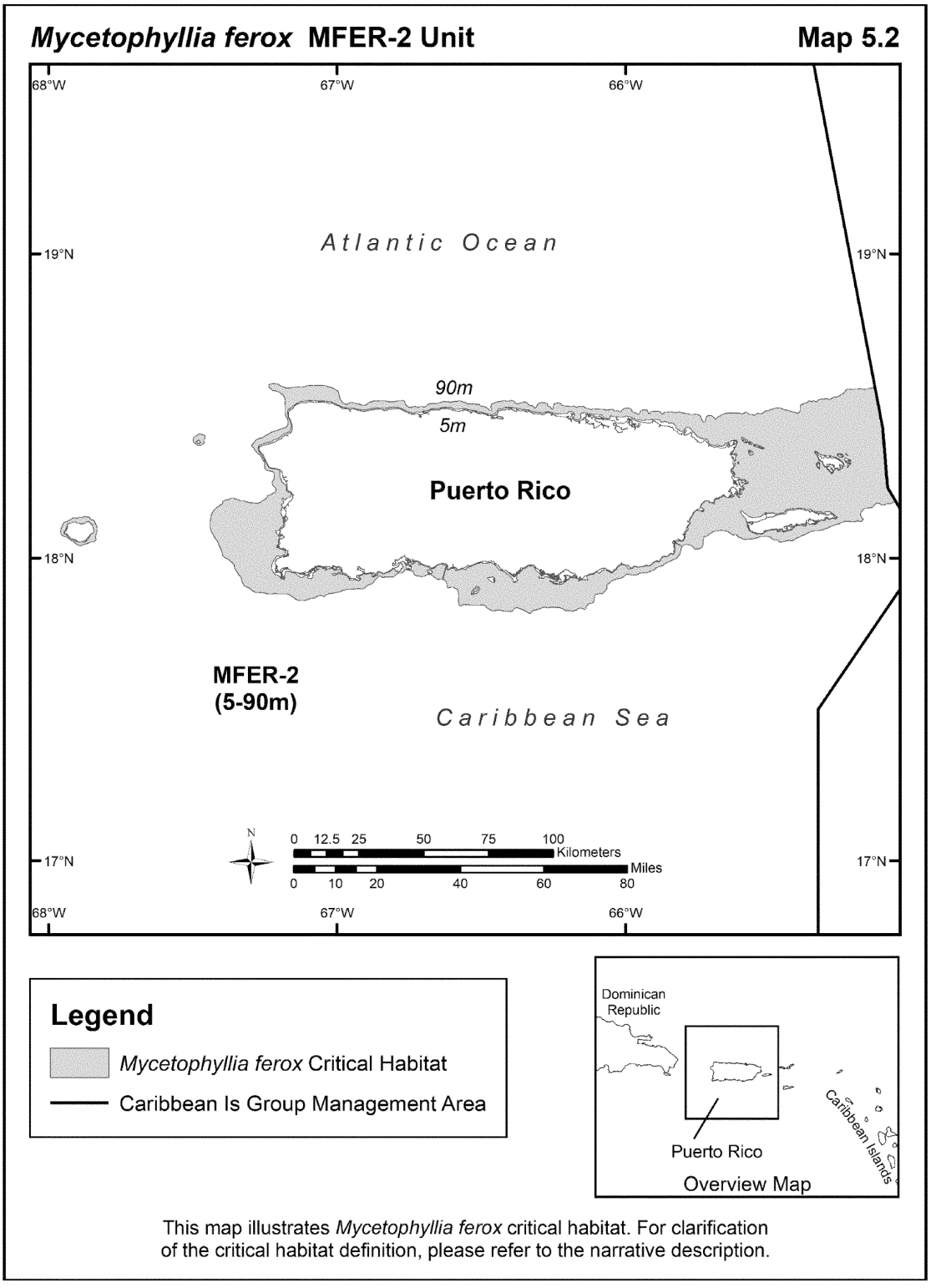


Figure 24 Paragraph (f)



This map illustrates *Mycetophyllia ferox* critical habitat. For clarification of the critical habitat definition, please refer to the narrative description. FKNMS - Florida Keys National Marine Sanctuary, GMFMC - Gulf of Mexico Fishery Management Council, SAFMC - South Atlantic Fishery Management Council.

Figure 24 Paragraph (f)



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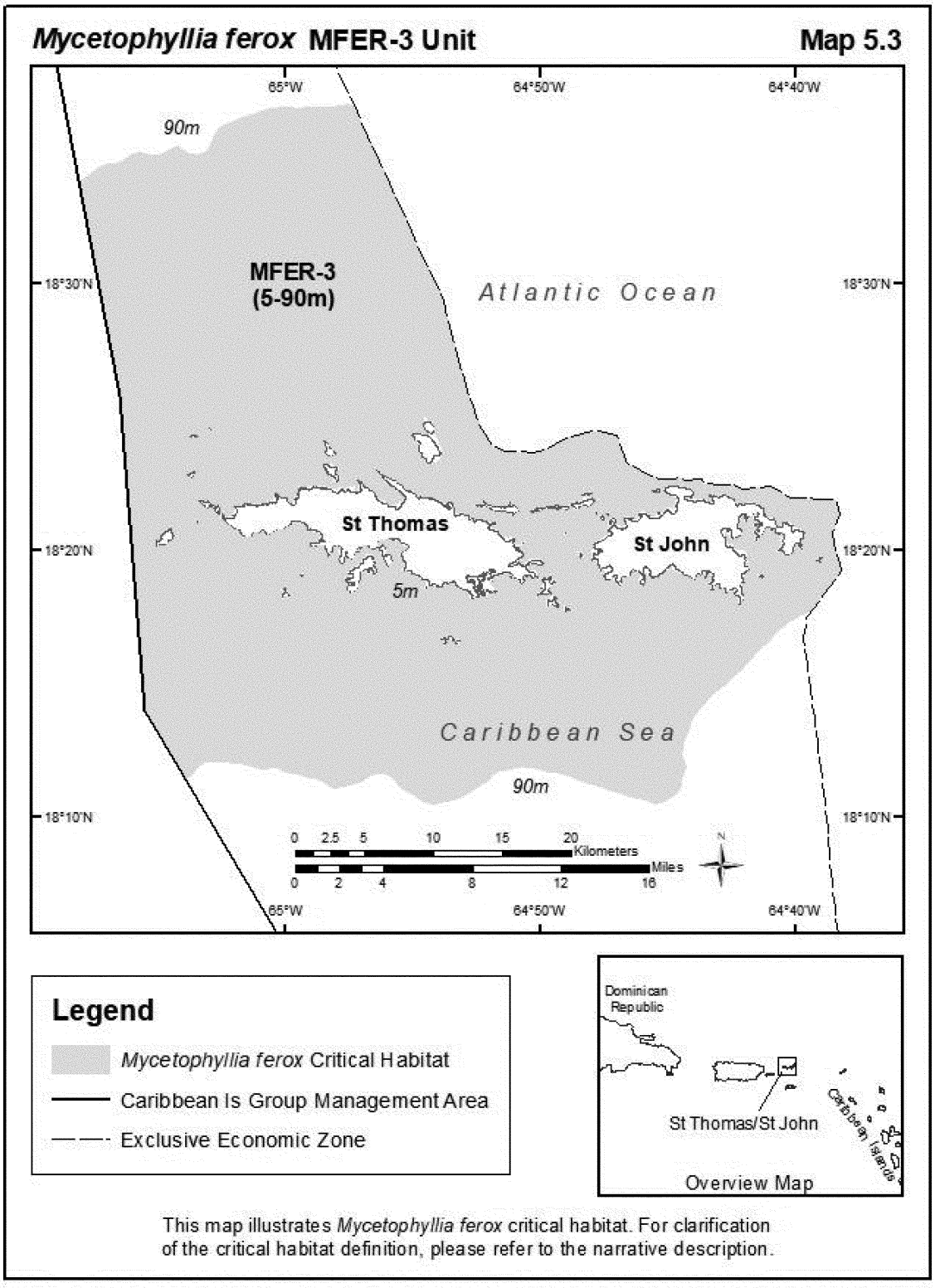

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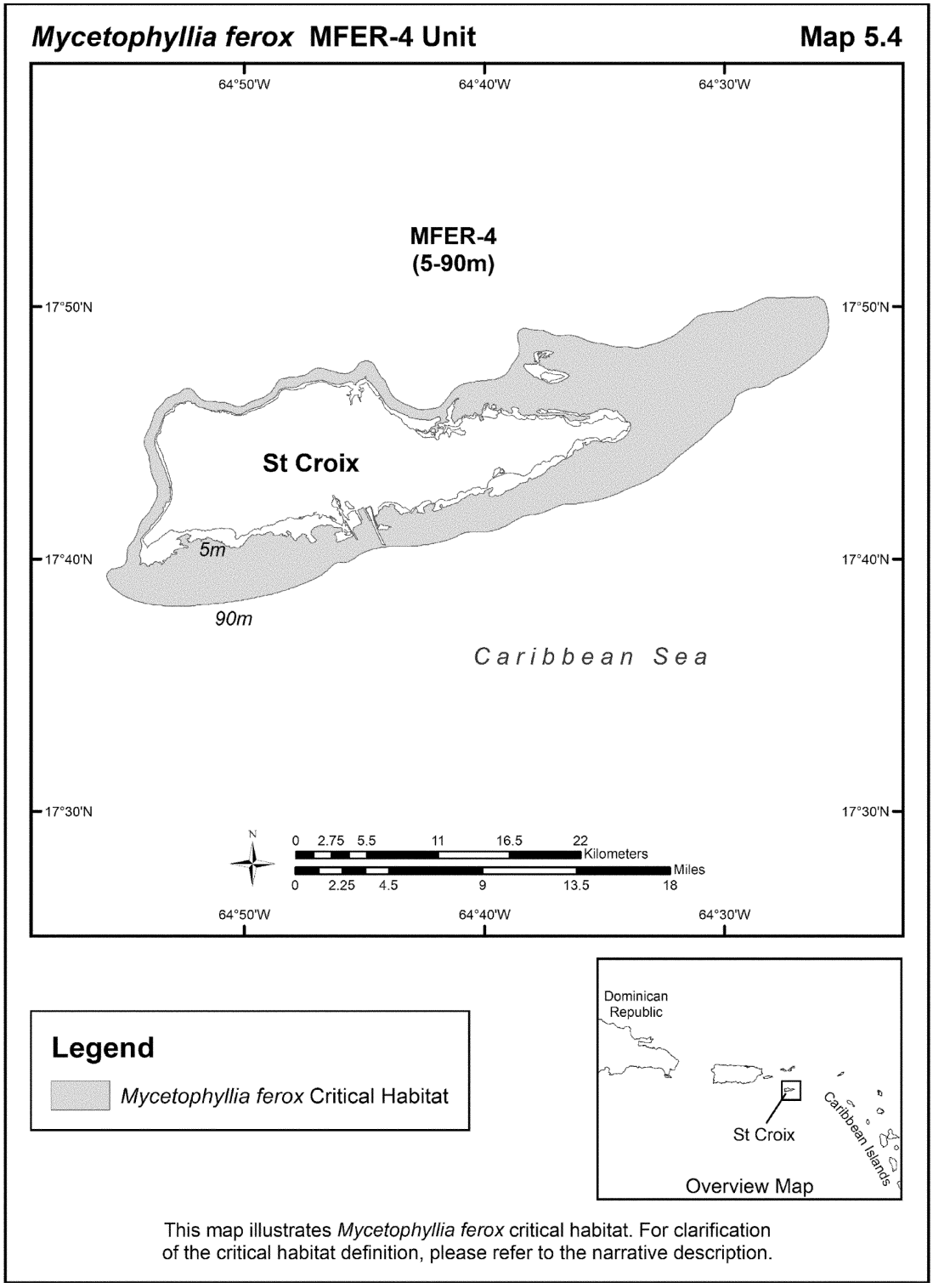

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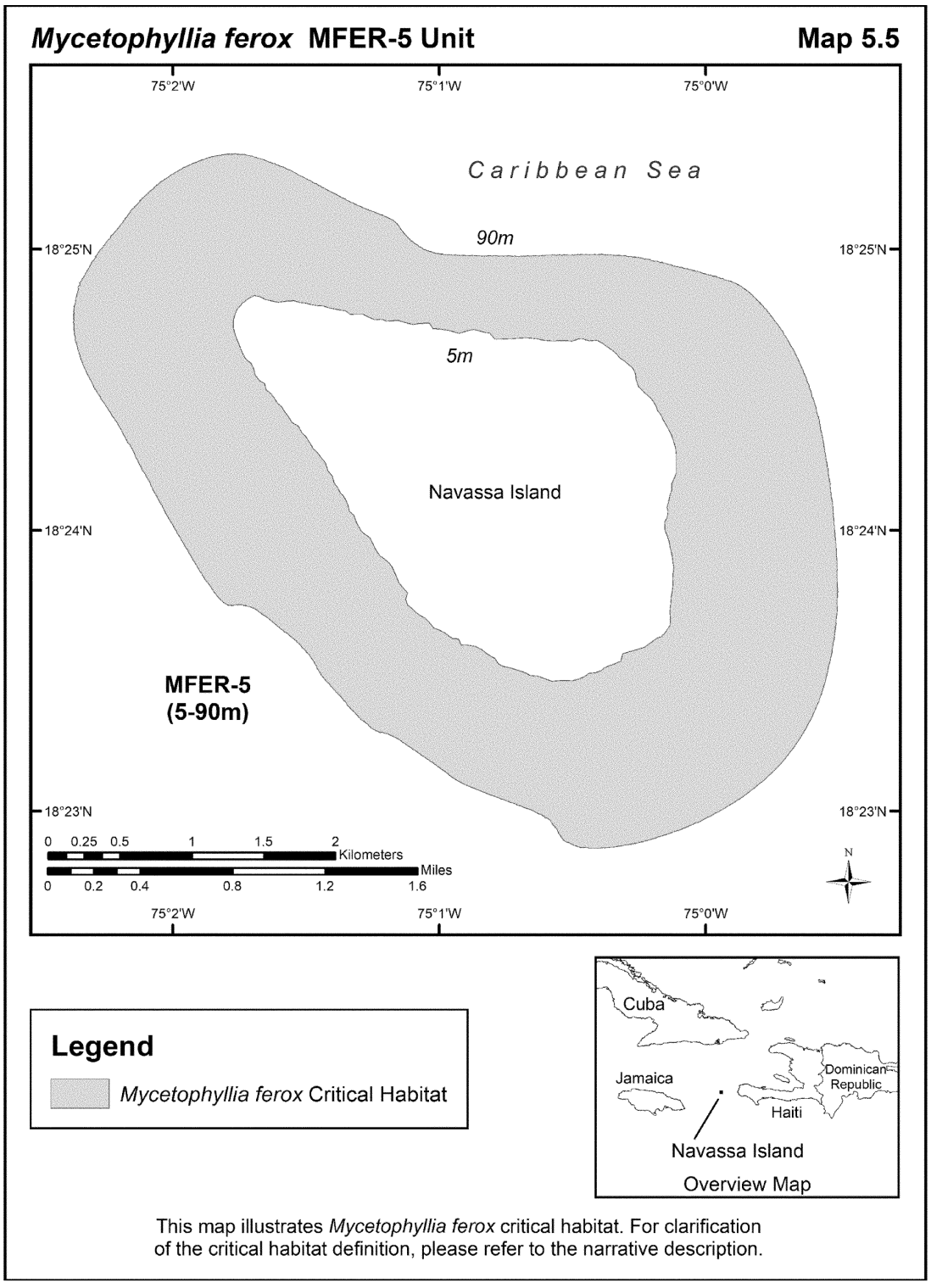

[FR Doc. 2023–16556 Filed 8–8–23; 8:45 am]
BILLING CODE 3510–22–C

FEDERAL REGISTER

Vol. 88 Wednesday,
No. 152 August 9, 2023

Part IV

Environmental Protection Agency

40 CFR Parts 260, 261, 262, et al.
Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 441

[EPA–HQ–OLEM–2023–0081; FRL 8687–02–OLEM]

RIN 2050–AH23

Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule; Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (the EPA or the Agency) is taking direct final action on a number of technical corrections that correct or clarify several parts of the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These technical corrections correct or clarify specific provisions in the existing hazardous waste regulations that were promulgated in the Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceuticals rule, and the Definition of Solid Waste rule. This rule also makes other minor corrections that fall within the same sections of the hazardous waste regulations but are independent of these three rules. Examples of the types of corrections being made in this rule include, but are not limited to, correcting typographical errors, correcting incorrect or outdated citations, making minor clarifications, and updating addresses.

DATES: This rule is effective on December 7, 2023, without further notice unless the EPA receives adverse comment by October 10, 2023. If the EPA receives adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** informing the public about the specific paragraph or amendment where the correction or clarification will not take effect.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2023–0081. 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 electronically through *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Knieser, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0516, (*knieser.brian@epa.gov*) or Kathy Lett, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–0517, (*lett.kathy@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

The EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment since the technical corrections are minor fixes and clarifications. However, in the ''Proposed Rules'' section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposed rule to adopt the provisions in this direct final rule if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If the EPA receives adverse comment on any individual correction, we will publish a timely withdrawal in the **Federal Register** informing the public about the specific regulatory paragraph or amendment that will not take effect. The corrections that are not withdrawn will become effective on the date set out above. We would address all public comments in any subsequent final rule based on comments and new information submitted in response to the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this action include hazardous waste generators, treatment, storage, and disposal facilities, healthcare facilities, reverse distributors, importers/exporters of hazardous waste, and users of the transfer-based exclusion to the definition of solid waste. Also affected are States and EPA Regions implementing the RCRA hazardous waste regulations.

III. What is the legal authority of this final rule?

This rule is authorized under sections 1004, 2002, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3010, 3017, and 3018 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6903, 6912, 6921, 6922, 6923, 6924, 6925, 6926, 6927, 6930, 6938, and 6939.

IV. Background

In the process of publishing in the **Federal Register** the three final rules that are the focus of this rulemaking, the EPA inadvertently made typographical errors, included incorrect citations, and finalized language that was unintentionally ambiguous. Similarly, while the Agency attempted to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations when these three rules were promulgated, some were overlooked. The EPA has also identified a number of other regulations needing to be corrected that were not part of the three final rules that are the main focus of this rulemaking but are located in the same sections of the regulations. The Agency determined that including those additional corrections in this rulemaking would be an efficient use of Agency resources and provide sufficient benefit to merit their incorporation. These inadvertent errors and oversights have been the cause of some confusion on the part of the regulated community, as well as the Federal and State regulators implementing the hazardous waste regulatory program. Making these corrections will ease that confusion among the EPA's stakeholders.

This rule addresses these problems by correcting and clarifying the RCRA hazardous waste management regulations—specifically the general hazardous waste management system regulations under 40 CFR part 260, the hazardous waste identification regulations under 40 CFR part 261; the standards applicable to generators of hazardous waste in 40 CFR part 262; the standards for owners and operators of hazardous waste treatment, storage, and disposal facilities in 40 CFR part 264; the interim status standards for owner and operators of hazardous waste treatment, storage, and disposal facilities in 40 CFR part 265; the regulations for specific hazardous wastes and specific types of hazardous waste management facilities in 40 CFR part 266, including the regulations for hazardous waste pharmaceuticals in 40 CFR part 266, subpart P; the regulations for EPA-administered hazardous waste permit programs under 40 CFR part 270;

the requirements for authorization of State hazardous waste programs in 40 CFR part 271; and the dental office point source category regulations in part 40 CFR part 441.

This action was developed in accordance with EPA guidance on environmental justice. As a technical correction rulemaking, it does not have any disproportionately high and adverse human health or environmental effects on the programs, policies, or activities of minority populations (people of color) and low-income populations. It does not have adverse impact on other federal agencies, states, local governments, tribes, paperwork burdens, or children's health.

Similarly, because this rule consists entirely of technical corrections, it does not have any adverse impacts on climate change nor any state and federal climate adaptation programs.

Today's action makes over 100 technical corrections to 40 CFR parts 260–262, 264–266, 270–271, and 441. The discussion of technical corrections to the regulations below is organized by the rulemaking that initially made the changes. Where a technical correction does not stem directly from one of the three main rulemakings being corrected, it has been included where it makes most sense to do so by topic. In addition, the EPA provides a description and explanation of the technical corrections in the preamble to this direct final rule.

V. Corrections Related to the Regulatory Revisions Implemented by the Hazardous Waste Generator Improvements Rule

This section addresses technical corrections to revisions made as part of the Hazardous Waste Generator Improvements rule. The final rule, referred to as the Generator Improvements rule, was published in the **Federal Register** on November 28, 2016 (81 FR 85732) and revised the requirements for hazardous waste generators, a regulatory term that refers to any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation. The Generator Improvements rule included a reorganization and renumbering of the regulations for the management of hazardous waste by generators of that waste as well as revisions that both closed regulatory gaps and, where appropriate, provided flexibility in the regulations for certain management scenarios. The technical corrections described in this action include the correction of typographical errors, the correction of citations in the regulations that were not updated in the original Generator Improvements rule, and revisions to wording in the regulations that has caused confusion in the six years since the final rule was published.

The technical corrections in this section of the rule appear mostly in the hazardous waste generator regulations in part 262 of chapter 40 of the Code of Federal Regulations, but also in other hazardous waste provisions in 40 CFR parts 260, 261, 264, 265, 266, 270, and 271. There is also one citation updated in 40 CFR part 441.

Each of the technical corrections are discussed below. The preamble discusses typographical errors first, then updated citations, and finally wording changes. Within each section, the technical corrections are generally discussed in the order they appear in the regulations. However, to avoid repetition, similar technical corrections are discussed together in the preamble.

A. Typographical Errors

- Section 262.16(b) is revised to include a reference to § 262.16(c) in the list of provisions in this section describing when a small quantity generator can accumulate hazardous waste for more than 180 days. The reference to § 262.16(c) was inadvertently left off this list in the 2016 Generator Improvements rule.
- Section 262.16(b)(5) is revised to remove an ''of'' from the paragraph where it does not belong.
- Sections 262.16(b)(8)(iv)(A) and (B) are both revised to replace the internal cross reference to paragraph (a)(8)(ii) of this section to the correct citation: paragraph (b)(8)(ii) of this section.
- Section 262.17(a)(7)(i)(A) is revised to make the internal cross reference more specific by including the fourth paragraph level. The correct cross reference is to § 262.17(a)(7)(iv)(C), which describes what elements must be included in a large quantity generator's (LQG) training program. This revision also is consistent with the cross referencing in § 265.16, which applied to LQGs before the Generator Improvements rule reorganization.
- Section 262.17(a)(8)(iii)(A)(*4*) is revised to correct the regulation it references. The correct citation is paragraph (a)(8)(iii)(A)(*2*) of this section.
- Section 262.213(a)(1) is revised to replace a misplaced ''or'' with ''of.''
- Section 262.232(b)(4) is revised to remove the word ''waste'' from a place where it does not belong.
- Section 262.232(b)(6)(iv) is revised to add ''RCRA-'' to the term ''designated facility'' to match the language of parallel provisions in this section.
- Section 265.71 is revised by removing the comment to paragraph (c). The contents of that comment were incorporated into the main text of paragraph (c) by the Generator Improvements rule, but the comment was not removed at that time.

B. Missed Citation Updates and Changed Terminology

The Generator Improvements rule reorganized the hazardous waste generator regulations. Two of the main changes during this reorganization were moving the regulations that had been in § 261.5 into §§ 262.13 and 262.14 and reorganizing the regulations that had been in § 262.34 into three new sections: § 262.15 for satellite accumulation areas, § 262.16 for small quantity generators, and § 262.17 for large quantity generators.

The Generator Improvements rule also replaced the § 260.10 defined term ''conditionally exempt small quantity generator'' throughout the regulations with a new term that more accurately describes this category of generators: ''very small quantity generator.'' In addition, the rule defined the terms ''small quantity generator'' and ''large quantity generator.'' The previous regulations had distinguished small quantity generators from large quantity generators by stating with each mention that the former were generators that generated greater than 100 kilograms and less than 1,000 kilograms of hazardous waste in a calendar month and the latter were generators that generated equal to or greater than 1,000 kilograms of hazardous waste per calendar month.

The Generator Improvements rule also removed from the Code of Federal Regulations several obsolete sections of the generator regulations that are no longer in effect.

Although the EPA attempted to find each reference to obsolete regulatory citations and terminology when finalizing the 2016 Generator Improvements rule, several were missed. The EPA is taking this opportunity to correct those errors in the regulations and update them with the new citations and terms or remove the citations completely, if appropriate. In addition, the EPA is updating one physical address listed in the regulations.

- The definition of ''Final closure'' in § 260.10 is revised to update the citation from § 262.34 to §§ 262.16 and 262.17.
- Section 261.1(a)(1) is revised to remove the reference to hazardous waste produced by very small quantity generators because the regulations for

very small quantity generators are now in part 262.

- Section 261.4(e)(1) is revised to replace the references to quantity determinations in §§ 261.5 and 262.34(d) with a reference to the counting requirements in § 262.13 and the accumulation limits in § 262.16(b)(1).
- Section 261.11(c) is removed and reserved. The Generator Improvements rule finalized regulations that directly address generator category and generation limits for each category; thus, this paragraph is redundant and could result in confusion if not removed.
- Section 261.30(d) is revised to replace the reference to § 261.5 with a reference to § 262.13, Table 1, and the text of the paragraph is revised to use the same language as the title to Table 1: Generator Category Limits.
- Three references to § 262.34 in appendix IX to part 261 are replaced with references to §§ 262.15, 262.16, and 262.17, as applicable.
- Section 262.10(k) is revised to replace a reference to § 262.34 with a reference to §§ 262.15–262.17, and the standards in those sections are identified as conditions for exemption to be consistent with the rest of the generator standards.
- Section 262.10, Note 1, is revised to replace two references to § 262.34 with references to §§ 262.15–262.17.
- Section 262.42(a)(1) and (2) and (b) are revised to replace descriptions of generator categories (*e.g.,* ''generators of 1000 kilograms or greater of hazardous waste in a calendar month'') with either ''small quantity generator'' or ''large quantity generator,'' which were terms promulgated and/or updated in the 2016 Generator Improvements rule.
- Section 262.82(e)(2) is updated to reflect the current address for hand deliveries of submittals required in part 262, subpart H, for transboundary movements of hazardous waste for recovery or disposal.
- The definition of ''trained professional'' in § 262.200 is revised to specifically identify the training requirements that personnel at large, small, and very small quantity generators must comply with under part 262, subpart K, to be considered a trained professional.
- Section 262.212(e)(3) is revised to replace a reference to § 261.5(c) and (d) with a reference to § 262.13.
- Section 264.1(g)(3) is revised to add generators that are accumulating waste on site in compliance with the generator standards in subparts K and L of part 262 to the list of compliant generators to which part 264 does not apply.
- Sections 264.1(g)(12), 265.1(c)(15), and 270.1(c)(2)(ix) referring to the expired New York State Utility XL project are all removed and reserved.
- Section 264.15(b)(5) referring to the expired Performance Track program is removed and reserved.
- Section 264.1030(b)(3) is revised to replace a reference to § 262.34(a) with a reference to § 262.17.
- Section 264.1050(b)(2) is revised to replace a reference to § 262.34(a) with a reference to § 262.17.
- Section 266.100(c)(3) is revised to replace the term ''special requirements'' with ''conditions for exemption''; to replace the term ''conditionally exempt small quantity generator'' with ''very small quantity generator''; and to replace a reference to § 261.5 with a reference to § 262.14.
- Section 266.108 is revised to replace the term ''special requirements'' with ''conditions for exemption''; to replace the term ''conditionally exempt small quantity generator'' with ''very small quantity generator''; and to replace a reference to § 261.5 with a reference to § 262.14.
- Section 271.10(c) is revised to add a reference to § 262.15 because the previous reference to § 262.34 should have been updated in the 2016 Generator Improvements rule to also include § 262.15.
- Section 441.50(b)(3) is revised to replace a reference to § 261.5(g)(3) with a reference to § 262.14(a)(5).

C. Regulations To Be Reworded

In the time since the 2016 Hazardous Waste Generator Improvements rule was promulgated, the EPA has received feedback from State regulators implementing the rule, industry stakeholders, and others using the rule that some of the changes in the final rule are worded in a confusing way or could be interpreted as changing how the generator regulations work when the EPA did not discuss making such changes. In this section of the preamble, the EPA discusses and explains technical corrections to the regulations finalized by the 2016 Generator Improvements rule to address these concerns.

1. Notification Requirements in Section 3010 of RCRA (Multiple Locations)

In multiple generator provisions promulgated in the 2016 Generator Improvements rule, the EPA refers to the notification requirements in section 3010 of the RCRA statute specifically. For example, in some provisions we state that the requirements for a permitted facility, including the notification requirements in section 3010 of RCRA, do not apply to those entities that meet generator conditions for exemption from permitting. Elsewhere, we state that if a generator violates a specific condition, such as an LQG accumulating longer than 90 days without an extension, they become subject to the permitting requirements, including section 3010 of RCRA.

Since the promulgation of the rule, the EPA has been asked if regulatory language in the 2016 rule means that a generator of hazardous waste does not need to notify as a generator using EPA Form 8700–12, the Site ID form. The EPA did not intend this language to have this meaning—and in fact, small and large quantity generators continue to have the requirement in § 262.18 to complete and submit the Site ID form, notifying the EPA and the implementing State that they are in operation.

The EPA has revised the regulatory text in §§ 262.1; 262.10(a)(2); and 262.16; and five places in § 262.17 (§ 262.17(b), (c), (d), (e), and (f)) to make it clear that the generators that are operating in compliance with the generator regulations are exempted from the notification requirements in section 3010 of RCRA specifically as they pertain to treatment, storage, and disposal facilities.

2. Hazardous Waste Determination (§ 262.11(d) and (g))

In the 2016 Generator Improvements rule, the EPA made numerous revisions to the hazardous waste determination regulations in § 262.11 to incorporate long-standing guidance and policy. Section 262.11(c) used to read: ''For purposes of compliance with 40 CFR part 268, or if the waste is not listed in subpart D of 40 CFR part 261, the generator must then determine whether the waste is identified in subpart C of 40 CFR part 261 by either . . .''

The 2016 Generator Improvements rule moved this paragraph to § 262.11(d) and reworded the paragraph: ''The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both.''

Rewording the paragraph has led to questions about whether it is now necessary to identify all characteristics, even when identifying a listing that already addresses the characteristic. For example, F003 solvents are listed for ignitability. The 2016 revision of § 262.11(d) could be read so that a generator must also identify the D001 characteristic for an F003 spent solvent. This was not our intent. We have been

consistent in our interpretation that as long as the listed waste code addresses the constituents or properties that cause the waste to exhibit a characteristic, then it is not necessary to also identify the characteristic. This is still the case. We are adding two sentences to the end of § 262.11(d) to clarify that we did not change this interpretation. For the same reason, § 262.11(g) is being revised to reference § 262.11(d) so they will be consistent with one another.

3. Very Small Quantity Generators That Accumulate Above the Threshold (§ 262.14(a)(3) and (4))

In the 2016 Generator Improvements rule, the EPA made revisions in §§ 260.10, 262.13, 262.14, and 262.16 to clarify to the regulated community which regulations apply to hazardous waste generators based on (1) The quantity of hazardous waste they generate per month; and (2) the quantity of hazardous waste they accumulate on site at any given time. Among those revisions were two lists of standards that apply when a very small quantity generator (VSQG) exceeds the VSQG limit for hazardous waste accumulated on site at any one time: one kilogram of acute hazardous waste, 100 kilograms of residue from a cleanup of a spill of acute hazardous waste, or 1,000 kilograms of non-acute hazardous waste. (See § 262.14(a)(3) and (4))

Before 2016, these provisions were in § 261.5 and stated that: (1) Accumulated acute hazardous wastes and residues from clean ups of spills of acute hazardous waste would be subject to regulation under parts 262–266, 268, and parts 270 and 124, as well as the applicable notifications requirements in section 3010 of the RCRA statute, and (2) non-acute hazardous waste would be subject to the part 262 provisions applicable to small quantity generator waste, as well as parts 263–266, 268, and parts 270 and 124, and the application notification requirements in section 3010 of the RCRA statute.

Instead of pointing generators to a long list of provisions that could apply in these situations, the revised language in the 2016 Generator Improvements rule provided two specific lists of the provisions that apply to the waste when a VSQG exceeds the accumulation threshold: one for acute hazardous wastes and one for non-acute hazardous wastes. However, the lists were focused on the conditions for exemption, and both left out several provisions that had been covered by the previous language.

This rule revises both lists—in § 262.14(a)(3) and (4)—to restore the independent requirements that were inadvertently left out of the lists, including notification; preparation and use of the Uniform Hazardous Waste Manifest when shipping the waste off site; and complying with pre-transport requirements, recordkeeping and reporting requirements, and transboundary shipment requirements.

A VSQG that is notifying because it exceeded the accumulation threshold retains its VSQG category and prepares and submits EPA Form 8700–12 (the Site ID form) as a ''very small quantity generator.''

4. Accumulation Limit for Small Quantity Generators Generating Acute Hazardous Waste (§ 262.16(b)(1))

The 2016 Generator Improvements rule established definitions for very small, small, and large quantity generators, reorganized the regulations for these categories of generators, and clearly distinguished the generator categories—determined by how much hazardous waste is generated per calendar month at a site—from the conditions for exemption that specify limits for how much hazardous waste small and very small quantity generators can accumulate on site at any one time.

However, the small quantity generator conditions for exemption include an accumulation limit of 6,000 kilograms for non-acute hazardous waste but do not specify an accumulation limit for acute hazardous waste.

In the original 1980 hazardous waste generator regulations, there were only two categories of hazardous waste generator: small (generating less than 1,000 kilograms of hazardous waste per month) and large (generating more than 1,000 kilograms of hazardous waste per month). These pre-1986 small quantity generators had a total on-site hazardous waste accumulation limit of 6,000 kilograms of non-acute hazardous waste and one kilogram of acute hazardous waste. The 1986 rule that established the category and specific requirements for those generating between 100 kilograms and 1,000 kilograms per month (small quantity generators) (51 FR 10146; March 24, 1986) implemented the changes to the hazardous waste program required by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and established a new category of ''conditionally exempt small quantity generator'' for those generating less than 100 kilograms of non-acute hazardous waste per month.

The scope of HSWA and the new regulations for conditionally exempt small quantity generators did not include acute hazardous waste. Therefore, generators generating less than one kilogram of acute hazardous waste per month are conditionally exempt small quantity generators and those generating more than one kilogram of acute hazardous waste per month are large quantity generators. There is no separate small quantity generator category based solely on generation of acute hazardous waste.

The EPA clarified the distinctions between the three generator categories in the 2016 Generator Improvements rule and stated that a small quantity generator can only generate up to one kilogram of acute hazardous waste in a calendar month, but it was not clear in the new language whether there is a limit on the amount of acute hazardous waste a small quantity generator can accumulate on site at any one time.

Consistent with what has been historically allowed for generators of small amounts of acute hazardous waste, the EPA is revising § 262.16(b)(1) to clarify that the acute hazardous waste accumulation limit for a small quantity generator is one kilogram.

5. Accumulation in Tanks (§ 262.17(a)(2))

Section 262.17(a)(2) describes the requirements for hazardous waste that LQGs accumulate in tanks. This section was reorganized with some wording changes in the 2016 Generator Improvements rule. Section 262.17(a)(2) used to be in § 262.34(a)(1)(ii), where it was clear that the LQG must comply with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except §§ 265.197(c) and 265.200. The EPA was informed by stakeholders that the revised regulation is not as clear as it had been previously and is therefore revising the paragraph by replacing the offsetting commas with a set of parentheses to ensure clarity about which requirements apply to LQGs that accumulate hazardous waste in tanks.

6. Closure of a Waste Accumulation Unit (§ 262.17(a)(8)(i) Introductory Text and (a)(8)(i)(A))

The Generator Improvements rule added a requirement that LQGs undergoing closure of a hazardous waste accumulation unit (*e.g.,* tank system, container accumulation area) must notify the EPA (or the authorized State). Section 262.17(a)(8)(i) describes the standards for notification when they are just closing one single accumulation unit and not all their accumulation units. In this case, LQGs have two options. They can submit the Site ID form notifying the EPA of a unit's closure at the time they close the unit (as per § 262.17(a)(8)(i)(B)) or they can put a notice in their operating record

and then, at a later date, when all the accumulation units are closing, include the earlier unit in the broader closure notification (as per § 262.17(a)(8)(i)(A)). The EPA is revising the language in this section to more clearly describe that these paragraphs apply specifically to closure of a waste accumulation unit but not the whole facility.

7. Exception Reporting for an Episodic Event (§ 262.232(a)(5))

The 2016 Generator Improvements rule added new provisions and conditions under subpart L (Alternate Standards for Episodic Generation) for very small and small quantity generators allowing them to hold episodic generation events one time per year if they experience an event that pushes them above the generation threshold for their normal generator category for that calendar month. (A second event may be allowed but must be approved by the EPA or the authorizing State.)

Under the episodic event provisions, very small quantity generators must comply with certain conditions including notification; labeling of tanks and containers; managing waste in a manner that minimizes fire, explosions, or releases; and transporting the hazardous waste to a RCRA treatment, storage, and disposal facility or a hazardous waste recycler using the Uniform Hazardous Waste Manifest (EPA Form 8700–22). The intent of these conditions was to ensure that any hazardous waste from an episodic event is sent to an appropriate hazardous waste designated facility under the protections of the manifest system.

However, in the regulations finalized by the 2016 Generator Improvements rule for very small quantity generators holding episodic events, the EPA neglected to include a reference to § 262.44 of the generator regulations—recordkeeping requirements for small quantity generators—an important part of the manifest's cradle-to-grave tracking. The EPA always intended for the entire manifest tracking system to apply to hazardous waste from episodic events being held by very small quantity generators.

The EPA is revising § 262.232(a)(5) to include a reference to § 262.44, which includes maintaining records of manifests and hazardous waste determinations, completing an exception report if the generator does not receive a copy of its manifest from the designated facility indicating that the waste arrived within 60 days from the date upon which the waste was accepted by the initial transporter, and complying with requests from the Administrator for additional reports under sections 2002(a) and 3002(a)(6) of RCRA.

8. Episodic Generation for Small Quantity Generators (§ 262.232(b)(4)(ii)(C))

Section 262.232(b) describes the conditions that apply when a small quantity generator is holding an episodic event. Generators must label accumulation units with the date the episodic event begins to ensure that all hazardous waste from the event is transported off site to a RCRA-designated facility within the 60 days allowed for the entire episodic event. This standard was clear in the preamble to the 2016 Generator Improvements final rule and in the parallel regulations for VSQGs and for small quantity generators accumulating hazardous waste in containers, but the 2016 regulatory language erroneously indicated that small quantity generators accumulating hazardous waste in tanks should mark them with the day the period of accumulation begins (*i.e.,* the day that hazardous waste started accumulating in that tank), as opposed to the day the event began. The EPA is revising the regulatory language to match its intent, as indicated in the 2016 preamble and the other parallel sections of the episodic generation regulations.

VI. Corrections Related to the Regulatory Revisions Implemented by the Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine Rule

This section addresses technical corrections to revisions made as part of the Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine rule. The final rule, referred to as the Hazardous Waste Pharmaceuticals final rule, was published in the **Federal Register** on February 22, 2019, (84 FR 5816) and added part 266 subpart P to title 40, chapter I, of the Code of Federal Regulations. The revisions described in this action include correction of typographical errors, the correction of citations in the regulations that were not updated in the original Hazardous Waste Pharmaceuticals final rule, revisions to wording in the regulations to provide consistency, and revisions to wording in the regulations that have caused confusion in the four years since the final rule was published.

All but three of the technical corrections appear in part 266, subpart P. The technical corrections that are not in part 266, subpart P, are in §§ 264.72 and 265.72 and Table 1 of § 271.1. Each of the technical corrections are discussed below. Generally, the technical corrections are discussed in the order they appear in the regulations. However, to avoid repetition, similar technical corrections are discussed together, even if that means that they are taken out of order.

A. Manifest Discrepancies (§§ 264.72 and 265.72)

Sections 264.72(a)(3) and 265.72(a)(3) are both being revised to include a reference to the new empty container standards in § 266.507 that were added as a component of part 266, subpart P. The current regulatory language in §§ 264.72(a) and 265.72(a) references the empty container standards in § 261.7(b). We are updating the references to include the new empty container standards in § 266.507 as well.

B. Applicability (§ 266.501)

Section 266.501(d)(2) of the Applicability section of part 266, subpart P, is being amended to correct a typographical error. Specifically, the regulatory citation § 262.502(a) is being revised to § 266.502(a). In fact, the citation § 262.502(a) does not exist.

C. Lab Pack Accumulation (§§ 266.502(d)(4) and 266.510(c)(4)(vi))

1. Overview of Technical Corrections Related to Lab Packing Hazardous Waste Pharmaceuticals

Sections 266.502(d)(4) and 266.510(c)(4)(vi) are both being amended to insert the phrase, ''or because it is prohibited from being lab packed due to § 268.42(c).'' Section 266.502(d)(4) is within the healthcare facility standards for non-creditable hazardous waste pharmaceuticals. Section 266.510(c)(4)(vi) is within the reverse distributor standards for evaluated hazardous waste pharmaceuticals. These changes clarify that non-creditable and evaluated hazardous waste pharmaceuticals that are prohibited from being lab packed for incineration must be accumulated in separate containers at healthcare facilities and reverse distributors, respectively. These amendments are consistent with guidance the EPA issued after the rule was published in February 2019 and posted on the web page, Frequent Questions about the Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine final rule.[1]

[1] *https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and#landdisposal.*

In the Frequent Questions, we explained that in the Hazardous Waste Pharmaceuticals final rule the EPA required that healthcare facilities and reverse distributors segregate certain metal-bearing hazardous waste pharmaceuticals in separate containers. The Agency's reasoning was that, while combustion is the required treatment standard under the Land Disposal Restrictions (LDRs) for most hazardous waste pharmaceuticals, the combustion of a few metal-bearing hazardous wastes is prohibited. Therefore, a healthcare facility or reverse distributor must accumulate those particular metal-bearing hazardous waste pharmaceuticals in a separate container at the initial point of accumulation, and label them with the appropriate hazardous waste codes in order to prevent them from being combusted inadvertently. While the final rule mentions the LDR dilution prohibition as one reason for accumulating certain metal-bearing hazardous waste pharmaceuticals separately, we inadvertently omitted a reference to the LDR lab-pack regulations as a reason for accumulating certain hazardous waste pharmaceuticals separately.

In § 266.510(c)(4)(vi), we included a parenthetical with an example of a metal-bearing hazardous waste pharmaceutical that was prohibited from being combusted due to the dilution prohibition of § 268.3(c). The example we included was arsenic trioxide. Including the example caused confusion, leading some to think that arsenic trioxide was the only metal-bearing hazardous waste pharmaceutical that had to be segregated. Therefore, we are replacing the example in the parenthetical with a reference to the complete list of metal-bearing waste codes in appendix XI to part 268. Similarly, we are adding a second parenthetical that will reference appendix IV to part 268 following the new language about the lab pack prohibition. For consistency, we are adding both of these parentheticals to § 266.502(d)(4).

2. Detailed Explanation of Regulatory Changes Related to Lab Packing Hazardous Waste Pharmaceuticals

The standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals include a provision related to metal-bearing pharmaceuticals that are subject to the dilution prohibition under the LDRs in § 268.3. Specifically, § 266.502(d)(4) of the Hazardous Waste Pharmaceuticals final rule states that a ''healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals and non-hazardous non-creditable waste pharmaceuticals in the same container, except that non-creditable hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of § 268.3(c) must be accumulated in separate containers and labeled with all applicable hazardous waste numbers (*i.e.,* hazardous waste codes).''

The standards for reverse distributors managing evaluated hazardous waste pharmaceuticals includes an analogous provision. Specifically, § 266.510(c)(4)(vi) states that a ''reverse distributor . . . must . . . [a]ccumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of § 268.3(c) (*e.g.,* arsenic trioxide (P012)) in separate containers from other evaluated hazardous waste pharmaceuticals at the reverse distributor.''

The healthcare facility standards and the reverse distributor standards both cite the LDR dilution prohibition found in § 268.3(c), which provides that ''combustion of the hazardous waste codes listed in Appendix XI'' to part 268 is ''prohibited, unless the waste, at the point of generation, or after any bona fide treatment such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more'' of the specific criteria (unless otherwise specifically prohibited from combustion). The criteria follow:

(1) The waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in § 268.48;

(2) The waste consists of organic, debris-like materials (*e.g.,* wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

(3) The waste, at point of generation, has reasonable heating value such as greater than or equal to 5000 BTU per pound;

(4) The waste is co-generated with wastes for which combustion is a required method of treatment;

(5) The waste is subject to Federal and/or State requirements necessitating reduction of organics (including biological agents); or

(6) The waste contains greater than 1% Total Organic Carbon (TOC).

Appendix XI to part 268 is a table of 51 metal-bearing hazardous wastes, some of which are, or are ingredients in, pharmaceuticals. In some cases, metal-bearing hazardous waste pharmaceuticals contain more than 1% total organic carbon (TOC), in which case they can be combusted and they do not need to be accumulated separately (see § 268.3(c)(6)). Other hazardous waste pharmaceuticals that do not contain more than 1% TOC (or do not meet any other exceptions in §§ 268.3(c)(1) through (5)), must be accumulated separately in accordance with §§ 266.502(d)(4) and 266.510(c)(4)(vi) because they are prohibited from being combusted due to the dilution prohibition. Arsenic trioxide is an example of a hazardous waste pharmaceutical that does not contain >1% TOC and therefore must be accumulated separately.

In some cases, a healthcare facility or reverse distributor will use lab packs for its hazardous waste pharmaceuticals. Lab packs, also known as ''overpacked drums,'' are a commonly used form of waste packaging for a variety of hazardous wastes—not just hazardous waste pharmaceuticals—where many small containers such as vials or bottles containing compatible hazardous waste are placed into a larger container with sorbent material. In some cases, lab packs are used by generators as accumulation containers at the initial point of accumulation of the hazardous waste. More often, hazardous waste is lab packed later by a vendor, as the hazardous waste is prepared to be shipped off site for treatment and disposal. Lab packs are typically treated by combustion.

In many cases, the use of lab packs by healthcare facilities and reverse distributors for hazardous waste pharmaceuticals is allowed per the alternative LDR treatment standard of § 268.42(c), which provides that, ''as an alternative to the otherwise applicable subpart D treatment standards, lab packs are eligible for land disposal,'' provided the specific requirements are met. The requirements follow:

(1) The lab packs comply with the applicable provisions of 40 CFR 264.316 and 265.316;

(2) The lab pack does not contain any of the wastes listed in appendix IV to part 268;

(3) The lab packs are incinerated in accordance with the requirements of 40 CFR part 264, subpart O, or 40 CFR part 265, subpart O; and

(4) Any incinerator residues from lab packs containing D004, D005, D006, D007, D008, D010, and D011 are treated in compliance with the applicable treatment standards specified for such wastes in subpart D of part 268.

However, the 17 hazardous wastes codes in appendix IV to part 268 are not eligible for this alternative LDR treatment standard, and thus are prohibited from being lab packed for incineration (see § 268.42(c)(2)). As shown in the table below, there are

several hazardous waste pharmaceuticals among the 17 hazardous wastes listed in appendix IV to part 268. These hazardous waste pharmaceuticals are prohibited from being included in lab packs that will be incinerated under the alternative LDR treatment standard; therefore, the result is that these also must be accumulated separately, just like the hazardous waste pharmaceuticals that are prohibited from being incinerated due to the dilution prohibition.

TABLE 1—EXAMPLES OF HAZARDOUS WASTE PHARMACEUTICALS LISTED IN APPENDIX IV TO PART 268—WASTES EXCLUDED FROM LAB PACKS UNDER THE ALTERNATIVE TREATMENT STANDARDS OF § 268.42(c)

Hazardous waste code	Hazardous waste chemical name
D009*	Mercury (toxicity characteristic).
P012*	Arsenic Trioxide.
P076	Nitric Oxide.
U151*	Mercury.

*Also appears in Appendix XI to Part 268—Metal Bearing Wastes Prohibited From Dilution in a Combustion Unit According to 40 CFR 268.3(c).

The regulatory language in §§ 266.502(d)(4) and 266.510(c)(4)(vi) is being amended to include this additional cross-reference to the prohibition on lab packing certain hazardous waste pharmaceuticals for incineration. The prohibition in § 268.42(c)(2) applies independent of the changes finalized by the Hazardous Waste Pharmaceuticals final rule. We are including this additional reference for clarity and for the reader's convenience.

3. Marking Lab Packs for Shipping

Although there are no corresponding regulatory technical corrections, we would like to highlight a related matter about marking lab packs for shipping. Under subpart P, a healthcare facility that is accumulating and shipping non-creditable hazardous waste pharmaceuticals to a designated facility is required to mark its containers with the words ''Hazardous Waste Pharmaceuticals,'' and it is not necessary to mark those containers with individual hazardous waste codes (see § 266.502(e)). However, be aware that the shipping standards for non-creditable and evaluated hazardous waste pharmaceuticals require that lab packs containing D004 (arsenic), D005 (barium), D006 (cadmium), D007 (chromium), D008 (lead), D010 (selenium) or D011 (silver) must be marked with the EPA hazardous waste numbers (see § 266.508(a)(1)(iii)(C)). These specific metals must be identified because § 268.42(c)(4) requires any incinerator residues from lab packs that contain any of these specific metals to undergo further treatment to meet applicable treatment standards prior to land disposal.

D. EPA Hazardous Waste Numbers (§§ 266.502, 266.508, and 266.510)

1. Clarifying Terminology

We are revising the regulatory language in six places to use consistent language when referring to EPA hazardous waste numbers, and to consistently reflect that EPA hazardous waste numbers are often referred to as hazardous waste codes. In each case, the regulatory language is being revised to read, ''. . . applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes).''

The six changes appear in the following four sections of the regulations:

(1) One change in § 266.502(d)(4);

(2) two changes in § 266.508(a)(1)(iii)(C);

(3) one change in § 266.508(a)(2)(i);

(4) two changes in § 266.510(c)(5).

2. Using Hazardous Waste Codes on the Hazardous Waste Manifest

We are amending § 266.508(a)(2)(ii) to insert a sentence at the end (using the same phrasing discussed above) clarifying that a healthcare facility may also include the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700–12, in addition to the PHARMS or PHRM code.

This technical correction is a restatement of preamble from the final rule and is also consistent with guidance that the EPA has provided since the final rule was published. This change pertains to the standards for healthcare facilities shipping non-creditable hazardous waste to a designated facility (*e.g.,* TSDF). The final rule requires the use of the word ''PHARMS'' on Item 13 of the manifest (see section VII.M. of this preamble for additional detail). In the preamble of the final rule, when discussing container labeling standards for non-creditable hazardous waste pharmaceuticals at healthcare facilities, the EPA stated that ''the Agency is not finalizing a requirement of healthcare facilities to label containers of non-creditable hazardous waste pharmaceuticals with hazardous waste codes, . . . although a vendor could include such a requirement in its contract with a healthcare facility.'' [2]

Since then, the EPA reinforced this statement in a Frequent Question [3] that is posted on our website, as well as in a memorandum.[4] The last paragraph of the memorandum states:

> Although healthcare facilities operating under subpart P are not required to include all applicable RCRA hazardous waste codes when manifesting non-creditable hazardous waste pharmaceuticals, the EPA indicated in the preamble to the final rule that we do not object if healthcare facilities or their vendors choose to include RCRA hazardous waste codes on manifests in addition to PHRM/PHARMS (see page 5877). Including all applicable RCRA hazardous waste codes on the manifest when shipping non-creditable hazardous waste pharmaceuticals could help receiving facilities better understand the wastes and determine the best course of management. In addition, we recommend for manifested non-creditable hazardous waste pharmaceuticals shipped from a healthcare facility operating under subpart P but passing through a state or going to a TSDF in a state that has not yet adopted subpart P, that the healthcare facility/vendor check with those states regarding whether they require all applicable waste codes to be on the manifest. Further, the regulated community should be aware that as authorized states adopt and become authorized for part 266 subpart P, it is possible that they may choose to be more stringent and require all hazardous waste codes when healthcare facilities manifest non-creditable hazardous waste pharmaceuticals.

[2] 84 FR 5816, February 22, 2019. See page 5877.

[3] *https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and#e2.*

[4] From Johnson to EPA Regions, December 19, 2019, RCRA Online #14919.

E. Calendar Days (§§ 266.502 and 266.510)

We are adding the word ''calendar'' to modify the word ''days'' in 15 citations within part 266, subpart P. The word ''calendar'' is already used to modify the word ''days'' in seven citations within part 266, subpart P, but we were not consistent throughout the subpart P regulatory language. In the preamble to the proposed and final rules, however, the term ''calendar days'' is used consistently such that the EPA believes our intention was clear that whenever ''days'' is mentioned, it refers to ''calendar days.'' Thus, these 15 regulatory citations are being amended for clarity and consistency.

Five of the corrected regulatory citations are in the healthcare facility standards for non-creditable hazardous waste pharmaceuticals in § 266.502. The other ten corrected regulatory citations are in the reverse distributor standards for evaluated hazardous waste pharmaceuticals in § 266.510(c). The 15 citations that are being amended to include the word ''calendar'' are:

(1) Section 266.502(h);
(2) Section 266.502(h)(3);
(3) Section 266.502(h)(4);
(4) Section 266.502(i)(2)(i)(A);
(5) Section 266.502(i)(2)(ii)(A);
(6) Section 266.510(b)(1);
(7) Section 266.510(b)(2);
(8) Section 266.510(c)(2);
(9) Section 266.510(c)(7);
(10) Section 266.510(c)(7)(iii);
(11) Section 266.510(c)(7)(iv);
(12) Section 266.510(c)(9)(ii)(A)(*1*);
(13) Section 266.510(c)(9)(ii)(A)(*2*);
(14) Section 266.510(c)(9)(ii)(B)(*1*);
(15) Section 266.510(c)(9)(ii)(B)(*2*).

F. Rejected Shipments (§§ 266.502 and 266.510)

We are replacing the word ''returned'' with ''rejected'' in two places in § 266.502(h) when discussing the procedures for the management of rejected shipments of non-creditable hazardous waste pharmaceuticals. Additionally, we are removing the words ''or returned'' from a third place in § 266.502(h).

This is being done for consistency and clarity. Given that the title of § 266.502(h) is ''Procedures for healthcare facilities for managing rejected shipments of non-creditable hazardous waste pharmaceuticals,'' it is more appropriate to consistently refer to the rejected loads as ''rejected'' rather than ''returned.'' We are making identical changes to the procedures for reverse distributors managing rejected shipment that are in § 266.510(c)(7).

G. Standards for Healthcare Facilities Managing Potentially Creditable Hazardous Waste Pharmaceuticals (§ 266.503)

We are amending § 266.503(b)(1) to be consistent with § 266.502(l)(1). Sections 266.502(l)(1) and 266.503(b)(1) each contain one of the conditions that receiving healthcare facilities must meet when accepting hazardous waste pharmaceuticals from an off-site VSQG healthcare facility. Section 266.502 pertains to non-creditable hazardous waste pharmaceuticals, while § 266.503 pertains to potentially creditable hazardous waste pharmaceuticals. For the reader's convenience, when drafting § 266.502(l)(1), we included a parenthetical with the definition of ''control,'' but we did not do the same in § 266.503(b)(1). We are amending § 266.503(b)(1) to include the same parenthetical with the definition of ''control'' that appears in § 266.502(l)(1). In both cases, the definition of ''control'' originates from an exclusion from the definition of solid waste that appears in § 261.4(a)(23)(i)(B).

H. Off-Site Collection of Hazardous Waste Pharmaceuticals Generated by Healthcare Facilities That Are VSQGs That Are Not Operating Under Part 266, Subpart P (§ 266.504)

There are three changes to § 266.504. First, the heading of § 266.504 is being amended by adding ''that are not operating under this subpart.'' Since part 266, subpart P, was published in 2019, there has been some confusion about the applicability of § 266.504. A healthcare facility must count all of its hazardous waste generated in a calendar month—including hazardous waste pharmaceuticals—in determining whether it is required to operate under part 266, subpart P. A healthcare facility that generates above VSQG amounts of hazardous waste must operate under subpart P. A healthcare facility that generates below VSQG amounts of hazardous waste is not required to operate under subpart P, but may choose to opt in. While the preamble to the final rule made it clear that all of the optional provisions in § 266.504 only apply to VSQG healthcare facilities that have not opted into part 266, subpart P,[5] the heading was not as clear. Therefore, we are amending the heading of § 266.504 to make it clear that the four optional provisions in § 266.504 are only available to VSQG healthcare facilities that have not opted into subpart P and therefore are not operating under subpart P. Conversely, a VSQG healthcare facility that opts into part 266, subpart P, would no longer be able to use the optional provisions in § 266.504.

We reiterate that a VSQG healthcare facility that elects to use any of the optional provisions in § 266.504 will not be considered to be opting into part 266, subpart P, and does not need to notify as a healthcare facility.

The second change to § 266.504 is correcting the spelling of off site. In § 266.504(b), the word ''off-site'' appears twice. The first time it appears it is correctly hyphenated because it is modifying the word ''collection.'' However, the second time it appears it is incorrectly hyphenated because it is being used as a noun. Section 266.504(b) is being revised to remove the hyphen from the word ''off-site'' the second time it appears, so that ''off-site'' becomes ''off site.''

The third change is that § 266.504(b) is being amended by replacing the term ''healthcare facility'' with the word ''generator'' toward the end of the paragraph. Normally the RCRA regulations do not allow a generator to send its waste off site to another generator. However, in the 2015 Generator Improvements proposed rule, we included a provision to allow VSQGs to consolidate their hazardous waste off site at a large quantity generator, provided certain conditions are met. The Hazardous Waste Pharmaceuticals rule, which was published the same day as the Generator Improvements proposed rule, included a similar off-site consolidation provision. Specifically, in the Hazardous Waste Pharmaceuticals rule we proposed § 266.504(b) to allow a healthcare facility that is a VSQG to send its hazardous waste pharmaceuticals off site to another healthcare facility provided certain similar conditions are met. When the Generator Improvements final rule was published on November 28, 2016, we finalized the off-site consolidation provision. When we finalized the Hazardous Waste Pharmaceuticals final rule on February 22, 2019, we provided options within the off-site consolidation provision of § 266.504(b), allowing VSQG healthcare facilities to use either version of the off-site consolidation provision: the version in the Generator Improvements final rule, or the version in the Hazardous Waste Pharmaceuticals final rule. As stated in the preamble of the Hazardous Waste Pharmaceuticals final rule, we included ''added flexibility for VSQGs to meet the consolidation provisions that were added as part of the 2016 Hazardous Waste Generator Improvements final

[5] See 84 FR 5858; February 22, 2019.

rule in lieu of the subpart P off-site consolidation provisions. In this case, the receiving LQG would have to meet the conditions in § 262.17(f) while the VSQG healthcare facility would have to meet the conditions in § 262.14(a)(5)(viii).'' The regulations in § 266.504(b) state (emphasis added), ''A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its hazardous waste pharmaceuticals off-site to another *healthcare facility,* provided [. . .].'' The final rule included two options for complying with the off-site consolidation provisions and they are set out in § 266.504(b)(1) and (2).

In adding these options, however, we neglected to remove the term ''healthcare facility'' from the introductory text of paragraph (b) when describing to whom the VSQG could send its hazardous waste pharmaceuticals. If a VSQG healthcare facility is using the subpart P off-site consolidation option described in § 266.504(b)(1), then it must send its hazardous waste pharmaceuticals to a healthcare facility that is operating under subpart P. On the other hand, if a VSQG healthcare facility is using the off-site consolidation option described in § 266.504(b)(2), then it must send its hazardous waste pharmaceuticals to an LQG that meets the conditions under § 262.17(f). It was not our intention to require the receiving LQG to be a healthcare facility. Therefore, we are removing the term ''healthcare facility'' from the final line of § 266.504(b) and replacing it with the word ''generator.''

I. Prohibition on Sewering Hazardous Waste Pharmaceuticals (§ 266.505)

The second and final sentence of § 266.505 currently reads, ''Healthcare facilities and reverse distributors remain subject to the prohibitions in 40 CFR 403.5(b)(1).'' We are revising the citation 40 CFR 403.5(b)(1) to 40 CFR 403.5(b). Section 403 is part of the Clean Water Act (CWA) regulations; specifically, it is part of the Effluent Guidelines and Standards. Section 403.5 is entitled ''National pretreatment standards: Prohibited discharges.'' Section 403.5(b) includes a list of eight ''Specific prohibitions.'' Healthcare facilities and reverse distributors remain subject to all the prohibitions in 40 CFR 403.5(b), not just the prohibition in 40 CFR 403.5(b)(1). The cross-reference to the CWA regulations did not appear in the proposed rule; we added it into the final regulations in response to comments. In the preamble to the final rule, we used the correct citation, § 403.5(b).[6]

J. Conditional Exemption for Hazardous Waste Pharmaceuticals That Are Also Controlled Substances (§ 266.506)

We are revising the title of § 266.506 and paragraph (a)(2) of § 266.506 to remove the reference to take-back events or programs. There are several methods of providing household pharmaceutical take-backs. For example, retail pharmacies can amend their DEA registration to become DEA authorized collectors and install collection receptacles (often referred to as kiosks) for take-back of household pharmaceuticals. Another example is DEA's very popular national take-back days that are scheduled for the last Saturday in April and October each year. ''Take-back events'' and ''take-back programs'' are terms that are typically used to refer to take-back methods that require the involvement of law enforcement. Subpart P applies to healthcare facilities (*e.g.,* retail pharmacies) and reverse distributors; it does not apply to law enforcement. Since subpart P does not apply to law enforcement, we should not have included a reference to take-back methods that involve law enforcement. Therefore, to help reduce confusion, we are removing the reference to take-back events and programs.

Our memorandum from September 11, 2018, for law enforcement conducting take-backs, continues to apply. It explains the regulatory status of household pharmaceuticals collected by law enforcement and the type of permitted incinerators that may be used to destroy the collected household pharmaceuticals.[7] We are also revising § 266.506(b)(3) to replace the periods with ''; or'' after paragraphs (b)(3)(iii) and (iv) to be consistent with how the rest of the list is punctuated.

K. Residues of Hazardous Waste Pharmaceuticals in Empty Containers (§ 266.507)

We are making several corrections and clarifications to the empty container standards in § 266.507. Each is explained separately below.

1. Intravenous (IV) Bags

The first sentence of § 266.507(c) defines when an IV bag is considered ''RCRA empty''; that is, when the contents have been fully administered to a patient. The second sentence of § 266.507(c) sets out how IV bags that are not RCRA empty must be managed. At the end of the second sentence, however, we include a clause that references the § 261.7(b)(1) definition of ''RCRA empty'' and we allow it to be used as an alternative, but only for IV bags that contain non-acute hazardous waste pharmaceuticals. We are moving the clause that references § 261.7(b)(1) to the end of the first sentence so the first sentence of § 266.507(c) will include both definitions of when an IV bag is considered RCRA empty.

2. Other Containers, Including Delivery Devices

We are amending the opening of § 266.507(d) by inserting the words ''At healthcare facilities operating under this subpart.'' We are making this change for two reasons. First, while § 266.507(a) through (c) pertain to specific types of containers at healthcare facilities, § 266.507(d) is a catch-all for other types of containers (including delivery devices) at healthcare facilities that are not addressed specifically by paragraphs (a) through (c). Given that the new definitions of ''empty containers'' in § 266.507 apply beyond healthcare facilities and reverse distributors operating under subpart P, ''other containers'' could be read very broadly to include large containers of hazardous waste pharmaceuticals, such as 55-gallon drums. This was not our intent. Rather, our intent with § 266.507(d) was to address ''other containers'' that are commonly found in the healthcare setting. This is clear from the examples we include at the end of § 266.507(d): inhalers, aerosol cans, nebulizers, tubes of ointments, gels, or creams.

The second reason we are amending the opening of § 266.507(d) is to clarify that it does not apply to healthcare facilities that are VSQGs, unless the VSQG healthcare facility has opted into subpart P. The current regulatory language in § 266.507(d) could be read to mean that any entity, including healthcare facilities that are VSQGs, must manage their non-empty containers of hazardous waste pharmaceuticals as non-creditable hazardous waste pharmaceuticals, even if they are not operating under subpart P. This was not our intent. Healthcare facilities that are VSQGs have the option of operating under subpart P with respect to their hazardous waste pharmaceuticals, including their non-empty containers.

3. Managing Non-Empty Containers

For a similar reason, we are inserting the words ''At healthcare facilities operating under this subpart'' into the second sentence of both § 266.507(b)

[6] 84 FR 5816, February 22, 2019. See preamble on page 5894.

[7] From Wheeler to U.S. Law Enforcement, September 11, 2018, RCRA Online #14906.

and (c). While the revised definitions of ''empty containers'' in § 266.507 apply to any hazardous waste generator, regardless of whether it is a healthcare facility operating under subpart P, the portions of § 266.507(b) through (d) that address how to manage non-empty containers of hazardous waste pharmaceuticals only apply to a healthcare facility operating under subpart P. If a reverse distributor is using the revised definitions of ''empty containers'' in § 266.507, it must manage non-empty containers as evaluated hazardous waste pharmaceuticals. If another type of facility is using the revised definitions of ''empty containers'' in § 266.507 and is not operating under subpart P, it must continue to manage non-empty containers as hazardous waste, under the applicable regulations (*e.g.,* part 262).

Finally, we note that a pharmaceutical in a non-empty container (stock, dispensing and unit-dose; syringe; IV bag; or ''other container'') may meet the definition of ''potentially creditable hazardous waste pharmaceutical,'' if it has a reasonable expectation of receiving manufacturer credit and is:

- In its original manufacturer packaging;
- undispensed, and
- unexpired or less than one year past expiration.

A non-empty container could include either a full, unopened container or a partial container. If the hazardous waste pharmaceutical does meet the definition of ''potentially creditable,'' § 266.507 does not preclude a non-empty container with a potentially creditable hazardous waste pharmaceutical from being sent to a reverse distributor. After a reverse distributor evaluates the potentially creditable hazardous waste pharmaceuticals for manufacturer credit, the reverse distributor must manage them as evaluated hazardous waste pharmaceuticals.

L. Radio Frequency Identification (§§ 266.508 and 266.510)

We are revising §§ 266.508(a)(1)(iii)(C) and 266.510(c)(5) to insert the noun ''tag'' following the phrase ''radio frequency identification.'' Section 266.508 is standards for shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility or evaluated hazardous waste pharmaceuticals from a reverse distributor. Section 266.510(c) is standards for reverse distributors managing evaluated hazardous waste pharmaceuticals. In both cases, we used the modifying phrase ''radio frequency identification'' without including the noun to which it applied, and so we are now including the noun ''tag.''

M. PHARMS Code (§ 266.508)

When part 266, subpart P, was promulgated, the EPA required healthcare facilities to use the word ''PHARMS'' on Item 13 of the manifest for non-creditable hazardous waste pharmaceuticals being shipped to a designated facility (*e.g.,* TSDF). As explained in the preamble to the final rule (see 84 FR 5909), we used six characters because the e-Manifest system can accommodate six characters, and because PHARMS communicates the nature of the waste. However, since the final rule was published, the EPA became aware of two issues related to using six characters. First, although the e-Manifest system can accommodate six characters and PHARMS can be selected from a prepopulated menu within the e-Manifest system, most generators are currently initiating shipments using paper manifests, not fully electronic manifests. The paper manifest was designed to accommodate four-character hazardous waste codes which has made it difficult to fit the entire PHARMS code in the box without exceeding the allotted space. Second, some States and industry stakeholders have told us that their databases are not designed to accommodate six characters, which means that a redesign of their database is required for them to exchange data with the EPA's e-Manifest system.

To assist implementation, the EPA issued a memorandum on this issue allowing the use the four-character code PHRM on both paper manifests and electronic manifests when shipping non-creditable hazardous waste pharmaceuticals under subpart P.[8] This four-character code achieves the same result as the six-character code; therefore, either code satisfies the requirement at § 266.508(a)(2)(ii). The EPA is now amending the regulations to be consistent with the guidance included in the memorandum.

Both PHRM/PHARMS codes have been and will continue to be available for use in the e-Manifest system, with identical ''Hazardous Waste Pharmaceuticals'' descriptions.

This change is also consistent with guidance the EPA included in the Hazardous Waste Pharmaceuticals final rule Frequent Questions web page.[9]

[8] Johnson to Land, Chemicals and Redevelopment Division Directors, December 19, 2019, RCRA Online #14919.

[9] *https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and#e1.*

N. Reverse Distributor Standards (§ 266.510)

1. Unauthorized Waste Reports

When a reverse distributor receives waste from off site that it is not authorized to receive (*e.g.,* non-pharmaceutical hazardous waste or regulated medical waste), it must submit an unauthorized waste report to the EPA Regional Administrator (or authorized State) within 45 calendar days. Section 266.510(a)(9)(i)(A) through (F) includes the list of elements that must be included in an unauthorized waste report. Paragraph (a)(9)(i)(C) of § 266.510 specifies that the EPA identification number, name, and address of the healthcare facility that shipped the unauthorized waste must be included in the report, if available. However, healthcare facilities are not the only entities that may ship to a reverse distributor. Other reverse distributors may also ship to a reverse distributor. Further, because this section addresses situations of non-compliance, it is possible that a reverse distributor could wrongly receive a shipment from another entity that includes unauthorized waste. Therefore, we are revising § 266.510(a)(9)(i)(C) by adding the parenthetical ''(or other entity)'' after healthcare facility, to reflect that possibility.

2. Hazardous Waste Numbers

Section 266.510(c)(5) applies to reverse distributors, and states ''[P]rior to shipping evaluated hazardous waste pharmaceuticals off site, all containers must be marked with the applicable [EPA] hazardous waste numbers (*i.e.,* hazardous waste codes).'' Earlier in this preamble, we explained the addition of ''EPA'' prior to ''hazardous waste numbers,'' wherever it appears in subpart P.

Section 266.508(a)(1)(iii)(C) allows for an exception to having to mark containers with the applicable hazardous waste numbers. Specifically, it allows that lab packs that will be incinerated in compliance with § 268.42(c) are not required to be marked with EPA hazardous waste numbers, except D004, D005, D006, D007, D008, D010, and D011, where applicable.

In § 266.510(c)(5), we are adding a cross-reference to the lab pack marking exception in § 266.508(a)(1)(iii)(C). The exception for marking lab packs with most EPA hazardous waste numbers applies regardless of this addition; nevertheless, we are adding the cross-reference for clarity and to aid the reader.

3. Reporting by a Reverse Distributor for Evaluated Hazardous Waste Pharmaceuticals

Section 266.510(c)(9)(ii) includes instructions for how a reverse distributor must file an exception report when it is missing a copy of the manifest for evaluated hazardous waste pharmaceuticals that it shipped to a designated facility.

Section 266.510(c)(9)(ii)(B) addresses the situation when a shipment is rejected by the designated facility and is shipped to an alternate facility. Paragraph (c)(9)(ii)(B)(*2*)(*i*) of § 266.510 states that a legible copy of the manifest for which the generator does not have confirmation of delivery must be included in the exception report. When the EPA adapted the generator exception reporting regulations for reverse distributors, we neglected to revise ''generator'' to ''reverse distributor,'' as we had intended. We are now revising the regulations to replace the word ''generator'' with ''reverse distributor.''

O. Hazardous and Solid Waste Amendments of 1984 (§ 271.1)

Table 1 in § 271.1 includes a list of RCRA Subtitle C regulations that have been added pursuant to HSWA. As the EPA explained in the preamble to the Hazardous Waste Pharmaceuticals final rule, the sewer prohibition was added to part 266, subpart P, pursuant to HSWA;[10] however, the EPA neglected to update Table 1 in § 271.1. This omission has no bearing on whether the sewer prohibition is considered a HSWA provision since the statute and preamble to the Pharmaceuticals final rule make clear that it is. For the sake of completeness and convenience to the reader, however, the EPA is making a technical correction to update Table 1 in § 271.1, with the addition of a row to add the Hazardous Waste Pharmaceuticals final rule and which will appear in chronological order.

P. Correction to a Preamble Statement in the Hazardous Waste Pharmaceuticals Final Rule

When discussing the management of residues in pharmaceutical containers in the preamble to the Hazardous Waste Pharmaceuticals final rule, we cited an EPA memorandum from November 2011, with the subject ''Containers that Once Held P-Listed Pharmaceuticals.''[11] On page 5903 of the preamble to the final rule, we stated:

This guidance was intended as a short-term solution that worked within the confines of the existing RCRA hazardous waste regulations . . . Today's new ''empty container'' regulations in § 266.507 will replace the November 2011 guidance as it pertained to residues of hazardous waste pharmaceuticals in containers, although the memo will remain in effect for non-pharmaceutical hazardous wastes.

In this rule, we are clarifying that while there are portions of the November 2011 memorandum that were made moot by the final rule, there are other portions of the November 2011 memorandum that are still valid with respect to acute (P-listed) hazardous waste pharmaceuticals.

The November 2011 memorandum provided guidance about containers that once held P-listed pharmaceuticals outlining three regulatory approaches for generators:

(1) Count only the weight of the hazardous waste residues toward their monthly generator category determination;

(2) Demonstrate an equivalent removal method to triple rinsing to render containers RCRA empty; and

(3) In the case of warfarin, show that the concentration in the residue is below the P-listed concentration.

1. Portion of the November 11, 2011, Memorandum That Is Still Valid With Respect to Acute Hazardous Waste Pharmaceuticals

The first approach outlined in the memorandum states that it is only necessary to count the weight of the actual hazardous waste, not the weight of the container holding the hazardous waste. This approach is not relevant to reverse distributors, because all reverse distributors must operate under subpart P, regardless of the amount of hazardous waste pharmaceuticals that are on site. On the other hand, this is still an allowable approach for a healthcare facility managing P-listed pharmaceutical waste, although it is probably only useful to a limited universe of healthcare facilities. The reason its utility is limited is that all healthcare facilities operating under subpart P are regulated the same as each other with respect to their hazardous waste pharmaceuticals. Put another way, there are no generator categories under subpart P. As a result, if a healthcare facility is operating under subpart P, it is not necessary to count the weight of the hazardous waste pharmaceuticals that it generates each month. If, however, a healthcare facility is not operating under subpart P, then this approach might be useful to determine whether it is required to operate under subpart P or prove that it is a VSQG and therefore not required to operate under subpart P (likewise, other generators might find this approach useful to determine whether they are required to operate as SQGs or LQGs under part 262 or prove that they are VSGQs). A healthcare facility must operate under subpart P for its hazardous waste pharmaceuticals if it generates more than VSQG amounts of any hazardous waste (*i.e.,* more than 1 kilogram of acute hazardous waste or more than 100 kilogram of non-acute hazardous waste per calendar month). Including the weight of containers may impact whether a healthcare facility exceeds the 1 kilogram acute hazardous waste monthly threshold, and, in turn, the requirement to operate under subpart P.

Note that if a container is considered RCRA empty, the residues are not regulated as hazardous waste; therefore, it is not necessary to count the weight of the P-listed pharmaceutical residues or the weight of the container. On the other hand, if a container is not RCRA empty, the residues are regulated as RCRA hazardous waste. For non-empty containers, it is only necessary to count the weight of the P-listed pharmaceutical residues, not the weight of the container. If a healthcare facility has containers of P-listed pharmaceutical waste that are not RCRA empty and is determining whether it is subject to subpart P, it may be useful for a healthcare facility to count only the weight of the P-listed acute hazardous waste and not count the weight of the container.

2. Portions of the November 11, 2011, Memorandum That Have Been Superseded With Respect to Acute Hazardous Waste Pharmaceuticals

In contrast, the second and third approaches outlined in the November 2011 memorandum have been superseded by the hazardous waste pharmaceuticals final rule. The reason each approach has been made moot by the rule is explained separately below.

The second approach in the November 2011 memorandum for managing containers that held P-listed pharmaceuticals could have been used to demonstrate an equivalent removal method to render containers RCRA empty. This was an existing regulatory mechanism that was offered as an alternative to triple rinsing containers to render them RCRA empty. Section 261.7(b)(3)(i) specifies that a container that held an acute hazardous waste is

[10] 84 FR 5816, February 22, 2019. See pages 5892 and 5936.

[11] Rudzinski to RCRA Division Directors, November 11, 2011, RCRA Online #14827.

empty if the container (or inner liner) has been triple rinsed using an appropriate solvent. Section 261.7(b)(3)(ii) offers an alternative whereby a container that held an acute hazardous waste is empty if the container (or inner liner) has been ''cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generators, to achieve equivalent removal.'' Section 266.507 of subpart P makes § 261.7(b)(3) moot for hazardous waste pharmaceuticals. That is because under § 266.507, triple rinsing (or an equivalent method) is either not required, or not allowed, depending on the type of container:

(1) *Stock, dispensing and unit-dose containers:* triple rinsing is not required to meet the definition of ''RCRA empty'' for a container that held an acute hazardous waste pharmaceutical. For these types of containers, a container is considered RCRA empty if the pharmaceuticals have been removed from the container using practices commonly employed to remove materials of that type from the container. For these types of containers, the definition of ''empty'' is the same for all pharmaceuticals, including P-listed pharmaceuticals.

(2) *Syringes:* triple rinsing is not required to meet the definition of ''RCRA empty'' for a syringe that held an acute hazardous waste pharmaceutical. For syringes, the syringe is considered RCRA empty if the plunger of the syringe has been fully depressed. For syringes, the definition of ''empty'' is the same for all pharmaceuticals, including P-listed pharmaceuticals.

(3) *IV bags:* triple rinsing of IV bags with acute hazardous waste pharmaceuticals is not allowed. If the P-listed pharmaceutical in the IV bag has not been completely administered, a healthcare facility operating under subpart P must manage it as a non-creditable hazardous waste pharmaceutical.

(4) *Other containers:* triple rinsing ''other containers'' of acute hazardous waste pharmaceuticals is not allowed and there is no method to make such containers RCRA empty. A healthcare facility operating under subpart P must manage a P-listed drug in an ''other container'' as a non-creditable hazardous waste pharmaceutical.

The third approach in the November 2011 memorandum for managing containers that held P-listed pharmaceuticals pertains only to warfarin, which is one of the two concentration-based P-listings. When warfarin is present at concentrations greater than 0.3%, it is an acute hazardous waste with the waste code P001. When warfarin is present at concentrations at or below 0.3%, it is a non-acute hazardous waste with the waste code U248. The memorandum offered the option of showing that the concentration in the residue in the container is below the P-listed concentration. Our thinking was that perhaps the residues would consist primarily of a non-warfarin coating on the outside of the pills, rather than warfarin itself, and thus the residue might have a concentration of warfarin that would be U-listed. Whether the warfarin is P-listed or U-listed was relevant because it drove the method that must be used to render the container RCRA empty. That is, under § 261.7, if the residues remaining in the container were U248 instead of P001, then the container would not need to be triple rinsed to render it RCRA empty. Under subpart P, however, triple rinsing is no longer required to render a warfarin container RCRA empty, so it is now unnecessary to demonstrate that the residues are U-listed rather than P-listed.

VII. Corrections to 40 CFR Part 261 Identification and Listing of Hazardous Waste

This section addresses technical corrections to the changes made in response to a partial vacatur of the 2015 Definition of Solid Waste (DSW) final rule. It also includes technical corrections of typographical errors and missing or incorrect citations found in 40 CFR part 261.

A. Corrections Related to the 2018 Vacatur of the Definition of Solid Waste Rule

On July 7, 2017, and March 6, 2018,[12] the United States Court of Appeals for the District of Columbia Circuit issued opinions on the 2015 DSW final rule [13] that, among other things,[14] (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off site (except for certain provisions); (2) reinstated the 2008 transfer-based exclusion to replace the now-vacated 2015 verified recycler exclusion; and (3) upheld the 2015 containment and emergency preparedness provisions and the eligibility of spent petroleum catalysts and applied these to the reinstated transfer-based exclusion. As a result, the EPA issued the 2018 DSW final rule that implemented the court's decision on May 23, 2018. See 83 FR 24664.

However, several references to the vacated provisions remained in 40 CFR part 261 subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials. In this rule, the EPA is correcting that error by removing all references to § 260.31(d) (vacated provision). Provisions affected are §§ 261.400(a), (b); 261.410(e), (f)(1) and (2); 261.411 introductory text, (b), (c), and (d)(3); and 261.420 introductory text, (a)(1), and (b)(2).

In addition, the 2018 vacatur response reinstated the export provisions for the transfer-based exclusion, found at § 261.4(a)(25). However, those reinstated provisions did not reflect the revisions the EPA had made to RCRA export requirements in the interim. In 2016, the EPA finalized changes to existing regulations regarding the export and import of hazardous wastes and other RCRA regulated materials from and into the United States (81 FR 85696, November 28, 2016). The final rule established: (1) Improved export and import shipment tracking; (2) one consolidated and streamlined set of requirements applying to all imports and exports; (3) mandatory electronic reporting to the EPA; and (4) a link between the consent to export and the electronic export information submitted to U.S. Customs and Border Protection.

However, these changes did not apply to hazardous secondary material recycled under the exclusion at § 261.4(a)(24) and (25), because the EPA had removed the export provisions in the 2015 DSW final rule. When the export provisions were reinstated in 2018 in response to the court vacatur, they did not reflect the improvements made to all the other RCRA export-import provisions. This rule updates the hazardous secondary material export requirements in § 261.4(a)(25) to be consistent with other RCRA export requirements.

B. Correction of Typographical Errors and Missing or Incorrect References

The EPA is also correcting a number of typographical errors and missing or incorrect references found in 40 CFR part 261 to:

- Add containment buildings (subpart DD of 40 CFR parts 264 and 265) to the list of management methods applicable to recyclable materials in § 261.6(c)(1).

[12] *American Petroleum Institute* v. *Environmental Protection Agency,* 862 F.3d 50 (D.C. Cir. 2017), decision modified on rehearing, 883 F.3d 918 (D.C. Cir. 2018).

[13] See 80 FR 1694, January 13, 2015.

[14] The court also vacated factor four of the 2015 definition of legitimate recycling found at 40 CFR 260.43 and reinstated the 2008 version of factor four to replace the now-vacated 2015 version of factor four.

- Change cited regulations from § 265.5113(d) (incorrect) to § 265.113(d) (correct). See § 261.142(a)(3) and (4).
- Change cited regulations from § 265.143(i) (incorrect) to § 261.143(i) (correct) See § 261.143(a)(7).
- Change cited regulations from § 264.151(g)(2) (incorrect) to § 261.151(g)(2) (correct). See § 261.147(g)(2)(i)(B).
- Change cited regulations from § 261.151(h)(2) (incorrect) to § 261.151(g)(2) (correct). See § 261.147(g)(2)(ii)(B).
- Correct numbering at § 261.151(g)(2). Remove the number for current paragraph 10 of the required agreement language under ''RECITALS.'' Correct the reference to paragraph 10 in paragraph 8 to read paragraph 9. Renumber the subsequent paragraphs of the required agreement language under ''RECITALS.''
- Correct truncated text at § 261.151(l)(2). Consistent with the corresponding provision in § 264.151(m)(2), the final sentence is corrected to read: ''State requirements may differ on the proper content of this acknowledgement.''
- Change cited regulation from § 262.410(f) (incorrect) to § 261.410(f) (correct). See § 261.420(b)(3).
- Revise ''subpart X of this part'' (incorrect) to ''subpart X of part 264'' (correct). See § 261.1033(n)(1)(i).
- Change cited regulations from § 261.1082(c)(1) (incorrect) to § 261.1082(c) (correct). See § 261.1083(a)(1), (a)(1)(i); and § 261.1084(j)(2)(i).
- Change cited regulations from § 261.1085(b)(1)(i) (incorrect) to § 261.1084(b)(1)(i) (correct). See § 261.1083(c)(4).
- Change cited regulations from § 261.1082(c)(2) (incorrect) to § 264.1082(c)(2) (correct). See § 261.1084(j)(2)(ii).
- Change cited regulations from § 261.1082(c)(4) (incorrect) to § 264.1082(c)(4) (correct). See § 261.1084(j)(2)(iii).
- Change cited regulations from § 261.1080(b)(7) or (d) (incorrect) to § 261.1080(a) (correct). See § 261.1089(a).
- Change cited regulations from § 261.1082(c)(1) or (c)(2)(i) through (vi) (incorrect) to § 261.1082(c) (correct). See § 261.1089(f).
- Remove incorrect reference to § 261.1085(g) (does not exist). See § 261.1089(g).

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, the EPA may authorize a qualified State to administer its own hazardous waste program within the State in lieu of the Federal program. Following authorization, the EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of the EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and the EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized State until the State adopted the Federal requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. The EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA related provisions as State law to retain final authorization, the EPA implements the HSWA provisions in authorized States until the States do so.

Authorized States are required to modify their program only when the EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than or equally as stringent as the previous Federal regulations.

B. Effect on State Authorization

This direct final rule finalizes technical corrections to a number of the regulations in 40 CFR parts 260, 261, 262, 264, 265, 266, 270, 271, and 441 that are being promulgated in part under the authority of HSWA, and in part under non-HSWA authority. Thus, the technical corrections and clarifications finalized in this direct final rule under non-HSWA authority would be applicable on the effective date only in those States that do not have final authorization of their base RCRA programs. The technical corrections to regulations in § 262.16(b)(1) are promulgated under the authority of HSWA and would be effective on the effective date of this direct final rule in all States unless the State is not authorized for the underlying provisions. Moreover, authorized States are required to modify their programs only when the EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their program. This is a result of section 3009 of RCRA, which allows States to impose more stringent regulations than the Federal program. This direct final rule is considered to be neither more nor less stringent than the current standards. Therefore, authorized States would not be required to modify their programs to adopt the technical corrections promulgated in this direct final rule, although we would strongly urge the States to adopt these technical corrections to avoid any confusion or misunderstanding by the regulated community and the public.

Although this rule makes a correction to Table 1 in § 271.1 which lists the provisions that have been promulgated under HSWA authority, the correction to the table is not itself being promulgated under HSWA.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the

PRA because it does not contain any information collection activities. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2050–0213, 2050–0202, and 2050–0212.

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. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action simply corrects typographical errors, incorrect citations, and omissions; provides clarifications; and makes conforming changes where they have not been made previously. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. Because the rule does not make any substantive change, it will not impose substantial direct costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

H. Executive Order 13211: Actions Concerning Regulations 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)

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 low-income populations.

The EPA believes that these technical corrections do not directly impact human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples because this final rule does not create any new regulatory requirements, but rather clarifies existing requirements and makes conforming changes.

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).

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Intergovernmental relations, Licensing and registration, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 441

Environmental Protection, Health facilities, Mercury, Waste treatment and disposal, Water pollution control.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, 6939g, and 6974.

§ 260.10 [Amended]

■ 2. Section 260.10 is amended in the definition of ''Final closure'' by removing ''§ 262.34'' and adding ''§§ 262.16 and 262.17'' in its place.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 4. Section 261.1 is amended by revising paragraph (a)(1) to read as follows:

§ 261.1 Purpose and scope.

(a) * * *

(1) Subpart A defines the terms ''solid waste'' and ''hazardous waste'', identifies those wastes which are excluded from regulation under parts 262 through 266, 268, and 270 of this subchapter and establishes special management requirements for hazardous waste which is recycled.

* * * * *

■ 5. Section 261.4 is amended by revising paragraphs (a)(25)(i)(I), (a)(25)(vi) and (vii), (a)(25)(xi)(D), and (e)(1) introductory text to read as follows:

§ 261.4 Exclusions.

(a) * * *

(25) * * *

(i) * * *

(I) The name of any countries of transit through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms ''EPA Acknowledgment of Consent'', ''country of import'' and ''country of transit'' are used as defined in 40 CFR 262.81 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

* * * * *

(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the hazardous secondary material generator receives from EPA an EPA Acknowledgment of Consent documenting the consent of the country of import to the receipt of the hazardous secondary material. Where the country of import objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from countries of transit.

(vii) Prior to each shipment, the hazardous secondary material generator or a U.S. authorized agent must:

(A) Submit Electronic Export Information (EEI) for each shipment to the Automated Export System (AES) or its successor system, under the International Trade Data System (ITDS) platform, in accordance with 15 CFR 30.4(b).

(B) Include the following items in the EEI, along with the other information required under 15 CFR 30.6:

(*1*) EPA license code;

(*2*) Commodity classification code per 15 CFR 30.6(a)(12);

(*3*) EPA consent number;

(*4*) Country of ultimate destination per 15 CFR 30.6(a)(5);

(*5*) Date of export per 15 CFR 30.6(a)(2);

(*6*) Quantity of waste in shipment and units for reported quantity, if required reporting units established by value for the reported commodity classification number are in units of weight or volume per 15 CFR 30.6(a)(15); or

(*7*) EPA net quantity reported in units of kilograms, if required reporting units established by value for the reported commodity classification number are not in units of weight or volume.

* * * * *

(xi) * * *

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, the DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the consent number(s) under which the hazardous secondary material was shipped and for each consent number, the total amount of hazardous secondary material shipped and the number of shipments exported during the calendar year covered by the report;

* * * * *

(e) * * *

(1) Except as provided in paragraphs (e)(2) and (4) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in 40 CFR 260.10, are not subject to any requirement of this part and 40 CFR parts 262 and 263 or to the notification requirements of section 3010 of RCRA, nor are such samples included in the quantity determinations of 40 CFR 262.13 and the accumulation limits in 40 CFR 262.16(b)(1) when:

* * * * *

■ 6. Section 261.6 is amended by revising paragraph (c)(1) to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L and AA through DD of 40 CFR parts 264 and 265, and under 40 CFR parts 124, 266, 267, 268, and 270 and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in paragraph (d) of this section.)

* * * * *

§ 261.11 [Amended]

■ 7. Section 261.11 is amended by removing paragraph (c).

■ 8. Section 261.30 is amended by revising paragraph (d) to read as follows:

§ 261.30 General.

* * * * *

(d) The following hazardous wastes listed in § 261.31 are subject to the generator category limits for acutely hazardous wastes established in table 1 of § 262.13 of this subchapter: EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026 and F027.

■ 9. Section 261.142 is amended by revising paragraphs (a)(2) through (4) to read as follows:

§ 261.142 Cost estimate.

(a) * * *

(2) The cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator. (See definition of ''parent corporation'' in § 265.141(d) of this subchapter.) The owner or operator may use costs for on-site disposal in accordance with applicable requirements if he can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under § 265.113(d) of this subchapter, facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under § 265.113(d) of this subchapter that might have economic value.

* * * * *

■ 10. Section 261.143 is amended by revising paragraph (a)(7) to read as follows:

§ 261.143 Financial assurance condition.

* * * * *

(a) * * *

(7) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a)(5) or (6) of this section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing. If the owner or operator begins final closure under subpart G of 40 CFR part 264 or 265, an owner or operator may request reimbursements for partial or final closure expenditures by submitting itemized bills to the Regional Administrator. The owner or operator may request reimbursements for partial closure only if sufficient funds are remaining in the trust fund to cover the maximum costs of closing the facility over its remaining operating life. No later than 60 days after receiving bills for partial or final closure activities, the Regional Administrator will instruct the trustee to make reimbursements in those amounts as the Regional Administrator specifies in writing, if the Regional Administrator determines that the partial or final closure expenditures are in accordance with the approved closure plan, or otherwise justified. If the Regional Administrator has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he may withhold reimbursements of such amounts as he deems prudent until he determines, in accordance with paragraph (i) of this section that the owner or operator is no longer required to maintain financial assurance for final closure of the facility. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide to the owner or operator a detailed written statement of reasons.

* * * * *

■ 11. Section 261.147 is amended by revising paragraphs (g)(2)(i)(B) and (g)(2)(ii)(B) to read as follows:

§ 261.147 Liability requirements.

* * * * *

(g) * * *

(2)(i) * * *

(B) Each State in which a facility covered by the guarantee is located have submitted a written statement to EPA that a guarantee executed as described in this section and § 261.151(g)(2) is a legally valid and enforceable obligation in that State.

(ii) * * *

(B) The Attorney General or Insurance Commissioner of each State in which a facility covered by the guarantee is located and the State in which the guarantor corporation has its principal place of business, has submitted a written statement to EPA that a guarantee executed as described in this section and § 261.151(g)(2) is a legally valid and enforceable obligation in that State.

* * * * *

■ 12. Section 261.151 is amended by revising paragraphs (g)(2) and (l)(2) to read as follows:

§ 261.151 Wording of the instruments.

* * * * *

(g) * * *

(2) A guarantee, as specified in § 261.147(g), must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Guarantee for Liability Coverage

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert ''the State of _____-'' and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is one of the following: ''our subsidiary;'' ''a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;'' or ''an entity with which guarantor has a substantial business relationship, as defined in 40 CFR [either 264.141(h) or 265.141(h)]'', to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in *40 CFR 261.147(g).*

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert ''sudden'' or ''nonsudden'' or ''both sudden and nonsudden''] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator[s] for the Region[s] in which the facility[ies] is[are] located and to [owner or operator] that he intends to provide alternate liability coverage as specified in *40 CFR 261.147*, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in *40 CFR 261.147* in the name of [owner or operator], unless [owner or operator] has done so.

7. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by *40 CFR 261.147*, provided that such modification shall become effective only if a Regional Administrator does not disapprove the modification within 30 days of receipt of notification of the modification.

8. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of *40 CFR 261.147* for the above-listed facility(ies), except as provided in paragraph 9 of this agreement.

9. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the EPA Regional Administrator(s) approve(s), alternate liability coverage complying with *40 CFR 261.147*.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its ''substantial business relationship'' with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is(are) located and by [the owner or operator].

10. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

11. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

12. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $.

[Signatures]
Principal
(Notary) Date
[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

13. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert ''primary'' or ''excess''] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in *40 CFR 261.151(g)(2)* as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

* * * * *

(l) * * *

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in § 261.147(j). State requirements may differ on the proper content of this acknowledgement.

State of
County of
On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

* * * * *

■ 13. Section 261.400 is amended by revising paragraphs (a) and (b) to read as follows:

§ 261.4009 Applicability.

* * * * *

(a) A generator of hazardous secondary material, or an intermediate or reclamation facility, that accumulates 6000 kg or less of hazardous secondary material at any time must comply with §§ 261.410 and 261.411.

(b) A generator of hazardous secondary material, or an intermediate or reclamation facility that accumulates more than 6000 kg of hazardous secondary material at any time must comply with §§ 261.410 and 261.420.

■ 14. Section 261.410 is amended by revising paragraphs (e), (f)(1) introductory text, and (f)(2) to read as follows:

§ 261.410 Preparedness and prevention.

* * * * *

(e) *Required aisle space.* The hazardous secondary material generator or intermediate or reclamation facility must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(f) * * *

(1) The hazardous secondary material generator or an intermediate or reclamation facility must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential

need for the services of these organizations:

* * * * *

(2) Where State or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility must document the refusal in the operating record.

■ 15. Section 261.411 is amended by revising the introductory text and paragraphs (b) introductory text, (c), and (d)(3) introductory text to read as follows:

§ 261.411 Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:

* * * * *

(b) The generator or intermediate or reclamation facility must post the following information next to the telephone:

* * * * *

(c) The generator or an intermediate or reclamation facility must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(d) * * *

(3) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) of this subchapter must immediately notify the National Response Center (using their 24-hour toll free number 800/424–8802). The report must include the following information:

* * * * *

■ 16. Section 261.420 is amended by revising the introductory text and paragraphs (a)(1) and (b)(2) and (3) to read as follows:

§ 261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.

A generator or an intermediate or reclamation facility that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:

(a) * * *

(1) Each generator or an intermediate or reclamation facility that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.

* * * * *

(b) * * *

(2) If the generator or an intermediate or reclamation facility accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) of this subchapter may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan''). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

(3) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 261.410(f).

* * * * *

■ 17. Section 261.1033 is amended by revising paragraph (n)(1)(i) as follows:

§ 261.1033 Standards: Closed-vent systems and control devices.

* * * * *

(n) * * *

(1) * * *

(i) The owner or operator of the unit has been issued a final permit under 40 CFR part 270 which implements the requirements of 40 CFR part 264, subpart X; or

* * * * *

■ 18. Section 261.1083 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(i), and (c)(4) to read as follows:

§ 261.1083 Material determination procedures.

(a) * * *

(1) Determining average VO concentration at the point of material origination. A remanufacturer or other person that stores or treats the hazardous secondary material shall determine the average VO concentration at the point of material origination for each hazardous secondary material placed in a hazardous secondary material management unit exempted under the provisions of § 261.1082(c) from using air emission controls in accordance with standards specified in §§ 261.1084 through 261.1087, as applicable to the hazardous secondary material management unit.

(i) An initial determination of the average VO concentration of the material stream shall be made before the first time any portion of the material in the hazardous secondary material stream is placed in a hazardous secondary material management unit exempted under the provisions of § 261.1082(c) from using air emission controls, and thereafter an initial determination of the average VO concentration of the material stream shall be made for each averaging period that a hazardous secondary material is managed in the unit; and

* * * * *

(c) * * *

(4) Use of knowledge to determine the maximum organic vapor pressure of the hazardous secondary material. Documentation shall be prepared and recorded that presents the information used as the basis for the knowledge by the remanufacturer or other person that stores or treats the hazardous secondary material that the maximum organic vapor pressure of the hazardous secondary material is less than the maximum vapor pressure limit listed in § 261.1084(b)(1)(i) for the applicable tank design capacity category. An example of information that may be used is documentation that the hazardous secondary material is generated by a process for which at other locations it previously has been determined by direct measurement that the hazardous secondary material's waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate tank design capacity category.

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■ 19. Section 261.1084 is amended by revising paragraphs (j)(2)(i) through (iii) to read as follows:

§ 261.1084 Standards: tanks.

* * * * *

(j) * * *

(2) * * *

(i) The hazardous secondary material meets the average VO concentration conditions specified in § 261.1082(c) at the point of material origination.

(ii) The hazardous secondary material has been treated by an organic destruction or removal process to meet the requirements in § 264.1082(c)(2).

(iii) The hazardous secondary material meets the requirements of § 264.1082(c)(4).

* * * * *

■ 20. Section 261.1089 is amended by revising paragraphs (a), (f), and (g) to read as follows:

§ 261.1089 Recordkeeping requirements.

(a) Each remanufacturer or other person that stores or treats the hazardous secondary material subject to requirements of this subpart shall record and maintain the information specified in paragraphs (b) through (j) of this section, as applicable to the facility. Except for air emission control equipment design documentation and information required by paragraphs (i) and (j) of this section, records required by this section shall be maintained at the facility for a minimum of 3 years. Air emission control equipment design documentation shall be maintained at the facility until the air emission control equipment is replaced or otherwise no longer in service. Information required by paragraphs (i) and (j) of this section shall be maintained at the facility for as long as the hazardous secondary material management unit is not using air emission controls specified in §§ 261.1084 through 261.1087 in accordance with the conditions specified in § 261.1080(a).

* * * * *

(f) The remanufacturer or other person that stores or treats the hazardous secondary material using a tank or container exempted under the hazardous secondary material organic concentration conditions specified in § 261.1082(c), shall prepare and maintain at the facility records documenting the information used for each material determination (*e.g.,* test results, measurements, calculations, and other documentation). If analysis results for material samples are used for the material determination, then the remanufacturer or other person that stores or treats the hazardous secondary material shall record the date, time, and location that each material sample is collected in accordance with applicable requirements of § 261.1083.

(g) A remanufacturer or other person that stores or treats the hazardous secondary material designating a cover as ''unsafe to inspect and monitor'' pursuant to § 261.1084(l) shall record and keep at facility the following information: The identification numbers for hazardous secondary material management units with covers that are designated as ''unsafe to inspect and monitor,'' the explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

* * * * *

■ 21. Amend appendix IX to part 261 by revising the entries for ''Bekaert Corp'' and ''Saturn Corporation'' in table 1 and by revising the entry for ''American Chrome & Chemical'' in table 2 to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Bekaert Corp	Dyersburg, TN	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste Nos. F006) generated at a maximum rate of 1250 cubic yards per calendar year after May 27, 2004, and disposed in a Subtitle D landfill. For the exclusion to be valid, Bekaert must implement a verification testing program that meets the following paragraphs: (1) Delisting Levels: All leachable concentrations for those constituents must not exceed the maximum allowable concentrations in mg/l specified in this paragraph. Bekaert must use the leaching method specified at § 261.24 to measure constituents in the waste leachate. (A) Inorganic Constituents TCLP (mg/l): Cadmium—0.672; Chromium—5.0; Nickel—127; Zinc—1260.0. (B) Organic Constituents TCLP (mg/l): Methyl ethyl ketone—200.0. (2) Waste Holding and Handling: (A) Bekaert must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of §§ 262.15, 262.16, and 262.17 of this subchapter, as applicable, and continue to dispose of the dewatered WWTP sludge as hazardous waste. (B) Once the first quarterly sampling and analyses event described in paragraph (3) is completed and valid analyses demonstrate that no constituent is present in the sample at a level which exceeds the delisting levels set in paragraph (1), Bekaert can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (C) If constituent levels in any sample taken by Bekaert exceed any of the delisting levels set in paragraph (1), Bekaert must do the following: (i) notify EPA in accordance with paragraph (7) and (ii) manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA. (D) Quarterly Verification Testing Requirements: Upon this exclusion becoming final, Bekaert may begin the quarterly testing requirements of paragraph (3) on its dewatered WWTP sludge. (3) Quarterly Testing Requirements: Upon this exclusion becoming final, Bekaert may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (A)(i) Collect four representative composite samples of the hazardous waste dewatered WWTP sludge at quarterly (ninety (90) day) intervals after EPA grants the final exclusion. The first composite sample may be taken at any time after EPA grants the final approval. (ii) Analyze the samples for all constituents listed in paragraph (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in paragraph (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Bekaert will report its first quarterly analytical test data to EPA. If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in paragraph (1) of this exclusion, Bekaert can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. (4) Annual Testing: (A) If Bekaert completes the quarterly testing specified in paragraph (3) above and no sample contains a constituent with a level which exceeds the limits set forth in paragraph (1), Bekaert may begin annual testing as follows: Bekaert must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in paragraph (1) at least once per calendar year.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) The sample for the annual testing shall be a representative composite sample for all constituents listed in paragraph (1). (C) The sample for the annual testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken. (5) Changes in Operating Conditions: If Bekaert significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify the EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from the EPA. (6) Data Submittals: Bekaert must submit the information described below. If Bekaert fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (7). Bekaert must: (A) Submit the data obtained through paragraph (3) to the Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Division, U. S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia, 30303, within the time specified. (B) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when either the EPA or the State of Tennessee request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.'' (7) Reopener: (A) If, any time after disposal of the delisted waste Bekaert possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (B) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1), Bekaert must report the data, in writing, to the Regional Administrator or his delegate within ten (10) days of first possessing or being made aware of that data. (C) If Bekaert fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires the EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Regional Administrator or his delegate determines that the reported information requires action the EPA, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed the EPA action is not necessary. The facility shall have ten (10) days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (8) Notification Requirements: Bekaert must do following before transporting the delisted waste: (A) Provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, sixty (60) days before beginning such activities. (B) Update the one-time written notification if Bekaert ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *
Saturn Corporation	Spring Hill, Tennessee	Dewatered wastewater treatment plant (WWTP) sludge (EPA Hazardous Waste No. F019) generated at a maximum rate of 3,000 cubic yards per calendar year. The sludge must be disposed in a lined, Subtitle D landfill with leachate collection that is licensed, permitted, or otherwise authorized to accept the delisted WWTP sludge in accordance with 40 CFR part 258. The exclusion becomes effective on December 23, 2005. For the exclusion to be valid, Saturn must implement a verification testing program that meets the following conditions:

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		1. Delisting Levels: The constituent concentrations in an extract of the waste must not exceed the following maximum allowable concentrations in mg/l: antimony—0.494; arsenic—0.224; total chromium—3.71; lead—5.0; nickel—68; thallium—0.211; and zinc—673. Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010B, 1020C, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A, (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of Saturn's sludge meet the delisting levels in this condition. 2. Waste Holding and Handling: (a) Saturn must accumulate the hazardous waste dewatered WWTP sludge in accordance with the applicable regulations of §§ 262.15, 262.16, and 262.17 of this subchapter, and continue to dispose of the dewatered WWTP sludge as hazardous waste until the results of the first quarterly verification testing are available. (b) After the first quarterly verification sampling event described in Condition (3) has been completed and the laboratory data demonstrates that no constituent is present in the sample at a level which exceeds the delisting levels set in Condition (1), Saturn can manage and dispose of the dewatered WWTP sludge as nonhazardous according to all applicable solid waste regulations. (c) If constituent levels in any sample taken by Saturn exceed any of the delisting levels set in Condition (1), Saturn must do the following: (i) Notify EPA in accordance with Condition (7) and (ii) Manage and dispose the dewatered WWTP sludge as hazardous waste generated under Subtitle C of RCRA. 3. Quarterly Testing Requirements: Upon this exclusion becoming final, Saturn may perform quarterly analytical testing by sampling and analyzing the dewatered WWTP sludge as follows: (i) Collect one representative composite sample (consisting of four grab samples) of the hazardous waste dewatered WWTP sludge at any time after EPA grants the final delisting. In addition, collect the second, third, and fourth quarterly samples at approximately ninety (90)-day intervals after EPA grants the final exclusion. (ii) Analyze the samples for all constituents listed in Condition (1). Any roll-offs from which the composite sample is taken exceeding the delisting levels listed in Condition (1) must be disposed as hazardous waste in a Subtitle C landfill. (iii) Within forty-five (45) days after taking its first quarterly sample, Saturn will report its first quarterly analytical test data to EPA and will include the certification statement required in condition (6). If levels of constituents measured in the sample of the dewatered WWTP sludge do not exceed the levels set forth in Condition (1) of this exclusion, Saturn can manage and dispose the nonhazardous dewatered WWTP sludge according to all applicable solid waste regulations. 4. Annual Verification Testing: (i) If Saturn completes the quarterly testing specified in Condition (3) above, and no sample contains a constituent with a level which exceeds the limits set forth in Condition (1), Saturn may begin annual verification testing on an annual basis. Saturn must collect and analyze one sample of the WWTP sludge on an annual basis as follows: Saturn must test one representative composite sample of the dewatered WWTP sludge for all constituents listed in Condition (1) at least once per calendar year. (ii) The sample collected for annual verification testing shall be a representative composite sample consisting of four grab samples that will be collected in accordance with the appropriate methods described in Condition (1). (iii) The sample for the annual testing for the second and subsequent annual testing events shall be collected within the same calendar month as the first annual verification sample. Saturn will report the results of the annual verification testing to EPA on an annual basis and will include the certification statement required by Condition (6). 5. Changes in Operating Conditions: Saturn must notify EPA in writing when significant changes in the manufacturing or wastewater treatment processes are implemented. EPA will determine whether these changes will result in additional constituents of concern. If so, EPA will notify Saturn in writing that Saturn's sludge must be managed as hazardous waste F019 until Saturn has demonstrated that the wastes meet the delisting levels set forth in Condition (1) and any levels established by EPA for the additional constituents of concern, and Saturn has received written approval from EPA. If EPA determines that the changes do not result in additional constituents of concern, EPA will notify Saturn, in writing, that Saturn must verify that Saturn's sludge continues to meet Condition (1) delisting levels. 6. Data Submittals: Saturn must submit data obtained through verification testing at Saturn or as required by other conditions of this rule to: Chief, North Section, RCRA Enforcement and Compliance Branch, Waste Management Division, U.S. Environmental Protection Agency Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303. If Saturn fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to re-open the exclusion as described in Condition (7). Saturn must: (A) Submit the data obtained through Condition (3) within the time specified. The quarterly verification data must be submitted to EPA in accordance with Condition (3). The annual verification data and certification statement of proper disposal must be submitted to EPA annually upon the anniversary of the effective date of this exclusion. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). (B) Compile, Summarize, and Maintain Records: Saturn must compile, summarize, and maintain at Saturn records of operating conditions and analytical data records of analytical data from Condition (3), summarized, and maintained on-site for a minimum of five years. Saturn must furnish these records and data when either the EPA or the State of Tennessee requests them for inspection. (C) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: ''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for getting the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for sending false information, including the possibility of fine and imprisonment.'' 7. Reopener. (A) If, at any time after disposal of the delisted waste, Saturn possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted WWTP sludge at Saturn indicating that any constituent is at a level in the leachate higher than the specified delisting level or TCLP regulatory level, then Saturn must report the data, in writing, to the Regional Administrator within ten (10) days of first possessing or being made aware of that data.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(B) Based upon the information described in Paragraph (A) and any other information received from any source, the EPA Regional Administrator will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require EPA action, the Regional Administrator will notify Saturn in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notification shall include a statement of the proposed action and a statement providing Saturn with an opportunity to present information as to why the proposed EPA action is not necessary. Saturn shall have ten (10) days from the date of the Regional Administrator's notice to present the information. (D) Following the receipt of information from Saturn, or if Saturn presents no further information after 10 days, the Regional Administrator will issue a final written determination describing the EPA actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. 8. Notification Requirements: Before transporting the delisted waste, Saturn must provide a one-time written notification to any State Regulatory Agency to which or through which it will transport the delisted WWTP sludge for disposal. The notification will be updated if Saturn transports the delisted WWTP sludge to a different disposal facility. Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
American Chrome & Chemical.	Corpus Christi, Texas	Dewatered sludge (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1450 cubic yards per calendar year after September 21, 2004 and disposed in a Subtitle D landfill. ACC must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels (mg/l). The petitioner must use the method specified in § 261.24 to measure constituents in the waste leachate. Dewatered wastewater sludge: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. (2) Waste Holding and Handling: (A) ACC is a 90 day facility and does not have a RCRA permit, therefore, ACC must store the dewatered sludge following the requirements specified in §§ 262.15, 262.16, and 262.17 of this subchapter, as applicable, or continue to dispose of as hazardous all dewatered sludge generated, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous dewatered sludge according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), ACC must retreat the batches of waste used to generate the representative sample until it meets the levels. ACC must repeat the analyses of the treated waste. (D) If the facility does not treat the waste or retreat it until it meets the delisting levels in Paragraph (1), ACC must manage and dispose the waste generated under Subtitle C of RCRA. (E) The dewatered sludge must pass paint filter test as described in SW 846, Method 9095 or another appropriate method found in a reliable source before it is allowed to leave the facility. ACC must maintain a record of the actual volume of the dewatered sludge to be disposed of-site according to the requirements in Paragraph (5). (3) Verification Testing Requirements: ACC must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution. ACC must conduct verification testing each time it decides to evacuate the tank contents. Four (4) representative composite samples shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) and submit the analytical results to EPA within 10 days of receiving the analytical results. If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. The EPA will notify ACC the decision in writing within two weeks of receiving this information. (4) Changes in Operating Conditions: If ACC significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA. (5) Data Submittals: ACC must submit the information described below. If ACC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. ACC must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Corrective Action and Waste Minimization Section, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when the EPA or the State of Texas request them for inspection.

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, any time after disposal of the delisted waste, ACC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the verification testing of the waste does not meet the delisting requirements in Paragraph 1, ACC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If ACC fails to submit the information described in paragraphs (5), (6)(A), or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require Agency action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A), or (6)(B), the Division Director will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: ACC must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ACC transports the excluded waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility. (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the exclusion.
*	*	* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 22. The authority for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

■ 23. Section 262.1 is amended by revising the definition of ''Condition for exemption'' to read as follows:

§ 262.1 Terms used in this part.

* * * * *

Condition for exemption means any requirement in § 262.14, § 262.15, § 262.16, § 262.17, § 262.70, or subpart K or L of this part that states an event, action, or standard that must occur or be met in order to obtain an exemption from any applicable requirement in parts 124, 264 through 268, and 270 of this chapter, or from any requirement for notification under section 3010 of RCRA for treatment storage, and disposal facilities.

* * * * *

■ 24. Section 262.10 is amended by:

■ a. Revising paragraphs (a)(2) introductory text and (k);

■ b. Redesignating notes 1 and 2 following paragraph (l) as notes 1 and 2 to § 262.10 appearing at the end of the section; and

■ c. Revising newly redesignated note 1 to § 262.10.

The revisions read as follows:

§ 262.10 Purpose, scope, and applicability.

(a) * * *

(2) A generator that accumulates hazardous waste on site is a person that stores hazardous waste; such generator is subject to the applicable requirements of parts 124, 264 through 267, and 270 of this chapter and section 3010 of RCRA for treatment, storage, and disposal facilities, unless it is one of the following:

* * * * *

(k) Generators in the Commonwealth of Massachusetts may comply with the State regulations regarding Class A recyclable materials in 310 C.M.R. 30.200, when authorized by the EPA under 40 CFR part 271, with respect to those recyclable materials and matters covered by the authorization, instead of complying with the hazardous waste accumulation conditions for exemption in §§ 262.15 through 262.17, the reporting requirements of § 262.41, the storage facility operator requirements of 40 CFR parts 264, 265, and 267, and the permitting requirements of 40 CFR part 270. Such generators must also comply with any other applicable requirements, including any applicable authorized State regulations governing hazardous

wastes not being recycled and any applicable Federal requirements which are being directly implemented by the EPA within Massachusetts pursuant to the Hazardous and Solid Waste Amendments of 1984.

* * * * *

Note 1 to § 262.10: The provisions of §§ 262.15 through 262.17 are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of §§ 262.15 through 262.17 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.

Note 2 to § 262.10: * * *

* * * * *

■ 25. Section 262.11 is amended by revising paragraphs (d) introductory text and (g) to read as follows:

§ 262.11 Hazardous waste determination and recordkeeping.

* * * * *

(d) The person then must also determine whether the waste exhibits one or more hazardous characteristics as identified in subpart C of 40 CFR part 261 by following the procedures in paragraph (d)(1) or (2) of this section, or a combination of both. Where a waste is both listed and exhibits a characteristic, the listed waste code is sufficient, provided that the listed waste code addresses the constituents and/or properties that cause the waste to exhibit the characteristic. Otherwise, the waste codes must be identified for all applicable listings and characteristics.

* * * * *

(g) *Identifying hazardous waste numbers for small and large quantity generators.* Consistent with paragraph (d) of this section, if the waste is determined to be hazardous, small quantity generators and large quantity generators must identify all applicable EPA hazardous waste numbers (EPA hazardous waste codes) in subparts C and D of part 261 of this subchapter. Prior to shipping the waste off site, the generator also must mark its containers with all applicable EPA hazardous waste numbers (EPA hazardous waste codes) according to § 262.32.

■ 26. Section 262.14 is amended by revising paragraphs (a)(3) and (4) to read as follows:

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) * * *

(3) If the very small quantity generator accumulates at any time greater than 1 kilogram (2.2 lbs) of acute hazardous waste or 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this subchapter, all quantities of that acute hazardous waste are subject to the following additional conditions for exemption and independent requirements:

(i) Such waste is held on site for no more than 90 days beginning on the date when the accumulated wastes exceed the amounts provided in paragraph (a)(3) of this section;

(ii) The conditions for exemption in § 262.17(a) through (g);

(iii) Notification as a ''very small quantity generator'' under § 262.18(a) through (c);

(iv) Preparation and use of the manifest in subpart B of this part;

(v) Pre-transport requirements in subpart C of this part;

(vi) Recordkeeping and reporting requirements in subpart D of this part; and

(vii) Requirements for transboundary movements of hazardous wastes in subpart H of this part.

(4) If the very small quantity generator accumulates at any time 1,000 kilograms (2,200 lbs) or greater of non-acute hazardous waste, all quantities of that hazardous waste are subject to the following additional conditions for exemption and independent requirements:

(i) Such waste is held on site for no more than 180 days, or 270 days, if applicable, beginning on the date when the accumulated waste exceed the amounts provided in paragraph (a)(4) of this section;

(ii) The quantity of waste accumulated on site never exceeds 6,000 kilograms (13,200 lbs);

(iii) The conditions for exemption in § 262.16(b)(2) through (f);

(iv) Notification as a ''very small quantity generator'' under § 262.18(a) through (c);

(v) Preparation and use of the manifest in subpart B of this part;

(vi) Pre-transport requirements in subpart C of this part;

(vii) Recordkeeping and reporting requirements in subpart D of this part; and

(viii) Requirements for transboundary movements of hazardous wastes in subpart H of this part.

* * * * *

■ 27. Section 262.16 is amended by revising the introductory text and paragraphs (b) introductory text, (b)(1), (b)(5) introductory text, and (b)(8)(iv)(A) and (B) to read as follows:

§ 262.16 Conditions for exemption for a small quantity generator that accumulates hazardous waste.

A small quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all the conditions for exemption listed in this section are met:

* * * * *

(b) *Accumulation.* The generator accumulates hazardous waste on site for no more than 180 days, unless in compliance with the conditions for exemption for longer accumulation in paragraphs (c), (d), and (e) of this section. The following accumulation conditions also apply:

(1) *Accumulation limit.* The quantity of acute hazardous waste accumulated on site never exceeds 1 kilogram (2.2 pounds) and the quantity of non-acute hazardous waste accumulated on site never exceeds 6,000 kilograms (13,200 pounds);

* * * * *

(5) *Accumulation of hazardous waste in containment buildings.* If the waste is placed in containment buildings, the small quantity generator must comply with 40 CFR part 265 subpart DD. The generator must label its containment buildings with the words ''Hazardous Waste'' in a conspicuous place easily visible to employees, visitors, emergency responders, waste handlers, or other persons on site and also in a conspicuous place provide an indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (*i.e.,* ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR part 172, subpart E (labeling) or subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704). The generator must also maintain:

* * * * *

(8) * * *

(iv) * * *

(A) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have

immediate access (*e.g.,* direct or unimpeded access) to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required under paragraph (b)(8)(ii) of this section.

(B) In the event there is just one employee on the premises while the facility is operating, the employee must have immediate access (*e.g.,* direct or unimpeded access) to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, *unless* such a device is not required under paragraph (b)(8)(ii) of this section.

* * * * *

■ 28. Section 262.17 is amended by revising the introductory text and paragraphs (a)(2), (a)(7)(i)(A), (a)(8)(i) introductory text, (a)(8)(i)(A), (a)(8)(iii)(A)(*4*), (b), (c) introductory text, (d), (e), and (f) introductory text to read as follows:

§ 262.17 Conditions for exemption for a large quantity generator that accumulates hazardous waste.

A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of parts 124, 264 through 267, and 270 of this chapter, or the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that all of the following conditions for exemption are met:

* * * * *

(a) * * *

(2) *Accumulation of hazardous waste in tanks.* If the waste is placed in tanks, the large quantity generator must comply with the applicable requirements of subpart J (except §§ 265.197(c) and 265.200 of this subchapter) as well as the applicable requirements of 40 CFR part 265, subparts AA through CC.

* * * * *

(7) * * *

(i)(A) Facility personnel must successfully complete a program of classroom instruction, online training (*e.g.,* computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part. The large quantity generator must ensure that this program includes all the elements described in the document required under paragraph (a)(7)(iv)(C) of this section.

* * * * *

(8) * * *

(i) Notification for closure of a waste accumulation unit. A large quantity generator must perform one of the following when closing a waste accumulation unit but not undergoing final closure:

(A) Place a notice in the operating record within 30 days after closure of a unit that identifies the location of the waste accumulation unit being closed within the facility; or

* * * * *

(iii) * * *

(A) * * *

(*4*) If the generator demonstrates that any contaminated soils and wastes cannot be practicably removed or decontaminated as required in paragraph (a)(8)(iii)(A)(*2*) of this section, then the waste accumulation unit is considered to be a landfill and the generator must close the waste accumulation unit and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills (§ 265.310 of this subchapter). In addition, for the purposes of closure, post-closure, and financial responsibility, such a waste accumulation unit is then considered to be a landfill, and the generator must meet all of the requirements for landfills specified in 40 CFR part 265, subparts G and H.

* * * * *

(b) *Accumulation time limit extension.* A large quantity generator who accumulates hazardous waste for more than 90 days is subject to the requirements of 40 CFR parts 124, 264 through 268, and part 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless it has been granted an extension to the 90-day period. Such extension may be granted by EPA if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(c) *Accumulation of F006.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, may accumulate F006 waste on site for more than 90 days, but not more than 180 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that it complies with all of the following additional conditions for exemption:

* * * * *

(d) *F006 transported over 200 miles.* A large quantity generator who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on site for more than 90 days, but not more than 270 days without being subject to parts 124, 264 through 267, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, if the large quantity generator complies with all of the conditions for exemption of paragraphs (c)(1) through (4) of this section.

(e) *F006 accumulation time extension.* A large quantity generator accumulating F006 in accordance with paragraphs (c) and (d) of this section who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 124, 264, 265, 267, and 270, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Regional Administrator on a case-by-case basis.

(f) *Consolidation of hazardous waste received from very small quantity generators.* Large quantity generators may accumulate on site hazardous waste received from very small quantity generators under control of the same person (as defined in § 260.10 of this subchapter), without a storage permit or interim status and without complying with the requirements of parts 124, 264

through 268, and 270 of this chapter, and the notification requirements of section 3010 of RCRA for treatment, storage, and disposal facilities, provided that they comply with the following conditions. ''Control,'' for the purposes of this section, means the power to direct the policies of the generator, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate generator facilities on behalf of a different person shall not be deemed to ''control'' such generators.

* * * * *

Subpart D [Amended]

■ 29. Section 262.42 is amended by revising paragraphs (a)(1), (a)(2) introductory text, (b) (and the note following (b)) to read as follows:

§ 262.42 Exception reporting.

* * * * *

(a)(1) A large quantity generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

(2) A large quantity generator must submit an Exception Report to the EPA Regional Administrator for the Region in which the generator is located if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The Exception Report must include:

* * * * *

(b) A small quantity generator of hazardous waste who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days of the date the waste was accepted by the initial transporter must submit a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery, to the EPA Regional Administrator for the Region in which the generator is located.

Note 1 to paragraph (b): The submission to EPA need only be a handwritten or typed note on the manifest itself, or on an attached sheet of paper, stating that the return copy was not received.

* * * * *

■ 30. Section 262.82 is amended by revising paragraph (e)(2) to read as follows:

§ 262.82 General conditions.

* * * * *

(e) * * *

(2) For hand-delivery, the Office of Land and Emergency Management, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, International Branch (Mail Code 2255T), Environmental Protection Agency, William Jefferson Clinton West Building, Room 1329, 1301 Constitution Ave. NW, Washington, DC 20004.

■ 31. Section 262.200 is amended by revising the definition of ''Trained professional'' to read as follows:

§ 262.200 Definitions for this subpart.

* * * * *

Trained professional means a person who has completed the applicable RCRA training requirements of § 262.17(a)(7) for large quantity generators, or is knowledgeable about normal operations and emergencies in accordance with § 262.16(b)(9)(iii) for small quantity generators and for very small quantity generators that opt into subpart K of this part. A trained professional may be an employee of the eligible academic entity or may be a contractor or vendor who meets the requisite training requirements.

* * * * *

■ 32. Section 262.212 is amended by revising paragraph (e)(3) to read as follows:

§ 262.212 Making the hazardous waste determination at an on-site interim status or permitted treatment, storage, or disposal facility.

* * * * *

(e) * * *

(3) Count the hazardous waste toward the eligible academic entity's generator status, pursuant to § 262.13 in the calendar month that the hazardous waste determination was made, and

* * * * *

■ 33. Section 262.213 is amended by revising paragraph (a)(1) to read as follows:

§ 262.213 Laboratory clean-outs.

(a) * * *

(1) If the volume of unwanted material in the laboratory exceeds 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material, or 1 kg of solid reactive acutely hazardous unwanted material), the eligible academic entity is not required to remove all unwanted materials from the laboratory within 10 calendar days of exceeding 55 gallons (or 1 quart of liquid reactive acutely hazardous unwanted material, or 1 kg of solid reactive acutely hazardous unwanted material), as required by § 262.208. Instead, the eligible academic entity must remove all unwanted materials from the laboratory within 30 calendar days from the start of the laboratory clean-out; and

* * * * *

■ 34. Section 262.232 is amended by revising the paragraphs (a)(5), (b)(4) introductory text, (b)(4)(ii)(C), and (b)(6)(iv) to read as follows:

§ 262.232 Conditions for a generator managing hazardous waste from an episodic event.

(a) * * *

(5) The very small quantity generator must comply with the hazardous waste manifest provisions of subpart B of this part and the recordkeeping provisions for small quantity generators in § 262.44 when it sends its episodic event hazardous waste off site to a designated facility, as defined in § 260.10 of this subchapter.

* * * * *

(b) * * *

(4) *Accumulation by small quantity generators.* A small quantity generator is prohibited from accumulating hazardous wastes generated from an episodic event on drip pads and in containment buildings. When accumulating hazardous waste generated from an episodic event in containers and tanks, the following conditions apply:

* * * * *

(ii) * * *

(C) Use inventory logs, monitoring equipment or other records to identify the date upon which each episodic event begins; and

* * * * *

(6) * * *

(iv) A description of how the hazardous waste was managed as well as the name of the RCRA-designated facility (as defined by § 260.10 of this subchapter) that received the hazardous waste;

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 35. The authority for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6939g.

■ 36. Section 264.1 is amended by revising paragraph (g)(3) and by removing and reserving paragraph (g)(12).

The revision reads as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(3) A generator accumulating waste on site in compliance with § 262.14, § 262.15, § 262.16, § 262.17, or subpart K or L of part 262 of this subchapter.

* * * * *

§ 264.15 [Amended]

■ 37. Section 264.15 is amended by removing paragraph (b)(5).

■ 38. Section 264.72 is amended by revising paragraph (a)(3) to read as follows:

§ 264.72 Manifest discrepancies.

(a) * * *

(3) Container residues, which are residues that exceed the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b) and 266.507.

* * * * *

■ 39. Section 264.1030 is amended by revising paragraph (b)(3) to read as follows:

§ 264.1030 Applicability.

* * * * *

(b) * * *

(3) A unit that is exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a ''90-day'' tank or container) and is not a recycling unit under the provisions of 40 CFR 261.6.

* * * * *

■ 40. Section 264.1050 is amended by revising paragraph (b)(2) to read as follows:

§ 264.1050 Applicability.

* * * * *

(b) * * *

(2) A unit (including a hazardous waste recycling unit) that is not exempt from permitting under the provisions of 40 CFR 262.17 (*i.e.,* a hazardous waste recycling unit that is not a ''90-day'' tank or container) and that is located at a hazardous waste management facility otherwise subject to the permitting requirements of 40 CFR part 270; or

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 41. The authority for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

§ 265.1 [Amended]

■ 42. Section 265.1 is amended by removing and reserving paragraph (c)(15).

§ 265.71 [Amended]

■ 43. Section 265.71 is amended by removing the undesignated ''Comment'' paragraph following paragraph (c).

■ 44. Section 265.72 is amended by revising paragraph (a)(3) to read as follows:

§ 265.72 Manifest discrepancies.

(a) * * *

(3) Container residues, which are residues that exceed the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b) and 266.507.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 45. The authority for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 46. Section 266.100 is amended by revising paragraph (c)(3) to read as follows:

§ 266.100 Applicability.

* * * * *

(c) * * *

(3) Hazardous wastes that are exempt from regulation under §§ 261.4 and 261.6(a)(3)(iii) and (iv) of this subchapter, and hazardous wastes that are subject to the conditions for exemption for very small quantity generators under § 262.14 of this subchapter; and

* * * * *

■ 47. Section 266.108 is amended by redesignating the note following paragraph (c) as note 1 to § 266.108(c) and revising it to read as follows:

§ 266.108 Small quantity on-site burner exemption.

* * * * *

(c) * * *

Note 1 to paragraph (c): Hazardous wastes that are subject to the conditions for exemption for very small quantity generators under § 262.14 of this subchapter may be burned in an off-site device under the exemption provided by this section but must be included in the quantity determination for the exemption.

* * * * *

■ 48. Section 266.501 is amended by revising paragraph (d)(2) to read as follows:

§ 266.501 Applicability.

* * * * *

(d) * * *

(2) Sections 266.502(a), 266.503, 266.505 through 266.507, and 266.509 with respect to the management of potentially creditable hazardous waste pharmaceuticals that are prescription pharmaceuticals and are destined for a reverse distributor.

* * * * *

■ 49. Section 266.502 is amended by revising paragraphs (d)(4), (h) introductory text, (h)(3) and (4), (i)(2)(i)(A) introductory text, and (i)(2)(ii)(A) introductory text to read as follows:

§ 266.502 Standards for healthcare facilities managing non-creditable hazardous waste pharmaceuticals.

* * * * *

(d) * * *

(4) A healthcare facility may accumulate non-creditable hazardous waste pharmaceuticals and non-hazardous non-creditable waste pharmaceuticals in the same container, except that non-creditable hazardous waste pharmaceuticals prohibited from being combusted because of the dilution prohibition of § 268.3(c) of this subchapter (*i.e.,* metal-bearing waste codes listed in appendix XI of part 268 of this subchapter, unless one or more criteria in § 268.3(c)(1) through (6) are met), or because it is prohibited from being lab packed due to § 268.42(c) (*i.e.,* waste codes listed in appendix IV of part 268), must be accumulated in separate containers, and labeled with all applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes).

* * * * *

(h) *Procedures for healthcare facilities for managing rejected shipments of non-creditable hazardous waste pharmaceuticals.* A healthcare facility that sends a shipment of non-creditable hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this subchapter may accumulate the rejected non-creditable hazardous waste pharmaceuticals on site for up to an additional 90 calendar days provided

the rejected shipment is managed in accordance with paragraphs (d) and (e) of this section. Upon receipt of the rejected shipment, the healthcare facility must:

* * * * *

(3) Within 30 calendar days of receipt of the rejected shipment, send a copy of the manifest to the designated facility that returned the shipment to the healthcare facility; and

(4) Within 90 calendar days of receipt of the rejected shipment, transport or offer for transport the returned shipment in accordance with the shipping standards of § 266.508(a).

(i) * * *

(2) * * *

(i) * * *

(A) If a healthcare facility does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 60 calendar days of the date the non-creditable hazardous waste pharmaceuticals were accepted by the initial transporter, the healthcare facility must submit:

* * * * *

(ii) * * *

(A) If a healthcare facility does not receive a copy of the manifest for a rejected shipment of the non-creditable hazardous waste pharmaceuticals that is forwarded by the designated facility to an alternate facility (using appropriate manifest procedures), with the signature of the owner or operator of the alternate facility, within 60 calendar days of the date the non-creditable hazardous waste was accepted by the initial transporter forwarding the shipment of non-creditable hazardous waste pharmaceuticals from the designated facility to the alternate facility, the healthcare facility must submit:

* * * * *

■ 50. Section 266.503 is amended by revising paragraph (b)(1) to read as follows:

§ 266.503 Standards for healthcare facilities managing potentially creditable hazardous waste pharmaceuticals.

* * * * *

(b) * * *

(1) Is under the control of the same person (as defined in § 260.10 of this subchapter) as the very small quantity generator healthcare facility that is sending the potentially creditable hazardous waste pharmaceuticals off site (''control,'' for the purposes of this section, means the power to direct the policies of the healthcare facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate healthcare facilities on behalf of a different person as defined in § 260.10 of this subchapter shall not be deemed to ''control'' such healthcare facilities) or has a contractual or other documented business relationship whereby the receiving healthcare facility supplies pharmaceuticals to the very small quantity generator healthcare facility;

* * * * *

■ 51. Section 266.504 is amended by revising the section heading and paragraph (b) introductory text to read as follows:

§ 266.504 Healthcare facilities that are very small quantity generators for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste that are not operating under this subpart.

* * * * *

(b) *Off-site collection of hazardous waste pharmaceuticals generated by a healthcare facility that is a very small quantity generator.* A healthcare facility that is a very small quantity generator for both hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste may send its hazardous waste pharmaceuticals off site to another generator, provided:

* * * * *

■ 52. Section 266.505 is revised to read as follows:

§ 266.505 Prohibition on sewering hazardous waste pharmaceuticals.

All healthcare facilities—including very small quantity generators operating under § 262.14 of this subchapter in lieu of this subpart—and reverse distributors are prohibited from discharging hazardous waste pharmaceuticals to a sewer system that passes through to a publicly-owned treatment works. Healthcare facilities and reverse distributors remain subject to the prohibitions in 40 CFR 403.5(b).

■ 53. Section 266.506 is amended by revising the section heading and paragraphs (a)(2) and (b)(3)(iii) and (iv) to read as follows:

§ 266.506 Conditional exemption for hazardous waste pharmaceuticals that are also controlled substances and household waste pharmaceuticals collected by an authorized collector.

(a) * * *

(2) Household waste pharmaceuticals that are collected by an authorized collector (as defined by the Drug Enforcement Administration) registered with the Drug Enforcement Administration that commingles the household waste pharmaceuticals with controlled substances from an ultimate user (as defined by the Drug Enforcement Administration).

(b) * * *

(3) * * *

(iii) A permitted hospital, medical and infectious waste incinerator, subject to 40 CFR part 62, subpart HHH, or applicable state plan for existing hospital, medical and infectious waste incinerators, or 40 CFR part 60, subpart Ec, for new hospital, medical and infectious waste incinerators; or

(iv) A permitted commercial and industrial solid waste incinerator, subject to 40 CFR part 62, subpart III, or applicable state plan for existing commercial and industrial solid waste incinerators, or 40 CFR part 60, subpart CCCC, for new commercial and industrial solid waste incinerators; or

* * * * *

■ 54. Section 266.507 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 266.507 Residues of hazardous waste pharmaceuticals in empty containers.

* * * * *

(b) *Syringes.* A syringe is considered empty and the residues are not regulated as hazardous waste under this subpart provided the contents have been removed by fully depressing the plunger of the syringe. At healthcare facilities operating under this subpart, if a syringe is not empty, the syringe must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical under this subpart and any applicable federal, state, and local requirements for sharps containers and medical waste.

(c) *Intravenous (IV) bags.* An IV bag is considered empty and the residues are not regulated as hazardous waste provided the pharmaceuticals in the IV bag have been fully administered to a patient, or if the IV bag held non-acute hazardous waste pharmaceuticals and is empty as defined in § 261.7(b)(1) of this subchapter. At healthcare facilities operating under this subpart, if an IV bag is not empty, the IV bag must be placed with its remaining hazardous waste pharmaceuticals into a container that is managed and disposed of as a non-creditable hazardous waste pharmaceutical under this subpart.

(d) *Other containers, including delivery devices.* At healthcare facilities operating under this subpart, hazardous waste pharmaceuticals remaining in all other types of unused, partially administered, or fully administered containers must be managed as non-creditable hazardous waste pharmaceuticals under this subpart, unless the container held non-acute

hazardous waste pharmaceuticals and is empty as defined in § 261.7(b)(1) or (2) of this subchapter. This includes, but is not limited to, residues in inhalers, aerosol cans, nebulizers, tubes of ointments, gels, or creams.

■ 55. Section 266.508 is amended by revising paragraphs (a)(1)(iii)(C) and (a)(2)(i) and (ii) to read as follows:

§ 266.508 Shipping non-creditable hazardous waste pharmaceuticals from a healthcare facility of evaluated hazardous waste pharmaceuticals from a reverse distributor.

(a) * * *

(1) * * *

(iii) * * *

(C) Lab packs that will be incinerated in compliance with § 268.42(c) of this subchapter are not required to be marked with EPA hazardous waste numbers (*i.e.,* hazardous waste codes), except D004, D005, D006, D007, D008, D010, and D011, where applicable. A nationally recognized electronic system, such as bar coding or radio frequency identification tag, may be used to identify the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes).

* * * * *

(2) * * *

(i) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals is not required to list all applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700–22.

(ii) A healthcare facility shipping non-creditable hazardous waste pharmaceuticals must write the word ''PHRM'' or ''PHARMS'' in Item 13 of EPA Form 8700–22. A healthcare facility may also include the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes) in Item 13 of EPA Form 8700–22.

* * * * *

■ 56. Section 266.510 is amended by revising paragraphs (a)(9)(i)(C), (b)(1) and (2), (c)(2), (c)(4)(vi), (c)(5), (c)(7) introductory text, (c)(7)(iii) and (iv), (c)(9)(ii)(A)(*1*), (c)(9)(ii)(A)(*2*) introductory text, (c)(9)(ii)(B)(*1*), (c)(9)(ii)(B)(*2*) introductory text, and (c)(9)(ii)(B)(*2*)(*i*) to read as follows:

§ 266.510 Standards for the management of potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals at reverse distributors.

* * * * *

(a) * * *

(9) * * *

(i) * * *

(C) The EPA identification number, name, and address of the healthcare facility (or other entity) that shipped the unauthorized waste, if available;

* * * * *

(b) * * *

(1) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from a healthcare facility must send those potentially creditable hazardous waste pharmaceuticals to another reverse distributor within 180 calendar days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

(2) A reverse distributor that receives potentially creditable hazardous waste pharmaceuticals from another reverse distributor must send those potentially creditable hazardous waste pharmaceuticals to a reverse distributor that is a pharmaceutical manufacturer within 180 calendar days after the potentially creditable hazardous waste pharmaceuticals have been evaluated or follow paragraph (c) of this section for evaluated hazardous waste pharmaceuticals.

* * * * *

(c) * * *

(2) *Inspections of on-site accumulation area.* A reverse distributor must inspect its on-site accumulation area at least once every seven calendar days, looking at containers for leaks and for deterioration caused by corrosion or other factors, as well as for signs of diversion.

* * * * *

(4) * * *

(vi) Accumulate evaluated hazardous waste pharmaceuticals that are prohibited from being combusted because of the dilution prohibition of § 268.3(c) of this subchapter (*i.e.,* metal-bearing waste codes listed in appendix XI of part 268 of this subchapter, unless one or more criteria in § 268.3(c)(1) through (6) are met), or because it is prohibited from being lab packed due to § 268.42(c) of this subchapter (*i.e.,* waste codes listed in appendix IV of part 268 of this subchapter), in separate containers from other evaluated hazardous waste pharmaceuticals at the reverse distributor.

(5) *Hazardous waste numbers.* Prior to shipping evaluated hazardous waste pharmaceuticals off site, all containers must be marked with the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes), except as provided in § 266.508(a)(1)(iii)(C). A nationally recognized electronic system, such as bar coding or radio frequency identification tag, may be used to identify the applicable EPA hazardous waste numbers (*i.e.,* hazardous waste codes).

* * * * *

(7) *Procedures for a reverse distributor for managing rejected shipments.* A reverse distributor that sends a shipment of evaluated hazardous waste pharmaceuticals to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receives that shipment back as a rejected load in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this subchapter, may accumulate the rejected evaluated hazardous waste pharmaceuticals on site for up to an additional 90 calendar days in the on-site accumulation area provided the rejected shipment is managed in accordance with paragraphs (a) and (c) of this section. Upon receipt of the rejected shipment, the reverse distributor must:

* * * * *

(iii) Within 30 calendar days of receipt of the rejected shipment of the evaluated hazardous waste pharmaceuticals, send a copy of the manifest to the designated facility that returned the shipment to the reverse distributor; and

(iv) Within 90 calendar days of receipt of the rejected shipment, transport or offer for transport the returned shipment of evaluated hazardous waste pharmaceuticals in accordance with the applicable shipping standards of § 266.508(a) or (b).

* * * * *

(9) * * *

(ii) * * *

(A) * * *

(*1*) If a reverse distributor does not receive a copy of the manifest with the signature of the owner or operator of the designated facility within 35 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter, the reverse distributor must contact the transporter or the owner or operator of the designated facility to determine the status of the evaluated hazardous waste pharmaceuticals.

(*2*) A reverse distributor must submit an exception report to the EPA Regional Administrator for the Region in which the reverse distributor is located if it has not received a copy of the manifest with the signature of the owner or operator of the designated facility within 45 calendar days of the date the evaluated hazardous waste pharmaceutical was accepted by the initial transporter. The exception report must include:

* * * * *

(B) * * *

(*1*) A reverse distributor that does not receive a copy of the manifest with the signature of the owner or operator of the alternate facility within 35 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter must contact the transporter or the owner or operator of the alternate facility to determine the status of the hazardous waste. The 35-day timeframe begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

(*2*) A reverse distributor must submit an Exception Report to the EPA Regional Administrator for the Region in which the reverse distributor is located if it has not received a copy of the manifest with the signature of the owner or operator of the alternate facility within 45 calendar days of the date the evaluated hazardous waste pharmaceuticals were accepted by the initial transporter. The 45-day timeframe begins the date the evaluated hazardous waste pharmaceuticals are accepted by the transporter forwarding the hazardous waste pharmaceutical shipment from the designated facility to the alternate facility. The Exception Report must include:

(*i*) A legible copy of the manifest for which the reverse distributor does not have confirmation of delivery; and

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 57. The authority for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

§ 270.1 [Amended]

■ 58. Section 270.1 is amended by removing and reserving paragraph (c)(2)(ix).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 59. The authority for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 60. In § 271.1, table 1 is amended by adding an entry for ''February 22, 2019'' in chronological order to read as follows:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation reference	Federal Register	Effective date
*	*	*	*
February 22, 2019 ...	Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine: § 266.505.	84 FR 5816	August 21, 2019.

* * * * *

■ 61. Section 271.10 is amended by revising paragraph (c) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(c) The State program must require that generators who accumulate hazardous wastes for short periods of time comply with requirements that are equivalent to the requirements for accumulating hazardous wastes for short periods of time under 40 CFR 262.15, 262.16, or 262.17.

* * * * *

PART 441—DENTAL OFFICE POINT SOURCE CATEGORY

■ 62. The authority for part 441 continues to read as follows:

Authority: 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342, and 1361. 42 U.S.C. 13101–13103.

■ 63. Section 441.50 is amended by revising paragraph (b)(3) to read as follows:

§ 441.50 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

(3) Documentation of all dates that collected dental amalgam is picked up or shipped for proper disposal in accordance with 40 CFR 262.14(a)(5), and the name of the permitted or licensed treatment, storage or disposal facility receiving the amalgam retaining containers.

* * * * *

[FR Doc. 2023–14731 Filed 8–8–23; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 2 and 51
Revisions to the Air Emissions Reporting Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 2 and 51

[EPA–HQ–OAR–2004–0489; FRL–8604–02–OAR]

RIN 2060–AV41

Revisions to the Air Emissions Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes changes to the EPA's Air Emissions Reporting Requirements (AERR). The proposed amendments may require changes to current regulations of State, local, and certain tribal air agencies; would require these agencies to report emissions data to the EPA using different approaches from current requirements; and would require owners/operators of some facilities to report additional emissions data. More specifically, the EPA is proposing to require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP; and to require State, local, and certain tribal air agencies to report prescribed fire data. The proposed revisions would also define a new approach for optional collection by air agencies of such information on HAP by which State, local and certain tribal air agencies may implement requirements and report emissions on behalf of owners/operators. The proposed revisions would also make the requirements for point sources consistent for every year; phase in earlier deadlines for point source reporting; and add requirements for reporting fuel use data for certain sources of electrical generation associated with peak electricity demand. The proposed revisions include further changes for reporting on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. For owners/operators of facilities that meet criteria described in this proposal, the proposed revisions would require reporting of performance test and performance evaluation data to the EPA for all tests conducted after the effective date provided in the final rulemaking. The EPA also proposes to clarify that information the EPA collects through the AERR is emission data that is not subject to confidential treatment.

DATES: Comments on this proposed rule must be received on or before October 18, 2023. Under the Paperwork Reduction Act, comments on the information collection request must be received by the EPA and OMB on or before September 8, 2023.

Public hearing: The EPA will hold a virtual public hearing on August 30, 2023. See **SUPPLEMENTARY INFORMATION** for additional information on the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0489, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Fax: (202) 566–9744.
- *Mail:* Air Emissions Reporting Requirements Rule, Docket No. EPA–HQ–OAR–2004–0489, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Please include two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2004–0489, EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Houyoux, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Emission Inventory and Analysis Group (C339–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–3649; email: *NEI_Help@epa.gov* (and include ''AERR'' on the subject line).

SUPPLEMENTARY INFORMATION:

Organization of this document. The information in this preamble is organized as follows:

Table of Contents

I. Public Participation

The EPA will hold a virtual public hearing on August 30, 2023. The hearing will convene at 10:00 a.m. Eastern Time (ET) and will conclude at 4:00 p.m. ET. The EPA may close the hearing 15 minutes after the last pre-registered speaker has testified if there are no additional speakers. The EPA will announce any further details at *https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr.*

Upon publication of this document in the **Federal Register**, the EPA will begin pre-registering speakers for the hearing. The EPA will accept registrations on an individual basis. To register to speak at the virtual public hearing, please follow the instructions at *https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr* or contact the public hearing team at 919–541–3391 or by email at *Godfrey.Janice@epa.gov.* The last day to pre-register to speak at the hearing will be August 25, 2023. Prior to the hearing, the EPA will post a general agenda that will list pre-registered speakers in approximate order at *https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr.*

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr.* The EPA does not intend to publish a document in the **Federal Register** announcing updates. While the EPA expects the hearing to go forward as described in this section, please monitor *https://www.epa.gov/air-emissions-inventories/air-emissions-reporting-requirements-aerr* for any updates to the information described in this document, including information about the public hearing.

If you require the services of a translator or a special accommodation such as audio description, please pre-register for the hearing with the public hearing team contact listed above and describe your needs by August 16, 2023. The EPA may not be able to arrange accommodations without advance notice.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2004–0489. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0489. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed in the *Submitting CBI* section of this document.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the *Instructions* section of this document. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the OAQPS CBI Office at the email address *oaqpscbi@epa.gov,* and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2004–0489. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Expedited Comment Review

To expedite review of your comments by agency staff, you are encouraged to send a courtesy copy of your comments, in addition to the copy you submit to the official docket, to Mr. EPA-Anonymous, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Emission Inventory and Analysis Group, Mail Code C339–02, Research Triangle Park, NC 27711; telephone: (919) 541–3649; email: *NEI_Help@epa.gov* and include ''AERR'' on subject line.

II. General Information

Does this action apply to me?

Categories and entities potentially regulated by this action include:

Category	NAICS code [a]	Examples of regulated entities
State/local/tribal government	92411	State, territorial, and local government air quality management programs. Tribal governments are not affected, unless they have sought and obtained treatment in the same manner as a State under the Clean Air Act and Tribal Authority Rule and, on that basis, are authorized to implement and enforce the Air Emissions Reporting Requirements rule.
Major sources	Any	Owners/operators of facilities.
Other (than major) sources		Owners/operators of facilities of:
	21xxxx, 22xxxx, 3xxxxx except for 311811.	Industrial and manufacturing industries.
	4247xx	Petroleum and Petroleum Products Merchant Wholesalers.
	481xxx	Scheduled Air Transportation.
	486xxx	Pipeline Transportation.
	4883xx	Support Activities for Water Transportation.
	493xxx	Warehousing and Storage.
	5417xx	Scientific Research and Development Services.
	54199x	Other Professional, Scientific, and Technical Services.
	56191x	Packaging and Labeling Services.
	5622xx	Waste Treatment and Disposal.
	5629xx	Waste Management and Remediation Services.
	61131x	Colleges, Universities, and Professional Schools.
	62211x	General Medical and Surgical Hospitals.
	62231x	Specialty (except Psychiatric and Substance Abuse) Hospitals.
	811121	Automotive Body, Paint and Interior Repair and Maintenance [b].
	8122xx	Death Care Services.
	812332	Industrial Launderers.
	92214x	Correctional Institutions.
	927xxx	Space Research and Technology.

Category	NAICS code [a]	Examples of regulated entities
	928xxx	National Security and International Affairs.

[a] North American Industry Classification System.
[b] Excluding small businesses for primary NAICS 811121.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity could be regulated by this proposed action, you should carefully examine the proposed revisions to the applicability criteria found in § 51.1 of the proposed regulatory text within this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. Background and Purpose of This Rulemaking

Background: The EPA promulgated the Air Emissions Reporting Requirements (AERR, 73 FR 76539, December 17, 2008) to consolidate and harmonize the emissions reporting requirements of the oxides of nitrogen (NO_X) State Implementation Plan (SIP) Call (73 FR 76558, December 17, 2008, as amended at 80 FR 8796, February 19, 2015; 84 FR 8443, March 8, 2019) and the Consolidated Emissions Reporting Rule (CERR, 67 FR 39602, June 10, 2002) with the needs of the Clean Air Interstate Rule (CAIR, 70 FR 25161, May 12, 2005). The EPA subsequently promulgated revisions of Subpart A (80 FR 8787, February 19, 2015), to align Subpart A with the revised National Ambient Air Quality Standard (NAAQS) for Lead (Pb) (73 FR 66964, November 12, 2008) and the associated Revisions to Lead Ambient Air Monitoring Requirements (75 FR 81126, December 27, 2010), and to reduce burden on States and local air agencies by making minor technical corrections. On August 24, 2016, the EPA further revised Subpart A (80 FR 58010) with the promulgation of the particulate matter (PM) with an aerodynamic diameter less than or equal to 2.5 microns ($PM_{2.5}$) SIP Requirements Rule to update the emissions reporting thresholds in Table 1 to Appendix A of this subpart.

Under the current AERR, State, local, and some tribal agencies [1] are required to report emissions of criteria air pollutants and precursors (collectively, CAPs) to EPA. Required pollutants under the current rule are carbon monoxide (CO), NO_X, volatile organic compounds (VOC), sulfur dioxide (SO_2), ammonia (NH_3), $PM_{2.5}$, PM with an aerodynamic diameter less than or equal to 10 microns (PM_{10}), and Pb. Further, these agencies may optionally report emissions of HAP and other pollutants. For simplicity in the remainder of this document, the term ''States'' will be used to denote all agencies that are currently reporting or that could/would report under any revision to the AERR (see 40 CFR 51.1(b) and (e) of this proposed action). Some facilities must be reported as point sources (as defined by the current AERR at 40 CFR 51.50) based on potential-to-emit (PTE) reporting thresholds for CAPs and an actual emissions reporting threshold for Pb. The current AERR includes a lower set of point source reporting thresholds for every third year and, thus, States are required to report more facilities as point sources on these triennial inventory years. The remaining requirements in the current rule are for the triennial inventories only, for which stationary sources must be reported as county total ''nonpoint'' sources. Agricultural burning is included as a nonpoint source. States, except for California, must also provide inputs to the MOtor Vehicle Emissions Simulator (MOVES), while California must submit CAP emissions for onroad vehicles and nonroad equipment. States are also encouraged to participate in voluntary reporting of wildfire and prescribed burning activity data, such as the location and size of burning.

In addition to the annual and triennial reporting requirements in the current rule, the AERR serves as the reference for the NO_X SIP Call (40 CFR part 51 Subpart G), Regional Haze requirements (50 CFR part 51, subpart P), Ozone SIP Requirements Rules (40 CFR part 51, subparts X, AA, and CC) and the $PM_{2.5}$ SIP Requirements Rule (40 CFR part 51, subpart Z). These other rules point to the AERR to define certain requirements related to emissions inventories for SIPs, collectively known as SIP planning inventories.

Purpose: The proposed amendments in this action would ensure that the EPA has sufficient information to identify and solve air quality and exposure problems. The proposed amendments would also allow the EPA to have information readily available that the Agency needs to protect public health and perform other activities under the Clean Air Act (CAA or ''the Act''). Further, the proposed amendments would ensure that communities have the data needed to understand significant sources of air pollution that may be impacting them—including potent carcinogens and other highly toxic chemicals linked with a wide range of chronic and acute health problems. The EPA has taken a systematic approach in developing this proposed action to ensure that key emissions information is collected in a streamlined way, while preventing unnecessary impacts to small entities within the communities we seek to inform and protect. The proposed amendments would continue EPA's partnership with States in a way that also respects the cooperative federalism framework provided by the CAA.

Authority: Pursuant to its authority under sections 110, 172, and the various NAAQS-specific sections of the CAA, the EPA has required the preparation of SIPs to include inventories containing information about criteria pollutant emissions and their precursors (*e.g.,* VOC). The EPA codified these inventory requirements in Subpart Q of 40 CFR part 51 in 1979 and amended them in 1987. The 1990 Amendments to the CAA revised many of the CAA provisions related to the attainment of the NAAQS and the protection of visibility in Class I areas. These revisions established new periodic emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emission inventory every 3 years for Moderate ozone nonattainment areas beginning in 1993. Similarly, section 187(a)(5) required States to submit an

[1] As prescribed by the Tribal Authority Rule (63 FR 7253, February 12, 1998), codified at 40 CFR part 49, subpart A, tribes may elect to seek treatment in the same manner as a state (TAS) status and obtain approval to implement rules such as the AERR through a Tribal Implementation Plan (TIP), but tribes are under no obligation to do so. However, those tribes that have obtained TAS status for this purpose are subject to the Subpart A requirements to the extent allowed in their TIP. Accordingly, to the extent a tribal government has applied for and received TAS status for air quality control purposes and is subject to the Subpart A requirements under its TIP, the use of the term State(s) in Subpart A shall include that tribe.

inventory every 3 years for Moderate CO nonattainment areas.

The EPA promulgated the original AERR in 2008 with the intent of streamlining various reporting requirements including those of CAA section 182(a)(3)(A) for ozone nonattainment areas and section 187(a)(5) for CO nonattainment areas, those under the NO_X SIP Call (40 CFR 51.122), and the annual reporting requirements of the CERR. The original AERR and its subsequent 2015 revision stem from these various CAA authorities in sections 110, 114, 172, 182, 187, 189, and 301(a). Likewise, the authority for the EPA to amend the reporting requirements for CAPs, as proposed in this action, stems from these same CAA provisions that the EPA relied upon to promulgate the original AERR and amend it in the past. The EPA is not reopening any aspects of the AERR except for those where we are proposing revisions or taking comment as described in this preamble and the accompanying draft regulatory text revisions.

This proposed action would additionally require that owners/operators of certain point sources report certain information on HAP to support the EPA and State needs for HAP data. Sections 114(a)(1) and 301(a) of the CAA provide the authority for the HAP reporting requirements contained in this proposed action. These provisions authorize the EPA to collect data routinely from owners/operators of emissions sources and other entities for the purpose of carrying out the provisions of the Act.

Section 114(a)(1) of the CAA authorizes the Administrator to, among other things, require certain persons (explained below) on a one-time, periodic, or continuous basis to keep records, make reports, undertake monitoring, sample emissions, or provide such other information as the Administrator may reasonably require. The EPA may require this information of any person who (i) owns or operates an emission source, (ii) manufactures emission control or process equipment, (iii) the Administrator believes may have information necessary for the purposes set forth in CAA section 114(a), or (iv) is subject to any requirement of the Act (except for manufacturers subject to certain Title II requirements). The information may be required for the purposes of: (1) developing an implementation plan such as those under sections 110 or 111(d), (2) developing an emission standard under sections 111, 112, or 129, (3) determining if any person is in violation of any standard or requirement of an implementation plan or emissions standard, or (4) ''carrying out any provision'' of the Act (except for a provision of Title II with respect to manufacturers of new motor vehicles or new motor vehicle engines).[2]

The scope of the persons potentially subject to a section 114(a)(1) information request (*e.g.,* a person ''who the Administrator believes may have information necessary for the purposes set forth in'' section 114(a)) and the reach of the phrase ''carrying out any provision'' of the Act are quite broad. The EPA's authority to request information extends to persons not otherwise subject to CAA requirements and may be used for purposes relevant to any provision of the Act. It is appropriate for the EPA to gather the emissions data required by this proposed action because such information is relevant to EPA's ability to carry out a wide variety of CAA provisions, as illustrated by the following description of the uses of such emissions data by EPA.

The EPA's need for CAP emissions data is well documented by the existing records for the various past AERR rulemaking actions that are located in the docket for this proposed action. Since the prior AERR promulgation, the EPA has recognized a gap in the current AERR approach to collect CAP emissions from all relevant facilities. The current AERR imposes a requirement on States to ''inventory emission sources *located on nontribal lands* and report this information to EPA.'' 40 CFR 51.1 (emphasis added). First, the phrase ''nontribal lands'' is not defined and may lead to confusion. Further, data from sources located within the geographic scope of Indian country (as defined by 18 U.S. C. 1151) are relevant for many purposes, including regional and national analyses to support the implementation of the Regional Haze Program and NAAQS for ozone and $PM_{2.5.}$ To address this explicit data gap, the EPA proposes, based on the authority provided by CAA section 114(a), to require reporting directly from certain facilities to the EPA. Specifically, the EPA is proposing that facilities located within Indian country for which the relevant tribe does not have Treatment as a State (TAS) status or approval to submit emissions through a Tribal Implementation Plan (TIP), and which are outside the geographic scope of the relevant State's implementation planning authority,[3] will report directly to EPA.

The EPA's need for HAP emissions data stems from CAA requirements that the EPA is expected to meet. For example, the EPA has many authorities and obligations for air toxic regulatory development under the many provisions of CAA section 112, including technology reviews pursuant to CAA section 112(d)(6), and risk reviews under CAA section 112(f)(2). EPA's implementation of these provisions is additionally informed by federal policy on environmental justice, including Executive Order 12898, which overlays environmental justice considerations for the EPA to assess as part of such work. HAP emissions data also would be useful in further refining chemical speciation to better meet the Agency's responsibilities under CAA Part D that require air quality modeling using emissions data to support NAAQS implementation. VOC chemical speciation is a critical part of such modeling and can be informed by emissions of HAP VOC. The EPA is additionally authorized (and in some cases, obligated) to assess the risks of pollutants, which requires an understanding of both toxicity and exposure. The EPA Office of Air and Radiation (OAR) prioritizes chemicals to nominate for toxicity assessment under EPA's Integrated Risk Information System (IRIS) program in part based on their potential for exposure and hazard. HAP emissions data are used to support these prioritization efforts. Finally, the EPA implements compliance and enforcement programs per CAA sections 113 and 114(a), (b), and (d), and HAP emissions data would support prioritization of those compliance and enforcement efforts. This discussion is not a comprehensive listing of all the possible ways the HAP information collected under this proposed action would assist the EPA in carrying out any provision of the CAA. Rather it illustrates how the information request

[2] Although there are exclusions in CAA section 114(a)(1) regarding certain Title II requirements applicable to manufacturers of new motor vehicle and motor vehicle engines, section 208 authorizes the gathering of information related to those areas.

[3] EPA is using the phrase ''implementation planning authority'' in this context to reflect the fact that in some cases, States may administer approved SIPs in certain areas of Indian country. For instance, in *Oklahoma Dept. of Envtl. Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014), the D.C. Circuit held 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. Under the D.C. Circuit's decision, the CAA does not provide authority to States to implement SIPs in Indian reservations. However, there are also uncommon circumstances where another federal statute provides authority for a particular State to administer an approved implementation plan in certain areas of Indian country, which may include certain Indian reservations.

fits within the parameters of EPA's CAA authority.

The EPA has also identified that many air emissions sources operating in Federal waters are not subject to emissions reporting under this subpart. The CAA section 328 provides the EPA the authority to ''establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Artic, and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes (''OCS sources'') to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I of [the CAA].'' To support the Agency in carrying out this function under the CAA, including data gathering for OCS sources, the EPA is proposing revisions to this subpart for owners/operators of such sources to report emissions data to EPA.

A. Point Sources

With this action, the EPA proposes amendments that would ensure HAP emissions data are collected consistently for the benefit of communities across the country. Currently, the availability and detail of HAP emissions data vary across States, which creates a situation where some communities have incomplete or less accurate information than others, while still facing the same or greater potential risks. To accomplish this within the authorities provided by the CAA, the EPA proposes new requirements on owners/operators under CAA Part A to report HAP emissions directly to EPA. Consistent with provisions of the current version of the AERR, the EPA proposes to retain State reporting of CAPs under CAA Part D, retain voluntary State reporting of HAP, and proposes an approach by which a State may report HAP emissions on behalf of sources in that State. As part of these proposed revisions, the EPA is proposing changes to the AERR-specific definition of point sources that would address which sources would be required to report based on HAP emissions.

To reduce the possibility of redundant or conflicting HAP emissions reports coming to the EPA from both States and owners/operators of facilities, this action proposes that States may elect to assume an owner/operator's responsibility for HAP reporting, provided that the State receives EPA approval that its HAP reporting rules satisfy the proposed requirements that would otherwise need to be met by owners/operators. Requirements for owners/operators would continue unless and until the EPA approves the State program, at which point it would become a State's responsibility (*i.e.,* State reporting would no longer be voluntary for that State). In such cases, the requirement for owners/operators to report directly to the EPA under this proposed action would be suspended provided that the State continued to have the responsibility and obligation to report the source's emissions.

Owners/operators already report HAP to many States. To allow for the EPA and States to streamline reporting for owners/operators, the EPA proposes to require owners/operators to report to the EPA using the Combined Air Emissions Reporting System (CAERS). This emissions collection system has been developed by the EPA to streamline reporting from owners/operators to multiple EPA and State programs. While this proposed amendment would add reporting requirements on owners/operators, CAERS can offset and even reduce total burden by providing owners/operators a way to report to the National Emissions Inventory (NEI), Toxics Release Inventory (TRI), as well as State programs. The EPA plans future enhancements to CAERS to share emissions data with the Greenhouse Gas (GHG) Reporting Program (GHGRP) and the Consolidated Emissions Data Reporting Interface (CEDRI), which will help owners/operators further streamline their reporting requirements.

This proposed action does not require States to use CAERS, but the EPA expects its use would help streamline emissions reporting efforts for facilities, prevent duplication of effort, and lessen burden on States for maintaining their own emissions collection systems. The EPA proposes that if the EPA approves a State for HAP reporting under the proposed option for doing so, a State would be able to continue using their existing emissions reporting forms and approaches provided that such approaches were updated to reflect any new AERR requirements. Depending on choices made by a State, owners/operators would either report to the EPA using CAERS, to the State using CAERS or a State system, or to CAERS for HAP and to a State system for pollutants required by the State.

The EPA is aware that some current State regulations have more stringent HAP reporting requirements than those proposed in this action. Similarly, EPA anticipates that future State regulations could be more stringent as well. A State could require reporting by owners/operators of facilities and for pollutants that would not otherwise be regulated based on this proposed action. If that occurs, a State that is approved to report HAP would be obligated only to report to the EPA those facilities and pollutants that would be required by this proposed action.

The proposed amendments would also rely on reporting by owners/operators directly to the EPA to ensure data for all pollutants are submitted by facilities that are outside the State's implementation planning authority. Most facilities of this type are located within Indian country and within Federal waters. Under the current AERR, emissions from these facilities are only reported to the EPA if a tribe chooses to do so, either voluntarily or through a formal TIP in which the tribe has accepted the AERR reporting requirements. The EPA also collects data from the Bureau of Ocean Energy Management (BOEM) for certain offshore facilities within their jurisdiction. In the current AERR, States do not report emissions data from federally permitted facilities within Indian country or elsewhere that are not regulated by a State. The current AERR and this proposed revision defines certain facilities as ''point sources'' to ensure that the EPA has detailed data on individual facilities when needed. The proposed amendments would ensure that point source facilities and their emissions are reported to the EPA either via the State where appropriate or by owners/operators. This requirement would apply regardless of whether a facility is located within Indian country, offshore, or other locations.

A summary of requirements and major impacts compared to the current rule are described in three sections below: (1) proposed point source revisions affecting both States and owners/operators, (2) proposed point source revisions affecting States, and (3) proposed point source revisions affecting owners/operators.

1. Proposed Point Source Revisions Affecting Both States and Owners/Operators

The EPA proposes to require owners/operators of certain facilities (*i.e.,* ''point sources'' as defined by the proposed action) to report annual actual emissions of HAP directly to the EPA for the NEI, and the EPA proposes an option for States to accept the reporting responsibility on behalf of owners/operators within their State. Even for owners/operators who also must report emissions to the TRI program, this proposed action would require additional sub-facility details necessary for air quality modeling that, in turn, would allow the EPA to assess local-

scale community impacts and devise solutions for high-risk areas.

For States, the proposed requirement for direct facility reporting would provide a new option not currently available under the current AERR. States may opt to use HAP data provided by the EPA through CAERS to inform their communities instead of promulgating or revising their own rules to collect that data. Alternatively, a State may opt to create or revise its own HAP emissions reporting requirements to comply with the proposed requirements of this action. Regarding CAP, States would be required to report CAP for all facilities with emissions greater than or equal to CAP reporting thresholds within their implementation planning authority.

This action also proposes new point source reporting requirements for States and owners/operators of facilities within Indian country to report daily activity data (*i.e.,* fuel use or heat input) for certain small generating units operated to help meet electricity needs on high electricity demand days (HEDDs). The EPA describes a proposed requirement and several alternatives for which small generating units would need to report, with the goal of improving characterization of emissions associated with HEDDs. The emissions from the small generating units can be significant when deployed synchronously by many facilities and can contribute to ozone formation. To allow the EPA and States to have the necessary data to improve characterization of these emissions sources and associated air quality events, the proposed amendments would require States to report daily fuel use or heat input for certain units. These proposed changes differ from the current AERR because they require daily activity data for a specific type of equipment at facilities, whereas the current AERR only requires annual emissions values or, if these small generating units are not located at a point source, no emissions reports. Under this proposed action, owners/operators of facilities within Indian country would also need to meet the same activity reporting requirements as States.

The EPA is also proposing that the definition of point sources would use the same emissions reporting thresholds for every year, such that States and owners/operators would report emissions for the same sources every year starting with the 2026 inventory year. This contrasts with the current requirements that use higher reporting thresholds for every 2 out of 3 years. This proposed requirement would allow communities, States, and the EPA to have the latest emissions data from all facilities, know whether facilities have installed emissions controls or taken other measures to reduce emissions, and be notified as soon as possible when emissions have changed. This proposed requirement would also ensure that States and the EPA have the most up-to-date emissions data to make informed, timely decisions for regulatory and other actions.

This proposed action would additionally distinguish portable facilities from mobile sources operated solely for the functioning of one or more stationary facilities (such as mines) and would clarify requirements for both types of sources. The current AERR does not address these types of sources specifically, and as a result, while the EPA has expected these sources to be included in emissions reports as part of the current ''all emissions'' clause of the existing 40 CFR 51.15(a)(1), the EPA has not always received portable facility emissions or data about mobile sources operating at facilities. To improve data quality related to such sources, the EPA proposes to include portable facilities in the AERR-specific definition of point sources that are subject to emissions reporting. The EPA also proposes that mobile sources operating solely for the function of one or more stationary facilities would need to be reported with the facilities' emissions reports. This would impact both States and owners/operators of facilities that are reporting directly to EPA. The EPA additionally seeks comment on an option for how the EPA could define portable sources for reporting under this subpart.

The current AERR has ambiguous statements regarding confidential data that, in the past, have been misinterpreted by States when reporting emissions. This proposed action would clarify the AERR definition of confidential data by specifically referencing provisions of the Act and existing law that define ''emissions data,'' identifying components such as load, operating conditions, and process data, and clarifying that such data cannot be treated as confidential by the States or by owners/operators when such data would be required to be reported by this proposed action.

The EPA also proposes to add additional required data fields for point source reporting, which would affect both States and owners/operators of facilities. First, the EPA proposes to require identification of all federally enforceable regulations that apply to each unit at certain facilities for the purpose of providing a repository documenting the regulations a facility has determined apply to its units. Such a repository would support streamlining of various aspects of the EPA and State activities. Second, the EPA proposes to require Title V permit numbers for major sources. Third, this action proposes to require a summed activity level for fuel use from combustion sources at each facility using standard units of measure for the purpose of preventing double counting with nonpoint emissions. States have the option to provide that summed data across all facilities for which they report emissions but would need to collect that data annually from their facilities to comply with this requirement. Finally, the EPA proposes to include several new fields to require States and facilities to better specify their control devices and impacts of those controls on reducing emissions.

This action also proposes to add a requirement for location information (*i.e.,* latitude and longitude) for stack and fugitive release points, which has previously been voluntary. The release point locations are essential to correctly model and estimate risk associated with HAP. The current AERR requires only a single facility-wide location. Both States and owners/operators would be impacted by this proposed revision.

2. Additional Proposed Point Source Revisions Affecting States

The EPA proposes a new approach for States to provide emissions data for aircraft, ground support equipment (GSE), and rail yards for triennial inventory years. Many States have voluntarily provided this information for past triennial inventories, with the EPA providing landing and takeoff (LTO) data for aircraft and emissions for rail yards for State review and comment. This action proposes to require States to treat these sources as point sources and to either (1) report aircraft activity data (*i.e.,* LTO data) for some or all aircraft and emissions from rail yards, (2) report emissions for some or all aircraft, GSE, and some or all rail yards, or (3) comment on and/or accept EPA's activity data and emissions estimates.

The EPA also proposes a clarification that offshore facilities (*e.g.,* oil platforms) within State waters be reported by States when such facilities meet the proposed point source reporting thresholds included in this action. The current AERR does not specifically indicate whether offshore facilities should be included or not, but the current AERR does require States to report ''all stationary sources.'' Under the current rule, however, the EPA has not consistently received emissions data

from States for these sources. Since the NEI is intended to be a complete dataset of all emissions sources, these omissions prevented complete information from being available to coastal communities and EPA. Therefore, this action proposes to include stationary and portable (*e.g.,* floating drill rig) offshore sources (excluding commercial marine vessel emissions) in State waters as point sources that would be reported to the EPA when such sources meet the proposed emissions reporting thresholds in this action.

3. Additional Reporting by Owners/Operators

Under the current AERR, use of the phrase ''nontribal lands'' in 40 CFR 51.1 may cause confusion in attempting to identify the geographic areas within a State's borders for which the State should report emissions data. Further, the Agency does not, under the current AERR, receive emissions data from facilities located within Indian reservations except in a few cases where the relevant Indian tribe has an approved TIP or the tribe chooses to report voluntarily. This is consistent with the intended scope of reporting under the current AERR. Similarly, owners/operators of facilities operating in Federal waters are not subject to reporting. This proposal would ensure that emissions from facilities that meet the AERR emissions reporting thresholds would be reported to the EPA by owners/operators when States do not report them.

The EPA additionally proposes to require owners/operators of facilities to report the results of stack tests and performance evaluations (generally, called ''source tests'') electronically to the CEDRI system when not otherwise reported to EPA. Source tests are activities that demonstrate emissions and emission rates of air pollutants from stationary sources though prescribed methods. ''Electronic source test reporting'' is using CEDRI to transfer the results of the tests through the internet. The EPA needs these data to develop and improve emissions factors. Many stakeholders including States and industry have previously asked the EPA to improve its emissions factors. Likewise, in 2006, EPA's Inspector General urged the EPA to improve both emissions factor quality and quantity in its report ''*EPA Can Improve Emissions Factors Development and Management.*'' [4] To implement those recommendations, the EPA created the CEDRI and WebFIRE data systems; however, calculations to create revised emissions factors depend on test data measured at sources. By requiring reporting of these data to CEDRI, the EPA will be able to use the data systems as planned to develop and improve the emissions factors.

B. Nonpoint Sources

The EPA proposes to revise emissions reporting by States for nonpoint sources (as defined in the AERR at 40 CFR 51.50) to improve data quality, consistency, and transparency for triennial reporting. These proposed revisions are based on an evolution of voluntary approaches that have been implemented under the current AERR and evaluated by the EPA while implementing the last several triennial NEIs. If finalized, this proposed action would make mandatory those currently voluntary approaches that support collaboration between States and the EPA on nonpoint source emissions to make the needed improvements.

1. Nonpoint Online Survey and Activity Data Requirements

The EPA is proposing to add a requirement for States to complete an online survey about their planned submissions for nonpoint sources so that the EPA could anticipate the States' intentions for accepting EPA data or reporting their own data. Currently implemented on a voluntary basis, this survey greatly assists States and the EPA in the quality assurance (QA) that compares what States submitted to the EPA to what States intended to submit. The nonpoint survey also provides States a way to indicate for each emissions sector whether they accept the EPA estimates.

The EPA is also proposing to add a requirement for States to report input data for EPA's nonpoint emissions tools and spreadsheet (hereafter referenced as ''tools''). This would allow States to meet nonpoint source reporting requirements by reviewing, commenting on, or editing EPA-provided nonpoint tool inputs. As part of this proposed changed, the EPA proposes that for sources with EPA tools, States can optionally report emissions, but if they chose to report emissions, States would need to include documentation of those emissions. These proposed changes differ from the current rule, which does not require the survey, emission tool inputs, or documentation, but rather requires States to report emissions. These proposed revisions should reduce burden for States when they accept EPA's data or report input data to nonpoint emissions calculation tools, rather than calculating and reporting emissions themselves. Furthermore, the EPA would be better equipped to perform QA in situations where State data differ from EPA tool default estimates and evaluate the cause and reasonableness of differences between State and EPA emissions estimates.

2. Commercial Marine Vessel and Locomotive Emissions Requirements

For commercial marine vessel and underway (*i.e.,* moving) locomotive emissions, the EPA proposes to add a clarifying statement about treating such sources as nonpoint sources for submission to the EPA under the AERR. The EPA also proposes to require States to report emissions data associated with EPA's standardized emissions calculation methods. States would be required to either (a) report annual emissions and documentation, (b) provide comment on EPA-provided data, or (c) accept EPA-provided data.

3. Nonpoint Sources Reported by States and Indian Tribes

The EPA intends to retain the current requirement for States to report emissions for nonpoint sources for which the EPA does not have emissions estimation tools. However, the EPA proposes to add a documentation requirement for such sources, which is not included in the current AERR. Consistent with the current rule, this proposed requirement would be limited to CAP emissions, but States may also voluntarily submit HAP emissions for these sources.

Regarding how States and Indian tribes should report nonpoint sources, the EPA proposes to add a requirement for States to include total activity input [5] (including Indian country) when reporting nonpoint data unless a State determines that an Indian tribe reports nonpoint tool inputs for Indian country that overlaps with a State's counties. In the latter case, the EPA proposes that a State would exclude the activity and/or emissions within Indian country from the county total data reported to avoid double counting. The EPA also proposes to add a requirement that any Indian tribe that reports nonpoint tool inputs and/or emissions for nonpoint sources would report that data separately for

[4] See *https://www.epa.gov/office-inspector-general/report-epa-can-improve-emissions-factors-development-and-management.*

[5] Activity data varies depending on the emissions calculation approach and, therefore, the emissions source. Examples of nonpoint activity data include solvent usage for printing, number and type of wells for oil and gas production, vehicle miles traveled for road dust, and fuel consumption for nonpoint industrial, commercial, and institutional boilers.

each county that overlaps the tribe's Indian country.

C. Wildland Fires

The EPA proposes to require States [6] to report activity data for certain prescribed fires on State, certain tribal land (*i.e.,* for tribes with TAS), private, or military lands for the purpose of data quality and completeness, specifically excluding prescribed fires that occur on non-military Federal lands. Non-military Federal lands are not included in this requirement due to the public availability of prescribed burn activity data and based on continuing discussions at the Congressionally mandated Wildland Fire Mitigation and Management Commission and Wildland Fire Leadership Council which are developing approaches for greater prescribed fire activity data tracking systems.[7] States would report fire activity data (*e.g.,* acres burned) on a day-specific basis for each broadcast and understory burn affecting 50 acres or more. Similarly, States would report prescribed fire activity data for a pile burn affecting 25 acres or more, including fires with both pile and broadcast or understory burning activity. EPA is committed to helping communities and our Federal, State, local, and tribal partners to manage the health impacts of smoke from wildland fires including prescribed fires. EPA and these partners view the use of prescribed fire as an important tool for reducing wildfire risk and the severity of wildfires and wildfire smoke. This proposal would help gather information needed to estimate emissions from prescribed burning with a goal of improving the accuracy of emissions estimates for these activities. The EPA also proposes to add a requirement that, for the purposes of data reported to EPA, man-made grassland fires are considered prescribed fires and not agricultural fires, land clearance burns, or construction fires.

Additionally, the EPA proposes to remove the requirement for States to report data for agricultural fires, which would make such reporting voluntary rather than mandatory. Furthermore, this action proposes that if States voluntarily report agricultural fire emissions, States would report that data as day-specific event sources rather than as annual/county total nonpoint sources.

D. Mobile Sources

The proposed revisions would clarify how States other than California can meet the current requirement to report onroad and nonroad emissions model inputs by submitting only select inputs. California would not be impacted by this proposed clarification because this proposed action would retain the current requirement for California (at 40 CFR 51.15(b)(3)) to submit emissions data from its own mobile models rather than model inputs. This proposed action would establish the following minimum model inputs to be reported: a county database checklist, vehicle miles traveled, and vehicle population. Additionally, the EPA proposes a list of other mobile model inputs that States can optionally provide and proposes to remove certain inputs from being submitted in any situation.

The EPA also proposes to add a requirement for California to provide documentation regarding the onroad and nonroad emissions data they submit, which would describe the inputs, modeling, post-processing of data, and quality assurance performed by California to create the emissions submitted to EPA.

E. Other Changes

The EPA proposes additional changes that impact all source categories. First, this action proposes to add a definition of ''actual emissions'' that would apply specifically to this subpart A of Part 51 (to the AERR). The proposed definition would clarify the relationship between the term ''actual emissions'' and other emissions terms including emissions from periods of startup, shutdown, and malfunction (SSM). Second, this proposed action would provide language to better address the relationship of the requirements of this subpart to the requirements of the NO_X SIP Call, Regional Haze requirements, Ozone SIP Requirements Rules, and the $PM_{2.5}$ SIP Requirements Rule.

IV. Proposed Revisions to Emissions Reporting Requirements

A. Emissions Data Collection of Hazardous Air Pollutants for Point Sources

1. The EPA Needs HAP Emissions for Regulatory Purposes

The CAA HAP list includes organic and inorganic substances that Congress identified as HAP in the 1990 CAA Amendments, which Congress and EPA have revised by further legislation and administrative action. These HAP are associated with a wide variety of adverse health effects, including, but not limited to cancer, neurological effects, reproductive effects, and developmental effects. See the Health Effects Notebook for Hazardous Air Pollutants.[8] As explained in this section, HAP emissions data are used extensively throughout EPA's regulatory and informational programs to protect public health and inform communities of potential risks from these pollutants.

The EPA has significant evidence that the current voluntary reporting program from States is insufficient to meet these needs, even when augmented by air data collection under the TRI. This evidence is provided by EPA's work to meet the requirements of CAA 112(f)(2) for Residual Risk analysis and to promulgate numerous regulatory actions. Historically, to ensure that the EPA had sufficient emissions data to complete its work, some of these regulatory actions have required extensive one-time data collection efforts. Such intermittent data collections require affected entities to take additional time and incur additional costs due to the often hurried, non-routine, nature of the requests. Consistent with the Paperwork Reduction Act, each of these data collections allows owners/operators to review a draft, comment on it, and then they are ultimately required to comply with a one-off collection. This sporadic approach results in owners/operators having to re-engage in an ad-hoc process with new requirements and instructions each time the EPA asks for information via the **Federal Register** and otherwise; it's an unpredictable stop-and-go process that requires a certain amount of ''start-up'' costs (time and resources) from owners/operators to understand and respond to each new request that may be quite different from the last.

Complete, predictable, and routine HAP reporting would significantly lessen the need for these intermittent data collections, thus reducing the burden to owners/operators to react to such intermittent, one-off collections. EPA would have data about all of the units, processes, release points, and controls at facilities and their associated emissions, so that EPA would not need to implement future ad hoc efforts to gather such information. The data collection proposed here would allow owners/operators to streamline collection and reporting by having a

[6] ''States'' is previously defined in Section III of this preamble to include delegated local agencies and certain tribes.

[7] The Bipartisan Infrastructure Law provides funding for a significant increase in fuels and wildfire preparedness on Federal, Tribal, State, and private lands to reduce wildfire risk. As part of the funding, effort is being made to develop more information of prescribed fire use from these same entities.

[8] U.S. EPA, Health Effects Notebook for Hazardous Air Pollutants, *https://www.epa.gov/haps/health-effects-notebook-hazardous-air-pollutants.*

consistent set of data to report routinely through a standardized approach.

While this ongoing collection of emissions data may ultimately have an overall higher burden on owners/operators as compared to sporadic one-time requests, this burden is at least partially offset by the reduction in intermittent, one-off collections. EPA would have data about all of the units, processes, release points, and controls at facilities and their associated emissions.

Further, the EPA predicts that the burden associated with the collection requirements proposed here will lessen over time. The EPA recognizes that, just like for one-time data collections, owners/operators will incur a ''start-up'' cost of time and resources to initially understand and comply with the revised AERR requirements. However, as owners/operators continue to comply year after year, this ''start-up'' burden associated with compliance will diminish because owners/operators will already know the regulations. When a standardized data reporting requirement is known in advanced, it provides respondents the opportunity to plan ahead to most efficiently use their resources to obtain the information to provide in the report. This diminishing effect does not occur with one-time collections where each new collection re-triggers those ''start-up'' costs. The EPA predicts that the AERR approach will be more efficient in the long run. Lastly, even if the approach proposed here imposes a burden that is comparatively higher than an approach of continuous one-time collections, the EPA finds that the incremental burden is justified by all the benefits associated with this proposal that one-time collections do not afford.

In addition to the reviews required under CAA 112(f)(2), CAA 112(d)(6) requires that the EPA must complete technology reviews every 8 years for the source categories regulated under CAA 112. Having current HAP emissions data to support this ongoing technology review requirement will facilitate future technology reviews, including both (a) reviewing and, if appropriate, revising the current standards for HAP that are regulated from the source category and (b) establishing standards for any unregulated HAP emissions, as required under the decision in *Louisiana Environmental Action Network* v. *EPA,* 955 F3d 1088 (D.C. Cir 2020) (''LEAN''). The LEAN decision clarified EPA's obligation to set standards for all HAP emitted from all emissions points for each category of major sources when EPA conducts a technology review and identifies a pollutant for which no MACT standard had been set.

Further, the EPA Office of Inspector General (OIG) has identified that EPA has inadequate emissions data and is late on RTR assessments. In its 2007 report, ''Improvements in Air Toxics Emissions Data Needed to Conduct Residual Risk Assessments,'' [9] OIG recommended that EPA ''establish requirements for State reporting of air toxics emissions data and compliance monitoring information.'' In its report, OIG also indicated that EPA's planned activities in response to the OIG report ''do not sufficiently address the problems identified, and we consider the issues unresolved.'' More recently, in 2022, OIG issued the report ''The EPA Needs to Develop a Strategy to Complete Overdue Residual Risk and Technology Reviews and to meet the Statutory Deadlines for Upcoming Reviews.'' [10] While this report focuses on the time it takes for EPA to complete a review, rather than availability of emissions data, it is clear from the timetable for conducting these reviews included in the report that collecting emissions data is a limiting factor. The timeline provided shows that the time to ''collect supplemental information'' is between 0 to 28 months. This supplemental information includes identifying the facilities associated with a source category and collecting their emissions inventory data. The data that EPA proposes to collect here would help address the findings of both OIG reports.

Under CAA 112(c)(5), the EPA has the authority to review the list of section 112 source categories and list new source categories and subcategories according to the statutory criteria. More current and extensive HAP emissions data would allow the EPA to better identify additional source categories and subcategories for listing. Furthermore, once a new HAP is listed, the EPA would need information about which sources are emitting it in order to develop and/or review regulations to address the additional HAP.

Executive Order (E.O.) 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, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations. Part of the impact of EPA's regulatory actions on communities is to improve air quality by reducing emissions of HAP and other pollutants with local impacts. Under the current voluntary HAP emissions reporting program, some States submit extensive HAP data, while other States submit few or no HAP data. While the TRI air data provide some additional information on the HAP emitted, the facility-level resolution does not provide quantitative or qualitative details about the types of stack and fugitive releases and respective emissions totals necessary for accurate risk modeling. Thus, analysis quality suffers in communities without detailed data. EPA's proposal to collect these data would help to close the gap in understanding impacts of HAP and other pollutants on communities and will therefore assist the EPA with fulfilling the goals of Executive Order 12898.

2. The EPA Needs HAP Emissions for Risk Assessment

To be able to assess risks, the EPA develops information about pollutant toxicity and characterizes pollutant hazards under the IRIS program. Given the huge number of chemicals released to the air, it is necessary to prioritize which pollutants are investigated by the IRIS program. OAR uses information on emissions and exposures to help inform priorities for IRIS nominations, which requires detailed HAP data and release parameters that are not sufficiently available under the current voluntary program.

The EPA has developed nationwide risk information for all pollutants with the National Air Toxics Assessment (NATA) program. NATA has been available approximately every 3 years since 2002 (starting with the 1996 inventory year) and has been cited in countless publications. More recently, as part of the air toxics strategy of the Office of Air Quality Planning and Standards (OAQPS), the NATA program has been replaced and enhanced by EPA's new AirToxScreen,[11] which will provide annually updated risk and emissions information for use by EPA, States, and the public. AirToxScreen

[9] U.S. EPA Office of Inspector General, ''Improvements in Air Toxics Emissions Data Needed to Conduct Residual Risk Assessments,'' Report No. 08–P–0020, October 31. 2007, *https://www.epa.gov/office-inspector-general/report-improvements-air-toxics-emissions-data-needed-conduct-residual-risk.*

[10] U.S. EPA Office of Inspector General, ''The EPA Needs to Develop a Strategy to Complete Overdue Residual Risk and Technology Reviews and to Meet the Statutory Deadlines for Upcoming Reviews,'' Report No. 22–E–0026, March 30, 2022, *https://www.epa.gov/office-inspector-general/report-epa-needs-develop-strategy-complete-overdue-residual-risk-and-0.*

[11] U.S. EPA Air Toxics Screening Assessment, *https://www.epa.gov/AirToxScreen.*

supports more efficient implementation of numerous other programs and provides risk information for communities through EJSCREEN and an EPA website. As highlighted in the ''Our Nation's Air'' 2022 Trends Report,[12] identifying areas of concern impacted by air toxics emissions is critical to EPA's mission to protect human health and the environment and that sharing the latest air toxics emissions data and risk are part of this effort. When EPA has more complete, current, and high-quality emissions data, this supports improved completeness and quality of this risk information.

For compliance purposes, EPA also uses the raw emissions data to confirm that facilities are in the proper regulatory category to ensure that their inspection frequency is correctly matched to their emissions footprint. EPA staff compares NEI data to ambient data from nearby air monitors to find discrepancies between the two. If a monitor is picking up high pollutant concentration levels for a HAP and no nearby facilities are reporting emissions of that HAP, EPA may find a reporting issue or illegal manufacturing and follow up with an inspection. EPA inspectors can search the EPA's Enforcement and Compliance History Online (ECHO) database [13] (that includes NEI data) by emissions processes to help identify facilities of interest by industry. EPA also uses AirToxScreen and its predecessor NATA for prioritization of compliance and enforcement resources. Within EPA, compliance staff have access to the ECHO Clean Air Tracking Tool (ECATT), which includes data from many sources including AirToxScreen. This tool integrates several data sources to facilitate analysis, including searching for facilities based on cancer risk and respiratory hazard index. Likewise, the EPA regional offices and States use risk data to determine communities and facilities for review. The current voluntary HAP data collection approach has provided some of the information needed for this evaluation; however, a more comprehensive HAP emissions collection program would further enhance the prioritization by supporting more complete and more detailed risk and emissions data than are currently available.

Another use of risk information enabled by HAP emissions data is the siting of ambient monitors. HAP emissions and risk data are used by the EPA and States to prioritize ambient monitor locations. These ambient monitors in turn inform communities about air quality in their local areas as well as support the evaluation of models that further improve available information to EPA, States, and communities.

In addition to supporting risk assessments, the data that EPA is proposing to collect provides foundational information about air emissions for other purposes across the government. For example, collecting data on air pollutants that are known cancer drivers will advance core public health goals, including the President's Cancer Moonshot Initiative which has the goal of preventing cancer through reducing environmental exposures to carcinogens.

3. The EPA Needs HAP Emissions for Air Quality Modeling

HAP emissions data not only inform the regulatory and programmatic activities dealing primarily with these pollutants, but also provide benefits to modeling needs for implementation of the NAAQS. Under CAA sections 110, 172, 182(b) through (e), and 189(a) and (b), the EPA and States have requirements to use air quality modeling to help bring into attainment nonattainment areas that violate the NAAQS ambient air pollutant thresholds. Increasingly, the science suggests that some HAP play important roles in air chemistry leading to formation of ozone and secondary organic aerosol (SOA), a component of $PM_{2.5}$.[14] For example, HAP such as formaldehyde, acetaldehyde, 1,3-butadiene, naphthalene, and chlorine contribute to ozone formation while other HAP such as toluene, xylenes, benzene, and ethyl benzene are important for SOA formation. In addition, some lower volatility or semi-volatile compounds that contribute to SOA formation are HAP, such as naphthalene and benzo(a)pyrene. Having more complete HAP data will be beneficial to improving modeling and understanding of ozone and $PM_{2.5}$ concentrations and SOA formation. The HAP data can provide the additional details needed to improve air quality modeling needed for NAAQS purposes.

As part of NAAQS implementation, the CAA specifically identifies VOCs as a precursor to ozone, and VOC is additionally a precursor to $PM_{2.5.}$ Thus, emissions and anticipated reductions of VOC are inputs used for certain air quality modeling. VOC is a large group of individual compounds, some of which are HAP and knowledge of those detailed HAP compounds can be beneficial to air quality models that rely on the components of VOC for model chemistry. Currently, the EPA and States must make assumptions about the composition of VOC for each source using other data called speciation profiles, which are costly to collect, are not available for each source type, and can become outdated quickly as new technologies and industrial chemical formulations are used. In addition, new photochemical modeling chemical mechanisms are being developed that provide better resolution to HAP species. For example, the Community Regional Atmospheric Chemistry Multiphase Mechanism (CRACMM) explicitly simulates 1,3-butadiene and toluene and can also represent polycyclic organic matter and xylenes better than prior, commonly used chemical mechanisms. While the use of speciation profiles is useful, VOC speciation for modeling could be significantly improved with complete and accurate HAP emissions that provide details about the component VOC HAP.

As with VOCs, $PM_{2.5}$ is a NAAQS pollutant and is currently collected from States by the AERR. $PM_{2.5}$ is also a large group of individual compounds, some of which are HAP. Individual HAP metals are included in this group, and some of these metals are required specifically in the most recent chemical formulations used in air quality models. In addition, as with VOCs, having more detail about $PM_{2.5}$ components would allow for increased confidence in EPA's air quality modeling results.

The EPA estimates costs and benefits as part of Regulatory Impact Analyses (RIAs) for rulemaking to support implementation of Executive Order 12866. That benefit analysis can include the ancillary benefits of HAP reductions, even when regulations are specific to NAAQS implementation. For

[12] U.S. EPA Our Nation's Air Trends though 2021, *https://gispub.epa.gov/air/trendsreport/2022/#home.*

[13] EPA Enforcement and Compliance History Online (ECHO), *https://echo.epa.gov/.*

[14] Carter, W. Updated Maximum Incremental Reactivity Scale and Hydrocarbon Bin Reactivities for Regulatory Applications, College of Engineering Center for Environmental Research and Technology, University of California, Riverside, January 28, 20210.

Ng, N.L., Kroll, J.H., Chan, A.W.H., Chhabra, P.S., Flagan, R.C., and Seinfeld, J.H.: Secondary organic aerosol formation from m-xylene, toluene, and benzene, Atmos. Chem. Phys., 7, 3909–3922, *https://doi.org/10.5194/acp-7-3909-2007,* 2007.

Chan, A.W.H., Kautzman, K.E., Chhabra, P.S., Surratt, J.D., Chan, M.N., Crounse, J.D., Kürten, A., Wennberg, P.O., Flagan, R.C., and Seinfeld, J.H.: Secondary organic aerosol formation from photooxidation of naphthalene and alkylnaphthalenes: implications for oxidation of intermediate volatility organic compounds (IVOCs), Atmos. Chem. Phys., 9, 3049–3060, *https://doi.org/10.5194/acp-9-3049-2009,* 2009.

example, the RIA accompanying the revision of an ambient standard and revisions to national mobile source standards can describe ancillary benefits of HAP reductions, even when those regulations are being put in place to reduce VOC or $PM_{2.5}$ emissions. A complete and integrated HAP emissions inventory would enhance EPA's ability to estimate the ancillary benefits of HAP reductions, and thereby help lead to better informed decision-making.

4. Proposed HAP Reporting Requirements

In previous rulemakings, the EPA has considered, but never finalized, mandatory HAP reporting to collect emissions inventories. On May 23, 2000, the EPA proposed to collect HAP emissions data (CERR; 65 FR 33268). However, the CERR proposed rule did not specify any details about how the EPA would collect that data, or even which pollutants the EPA would require to be reported. The EPA did not finalize any mandatory reporting for HAP due to comments received on the proposed rule arguing that ''EPA should not include HAP reporting requirements in the final rule until the specific HAP reporting requirements were proposed'' (67 FR 39602, June 10, 2002).

In response to the original AERR proposed rule (71 FR 69; January 2, 2006), several commenters encouraged the EPA to include a specific requirement in the rule for reporting HAP emissions data for title V facilities. Another commenter encouraged the EPA to include requirements for reporting of HAP from all emission sources. One commenter noted that States were attempting to provide HAP data to the EPA by relying on data collected from facilities largely on a voluntary basis, and that collection would improve if the EPA required HAP reporting. However, the EPA did not include HAP in the final AERR rule at that time. The EPA cited the existing voluntary program, stating that we believed it would be possible to continue developing and improving national level HAP inventories using a voluntary approach. We also explained that we intended to closely monitor the participation of State agencies in this effort and that, should the need arise, we would revisit the issue.

Furthermore, while the EPA has numerous regulations on industrial facilities through the National Emission Standards for Hazardous Air Pollutants (NESHAP) and other similar standards, these regulations do not typically require the reporting emissions of annual HAP. Rather, they largely require reporting of compliance information such as stack test results. In many cases, these stack tests are not required to be tests for HAP but instead can be tests of a surrogate pollutant such as filterable $PM_{2.5}$. The result of the test does not estimate annual emissions but rather provides an emission rate of one or more pollutants from the source. As a result, even for these well-regulated industries, the EPA lacks annual HAP except when it is voluntarily reported or collected for the TRI.

With this action, the EPA is proposing to require the reporting of HAP from point sources, as defined by the AERR, which can be both major sources and non-major sources. For purposes of the AERR, certain non-major sources can be point sources that would be subject to the proposed reporting requirements. These can include CAA section 112(c)(3) area sources and sources that do not have a source category listing. Non-major sources would need to emit at or above the proposed thresholds in order to be subject to these proposed reporting requirements. For CAP and HAP major sources, the EPA proposes a requirement to report all HAP, which is defined by pollutants listed in CAA 112(b)(1), 42 U.S.C. 7412(b)(1) and 40 CFR 63.64(a). The EPA also proposes a requirement to report certain HAP from non-major sources [15] when annual actual emissions exceed a reporting threshold promulgated by the Agency (as described in section IV.A.8 of this preamble and as listed in the proposed Table 1B to Appendix A of Subpart A). In addition to these requirements, this proposal includes maintaining the current voluntary pollutant reporting by States and industry for additional facilities and/or additional HAP for non-major sources and voluntary GHG reporting by States. Finally, while the proposal for mandatory HAP reporting is organized within the AERR structure for convenience and to limit burden via streamlining, the HAP reporting requirements are able to stand on their own separate from the CAP reporting requirements.

Requirements for HAP reporting are being proposed for two overarching reasons in addition to the other reasons discussed throughout this notice. First, the EPA has monitored the collection and reporting of HAP information from States and has found that the voluntary approach has not sufficiently provided the EPA with the point source HAP data it needs. States report to the EPA between 1 and 148 HAP per year from point sources. This proposed action would collect information on all 188 HAP from major sources and significant emissions of HAP from non-major sources. Collecting information on all HAP from major sources supports requirements of CAA section 112, which includes a definition at CAA 112(a)(1) of major HAP sources based on total HAP emissions, and which directs EPA at CAA 112(d)(1) to promulgate regulations establishing emission standards that CAA 112(d)(2) requires the maximum degree of reduction in emissions for all of the HAP subject to section 112 of the Act that are emitted from source categories of major sources.

For the 2017 NEI,[16] 76 out of 85 State/local/tribal agencies reported point source HAP to EPA. These 76 agencies reported an average of 79 such pollutants. The EPA has found these voluntary reports to be insufficient and, therefore, they have been unable to meet EPA's needs for implementing CAA section 112. Because the section 112 regulatory work requires the most detailed HAP emissions data, we can reasonably conclude that the data for other HAP analysis products and needs described above are similarly incomplete. While the EPA has increasingly used TRI air emissions data to help fill reporting gaps for some uses of the NEI (*e.g.,* national totals), these data do not have the sufficient detail necessary for detailed risk modeling and other assessment needs previously described.

Second, the EPA now has a proven infrastructure through CAERS to support centralized collection of detailed emissions data from facilities and to provide flexibility in reporting from either facilities or States. CAERS can implement the requirements of this proposed rule without undue burden on facilities or States by: (1) avoiding duplicative reporting requirements, (2) supporting consistency of data across programs, and (3) supporting States, locals, and Indian tribes that collect HAP data.

Using CAERS, the EPA is currently working to connect the CEDRI source test data collection with the estimation of emissions data included in this proposal. This proposal does not require any new monitoring or source testing, rather the EPA is proposing that owners/operators use the ''best available'' estimation techniques (see section IV.I.6 of this preamble for more details). Through planned CAERS

[15] Non-major sources are stationary sources that do not meet the major source thresholds for criteria pollutants and HAP. Major sources require Title V permits. Criteria for these sources are provided at *https://www.epa.gov/title-v-operating-permits/who-has-obtain-title-v-permit.*

[16] U.S. EPA, 2017 National Emissions Inventory, *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.*

enhancements, owners/operators would be able to pull in their source test data more easily, to facilitate this approach for using the best available data to estimate emissions. If a source is already required to report compliance information, such as stack testing, due to an existing requirement separate from the AERR, such as a NESHAP, then this proposal is that the owner/operator would use that existing information, if appropriate, for purposes of estimating annual emissions reported under the AERR. Similarly, if the source already generates certain data for the TRI, then EPA is proposing that the source utilize that existing data for purposes of the AERR.

5. Collecting HAP Annual Emissions

Based on the numerous needs for HAP data described above, the EPA is considering how to obtain the HAP emissions data that the Agency needs to carry out the requirements of the CAA, while also seeking to minimize burden on States, by investigating whether HAP emissions should be reported by States, by owners/operators of facilities, or by some combination. The EPA's primary proposal would use a combined approach for reporting HAP emissions. First, this action proposes that owners/operators of facilities would be required to report facility inventory data and HAP emissions directly to the EPA via CAERS. This proposed approach would include reporting by facilities both within States and within Indian country. Second, this action proposes an option that would allow a State to report HAP data to the EPA on behalf of the owners/operators of facilities in the State. However, to implement this option, the EPA also proposes that States choosing to report HAP emissions on behalf of sources would be required to receive EPA approval for State regulations that implement HAP reporting requirements. For a State to receive approval, State regulations would need to meet any finalized requirements based on this proposed action (*e.g.,* by reporting at least the same information from the same sources on the schedule required for owners/operators). State regulations could include additional HAP reporting requirements that exceed the EPA requirements. Additional details on the approach for transfer of responsibility from owners/operators to States is proposed below.

The current AERR supports voluntary reporting of HAP by States. To date, the EPA has observed the benefit of State oversight given the States' authority to issue and manage permits and associated emissions limits. The EPA also recognizes the additional burden that would be placed on States if they were required to report HAP, especially for those States that are not already requiring such reporting from sources. Further, States that are already collecting HAP data may need to revise their current reporting rules and/or develop new collection mechanisms for HAP if their current programs are not meeting any final HAP reporting requirements that are promulgated in this rulemaking. This burden could include managing reports from more facilities, maintaining more data, and implementing a more complex annual collection process than a program that requires CAPs alone. The EPA recognizes that States will have differing capacities to include HAP emissions collection as an additional responsibility.

In formulating this proposal, the EPA is considering the significant differences between CAA Part D, with many emission data provisions required of States, as compared to other provisions in CAA Part A under which the EPA has regulated HAP. The current AERR requires emissions reporting only for CAPs but does not specifically include a requirement for States to have reporting rules in place. This is because for CAPs, the CAA has set up a coregulator paradigm by which State emissions reporting rules are reviewed and approved by the EPA as part of infrastructure and other SIPs. In this way, the EPA can ensure that State regulations meet the various emissions reporting requirements of the AERR. The CAA does not provide a similar paradigm for HAP emissions data collection. Thus, EPA's proposed solution addresses these differences to provide an implementation that aligns with the Act.

Another consideration is the available technical methods by which the EPA can gather data from States and/or from owners/operators. Under the current AERR, States submit data through the Central Data Exchange (CDX) to the Emissions Inventory System (EIS), and that approach is expected to continue under this proposed action. In addition, the EPA and States have developed CAERS as one approach for supporting State collection of emissions in a way that can reduce the burden on some owners/operators of facilities for shared reporting of emissions to the TRI program.

The EPA is considering that some owners/operators of facilities are already obligated to report HAP to the TRI, though with less detail than is needed by the EPA for risk assessment and other purposes cited in this proposal. Because CAERS offers owners/operators a means to report air emissions to States, NEI, and TRI, EPA's experience leads the Agency to anticipate that CAERS would ultimately lessen the reporting burden on owners/operators. The EPA is aware that facility definitions occasionally differ among the TRI program, the NEI, and the State programs. Ongoing work by the EPA is expected to address the challenges posed by differing facility definitions across emissions collection programs, which is related to the Cross-Program Identifiers Option described in section IV.I.17 of this preamble.

The EPA is also considering that there are numerous State HAP emissions collection programs with differing requirements. Comparing such programs reveals that they collect different data fields, have different emissions reporting thresholds, and collect different pollutants. Companies that operate facilities in multiple States and report emissions data from a central part of the company could have to comply with numerous different requirements depending on the State. Additionally, the EPA is considering that owners/operators would face additional challenges if a State required owners/operators to report HAP, but the State requirements did not match EPA requirements. In this case, owners/operators could be faced with the burden to report differently both to the State and to EPA. Indeed, this situation already exists with respect to State HAP requirements and EPA requirements for TRI reporting.

By proposing CAERS as the reporting system for owners/operators of facilities, the EPA also provides States a choice about the degree to which the State will take on additional burden. States may choose to participate voluntarily in review of HAP data provided by owners/operators to the EPA rather than implement their own reporting requirements. States may alternatively choose to implement HAP reporting regulations that match (or go beyond) EPA's requirements.

This proposed action does not eliminate the possibility that industry may face a duplicative reporting requirement for the State. States are free to use a data collection approach of their choice and implement regulations that meet State needs. For example, if a State chooses for owners/operators of facilities to continue to report to a State system and those facilities are also required to report HAP to the EPA via CAERS, then duplication could exist. This duplication could take the form of requiring the same HAP emissions data be reported via two separate collection

mechanisms to both the State and to EPA. This proposal provides mechanisms to avoid duplicative reporting requirements, but the Agency is aware that it may not completely eliminate the possibility of duplicative requirements because it provides States choices in how they comply with the proposed requirements. The EPA seeks comments on how we might reduce or eliminate the possibility of duplicative requirements.

While CAERS provides a way to help eliminate the possibility of duplicative burden on owners/operators, the EPA is not proposing to require that CAERs be used by States at this time. To avoid duplicative reporting burden for the owners/operators of facilities for which the associated State is collecting HAP emissions, a State would need to choose to participate in CAERS using one of the supported approaches. First, a State may choose to have owners/operators report data through CAERS to the EPA and then use CAERS to review and/or transfer the data to the State's own data system. Second, a State may choose to work with the EPA to build a direct connection between the State's data system and CAERS, so that data transfers can happen even more easily. Third, a State may choose to adopt CAERS as their emissions data reporting system.

The EPA is considering the additional complexity that would be created under a requirement in which owners/operators reported HAP directly to the EPA while States reported CAPs to EPA. Furthermore, the EPA expects additional complexity because some State requirements would, as they do under the current AERR, collect more facilities and/or pollutants than EPA requirements that may be finalized under this proposed action. To be able to support this complexity, CAERS would share the ''facility inventory'' among EPA, States, and owners/operators to provide the collection of facilities and their components for which emissions are reported. These components include units, processes, release points, control devices and associated identification codes and parameters. The EPA is aware that often the identification codes for the components of the facility inventory are different between the State and the facility reporting the data. Thus, the EPA and State implementation of any finalized data collection approach would consider and address these challenges. The EPA requests comments that offer suggested approaches for sharing facility inventory data between the EPA and States.

The EPA is considering whether it would be feasible to allow States to report only some of the required HAP, while sources retain the obligation to report the remaining HAP. EPA's experience suggests that such an approach would be too complicated to implement because it would require EPA and States to track reporting responsibility individually for the hundreds of required pollutants. The approach proposed by the EPA provides for a simpler tracking approach with just two categories of pollutants: ''CAP'' and ''HAP.'' This straightforward approach helps ensure that the EPA and States will know whether the State or owner/operator is expected to report HAP for a given facility and inventory year. The approach also allows the EPA to administer the reporting program more robustly, including assessing completeness of data submissions and compliance with the proposed requirements. This proposed approach also makes it easier for owners/operators and States to know which party is responsible for reporting each pollutant to EPA.

The current AERR includes voluntary reporting of HAP, air toxics, and greenhouse gases. As just described, the EPA proposes that the HAP reporting would become mandatory under any final version of this proposed action and proposes to retain voluntary reporting by States as an option in other cases. For example, States would be able to continue to report any pollutant for facilities not required to report for HAP under any final action. Additionally, for *any* point sources, States would be able to report any other pollutant not required by any final version of this proposed action, such as other air toxics that are not HAP (*e.g.,* Tert-butyl Acetate) and greenhouse gases, provided that the pollutant is supported by EPA's electronic collection approach.

In addition to the proposed policies just described, the EPA is considering an alternative (Alternative A1) that would *not* collect data directly from owners/operators of facilities within the geographic scope of a State's implementation planning authority but would only collect such data from States. Such an approach would reduce complexity, but also would not provide States flexibility in their implementation approach and would cause additional burden for all States if the EPA finalizes mandatory HAP reporting. To implement such an option, the EPA would change the proposed regulation as follows: remove owner/operator requirements of proposed § 51.25(a), remove the HAP reporting application of proposed § 51.1(d), and modify proposed § 51.15(a)(2) to eliminate the qualifier ''if the EPA has approved a HAP reporting application as per § 51.1(d)(2) of this subpart.'' The EPA requests that commenters provide input on Alternative A1.

In addition, the EPA is considering a second alterative (Alternative A2) of relying *only* on owner/operator reporting for HAP and not including an option for States to report on behalf of owners/operators. The existing state-reporting paradigm in the current AERR is a valuable approach that would continue under this alternative for CAPs to ensure the collection and sharing of data needed for NAAQS implementation under CAA Part D. For HAP, the EPA recognizes the benefit of States' roles in collection of HAP emissions and, for that reason, has proposed to include State reporting as an option. To implement Alternative A2, the EPA would remove the HAP reporting application of the proposed § 51.1(d) and remove the proposed § 51.15(a)(2). In addition, under this alternative, States would continue to report Pb for point sources meeting any of the CAP emissions reporting thresholds (including Pb), while owners/operators would report Pb for other sources that do not meet the CAP Pb reporting threshold but are otherwise subject to the proposed Pb reporting requirements as a HAP.

Because the primary proposed approach would require owners/operators to report to the EPA using CAERS, the EPA anticipates that some States will choose to participate in the CAERS program. In addition, the EPA has already received notifications from States of their intent to adopt CAERS in some form, and the EPA recognizes a need for managing that process so that the EPA and States will have sufficient time to transition to CAERS in advance of emissions data collection. To address these considerations, the EPA proposes that States voluntarily adopting one of the CAERS workflows notify the EPA within 2 months before the beginning of the first inventory year for which a State intends to use the CAERS workflow. For example, for the 2024 inventory year, a State would notify the EPA by November 1, 2023. This timing would allow the EPA and the State about 16 months to integrate the States' needs and data to CAERS in preparation for the start of the CAERS reporting period for that inventory year by February of the year after the inventory year.[17] For

[17] The availability of each CAERS release to date has been during February of each year, with CAERS

Continued

example, for the 2024 inventory year, the EPA would make available CAERS no later than February 28, 2025, for owners/operators to report emissions data. While such a notification is included in the proposed rule as a recommendation (*i.e.,* ''should'') rather than a requirement, if a State does not notify the EPA in advance of that date, the EPA may not be able to accommodate the State for CAERS use until the following inventory year.

6. State Application for Voluntary HAP Reporting Responsibility

With HAP emissions reporting by either owners/operators or by States for a particular inventory year, it is necessary that this proposed action include provisions to ensure that EPA, States, and owners/operators all know which party is expected to report HAP emissions to EPA. Under this proposal, a State could choose to report for all owners/operators within the State who would have to report HAP. This proposed approach allows for States that already report HAP to continue to do so, but also avoids a burden increase for other States while making CAERS available to further reduce burden for States reporting HAP.

A clear and documented transfer of responsibility from owners/operators to a State is necessary when a State elects to report HAP, and the EPA is considering how best to ensure that the State regulations provide an adequate substitute for its own requirements in this situation. Similarly, this proposed action includes an approach to transfer responsibility from a State back to sources in the event a State no longer meets the requirements or intends to stop reporting on behalf of owners/operators.

The EPA is considering how States should document their intent to meet this proposed action's HAP reporting requirements. One approach under consideration could be to have States simply notify the EPA of their intent, and if the State did not fulfill a reporting requirement, require the facility to report any missing data to EPA. This approach has the benefit of more flexibility, but implementation would be very challenging because it would not be clear which party would be obligated to report which data. Further, turning to owners/operators to report when States have missed the requirement would delay the data transmission to EPA.

To provide the EPA with evidence of a State's intent and to ensure a clear transfer of responsibility from an owner/operator to a State, the EPA proposes to require that a State choosing to report on behalf of its owners/operators adopt EPA's requirements, or the equivalent, into the State's regulations. This proposed action also specifies the process for the transfer to occur, including State submittal of its HAP emission collection program to the EPA for approval. When a State submits its program, the submittal would reference the State regulation and explain how it meets all provisions of EPA HAP reporting requirements. Without a sufficient State regulation, the EPA would not be able to approve a State to report HAP emissions on behalf of owners/operators. The EPA recognizes sufficient time is required for changes to State regulations, which informs the proposal of 2026 as the first inventory year that would require HAP reporting by owners/operators within States.

The EPA proposes that the geographic scope of a State regulation requiring HAP emissions data should be consistent with those lands covered by the State's Infrastructure SIP (EPA understands this scope to be synonymous with the relevant State's implementation planning authority). This proposed approach stems from the current structure of the AERR and this proposal's approach to continue States' reporting of CAP emissions data for sources located within this geographic scope. The intent is to create clarity regarding which parts of a State's geographic boundaries would be included for HAP reporting by the State under this proposal, and the EPA's understanding of the State's authority would generally be the same for sources of CAP and HAP emissions. Once a State is approved to report HAP emissions on behalf of the owners/operators of facilities located within the geographic scope of the State's implementation planning authority, then the State becomes the responsible party for complying with the requirements of the AERR for those sources; the EPA would no longer consider those owners/operators to be the party responsible for compliance.

To formalize the transfer of responsibility for reporting after the completion of the process described above, the EPA would issue a letter to the State indicating that the State is approved to submit HAP reports on behalf of owners/operators. Further, to provide a means for owners/operators to determine whether their State has assumed the responsibility for reporting, the EPA would post that letter on a website that would be maintained for the purpose of communicating which States are responsible to report HAP on behalf of owners/operators for each inventory year.

The EPA additionally proposes to require a State seeking approval to submit its HAP collection program to the EPA by March 31 of the first inventory year for which the State intends to report emissions (*e.g.,* by March 31, 2026, for the 2026 inventory year). This timing is designed to be at least one year in advance of the deadline proposed for owners/operators to report emissions directly to EPA. It provides sufficient time for the EPA to review the State application, the State to revise the application if needed, and the EPA to act on the State submittal. A State could still submit after this deadline but doing so would likely mean that the transfer of authority would not happen in time for the next reporting period. A delayed application would simply delay when the State could start reporting if approved. Once the EPA provides HAP reporting approval, the State would be obligated to fulfill the HAP reporting requirements for subsequent inventory years. While the EPA will make every effort to review applications in time for the desired inventory reporting year, there is no guarantee that the EPA will complete the review in time to meet the States' wishes.

The EPA would notify States as expeditiously as possible regarding EPA's response to the State's application, any needed adjustments, and post final decisions on the EPA Air Emissions Inventories website. This website publication would ideally be made by December 15 of the inventory year, but the date could be earlier or later than that depending on circumstances. This target date is intended to provide sufficient time for owners/operators to adjust plans and obtain training for any new reporting systems. Since States start collecting data within months of this date, the EPA expects States would have already made updates to their data collection system to comply with their new regulatory requirements in advance of this date in anticipation of approval.

7. Review and Revisions to HAP Reporting Responsibility

The EPA proposes to require an EPA review of previously issued HAP reporting approval when: (1) a State or the EPA revises emissions reporting requirements for any emissions data element affecting HAP (including the facility inventory); or (2) the EPA is made aware of any discrepancies between EPA requirements and either (a) what a State requires from facilities

opening for reporting for the 2022 inventory year on February 6, 2023.

or (b) what a State has reported or intends to report. A State or the EPA could initiate a review by informing the other party that such a review is necessary. Any revised submissions by a State on its HAP collection program would need to meet the same March 31 deadline as for initial applications. A review of a State HAP reporting program could result in a revocation of approval to report.

The EPA proposes that HAP reporting approval for a State would continue to apply for subsequent inventory years unless the EPA revokes the reporting approval and transfers responsibility back to owners/operators. As with reporting approval, this revocation would be made via letter from the EPA to the state. The letter would be posted on the same website previously described to document which entities have reporting responsibility for which inventory years.

In addition, the EPA proposes an approach for how a State, having previously been approved to report on behalf of owners/operators, could elect to revert HAP data reporting back to owners/operators. To initiate such a transfer, the EPA proposes that a State would need to notify the EPA in writing no later than November 1st of the year before the inventory year. For example, if the State intended for reporting to revert to owners/operators for the 2027 inventory year, the State would be required to notify the EPA by November 1, 2026. This timing would allow the EPA sufficient time to update CAERS to incorporate the additional owners/operators and their facilities. While the EPA will make every effort to review requests to revert responsibility to owners/operators in time for the desired inventory reporting year, there is no guarantee that the EPA will complete the review in time to meet the State's wishes. If approved by EPA, a request to revert responsibility to owners/operators would result in a revocation letter as described above.

8. Expansion of Point Source Definition To Include HAP

The current AERR defines point sources for reporting to the EPA by States based on Table 1 to Appendix A of this subpart using PTE reporting thresholds for CAPs. To implement collection of HAP emissions, the EPA would need to determine criteria to specify which facilities would need to be reported by States and owners/operators as point sources for HAP. For the reasons discussed in this section, the EPA is proposing at 40 CFR 51.50 to expand the AERR-specific definition of point sources to ensure the appropriate facilities would be included for HAP reporting purposes.

EPA first evaluated using the current AERR's CAP PTE reporting thresholds to define point sources. The EPA is not proposing this approach because there is no reasonable expectation that using these reporting thresholds to define point sources for HAP reporting would capture all sources with significant HAP emissions from a public health perspective. Such an approach could result in an incomplete reporting approach that would limit EPA's ability to obtain all needed HAP data. For example, hexavalent chromium is a component of $PM_{2.5}$, so using the current AERR PTE threshold for $PM_{2.5}$ would result in a 100 tons per year (tpy) PTE threshold for chromium. However, hexavalent chromium has been shown to cause significant public health risks at levels less than 100 pounds.[18] Given this example and others like it, using the current AERR emissions reporting thresholds would be insufficient to fulfill the goals of this proposed action. By contrast, the EPA expects that two remaining approaches would provide EPA emissions data to support our public health mission: (1) collecting data from all facilities emitting any level of HAP or (2) setting specific HAP facility-wide emissions levels above which owners/operators would need to report.

To evaluate the approach of collecting data from all facilities emitting any level of HAP, the EPA considered the practical implications of collecting HAP data from all sources, specifically looking at the number of facilities that would be affected from certain common activities based on the 2017 Economic Census.[19] Some examples of emissions sectors with many facilities that emit some level of HAP include restaurants (583,400), gas stations (112,600), and automotive repair and maintenance (162,000). Under the current AERR, EPA requires reporting of about 12,400 facilities as point sources. Further, States voluntarily submitted about 49,500 point sources for the 2017 NEI and about 59,800 for the 2020 NEI. If EPA now proposed to collect emissions from all facilities emitting any HAP, such a vast expansion could overwhelm both the States' and the EPA's abilities to manage the efforts effectively.

Further, an expansion to all facilities emitting any level of any HAP may cause undue burden on facilities that each emit a very small amount of HAP. At this time, the EPA estimates emissions from such sources as nonpoint sources on a county-wide basis. For example, for gas stations, the EPA estimates nonpoint emissions using the MOVES model for Stage II refueling from storage tanks to vehicles and data consistent with MOVES for Stage I refueling from tankers to storage tanks.[20] For commercial cooking occurring at restaurants, EPA purchases data about the number of restaurants in each county and uses other data about food usage along with emission factors to estimate emissions.

Based on these examples, the EPA does not now intend to require all emitters of HAP to report emissions at any level. In addition to the burden on the many small establishments, EPA and State resources would be diverted away from focusing on the more critical emitters due to the sheer volume of owners/operators that could be required to report without a more tailored approach. Such a tailored approach is consistent with CAA section 112, which provides the EPA with flexibility in setting requirements for area sources, which emit HAP at less than major source levels. So, it is appropriate for the EPA to consider how best to gather data about HAP emissions at those levels.

The EPA is proposing to set new reporting thresholds for HAP, above which owners/operators of facilities would need to report emissions. The EPA is considering the following factors in defining reporting thresholds: (1) existing thresholds such as the major source definition and reporting thresholds for the TRI; (2) which pollutants should be reported; (3) the degree of human health impact on communities caused by differences in toxicity of pollutants; and (4) a desire to focus data collection efforts on facilities with the potential to cause significant and ongoing impacts while avoiding less beneficial reporting by many small, lower impact facilities. Each of these considerations is described in the paragraphs below.

Factor 1: For existing thresholds, CAA section 112 provides the definition of HAP major sources as the potential to

[18] See Chromium Electroplating NESHAP rule: *https://www.epa.gov/stationary-sources-air-pollution/chromium-electroplating-national-emission-standards-hazardous-air* proposal results (FR 65068, October 21, 2010), which found a maximum individual risk of 70-in-1 million from 33 lbs of hexavalent chromium emissions.

[19] U.S. Census Bureau, 2017 SUSB Annual Data Tables by Establishment Industry, *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html,* May 2021, Excel file ''us_state_naics_detailedsizes_2017.xlsx''.

[20] U.S. EPA, 2020 National Emissions Inventory, Technical Support Document, March 2023, EPA Document number EPA–454/R–23–001, *https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-technical-support-document-tsd.*

emit 10 tpy of any HAP or 25 tpy of any combination of HAP. The EPA must also address emissions of all HAP in its actions to regulate major sources. In addition, major sources are already well versed in the regulatory requirements under which they operate, and many of these sources also must report to the TRI program. For these reasons, a logical and reasonable approach for a minimum requirement would be that major sources would report all HAP to be consistent with the regulatory programs and requirements that the EPA seeks to meet.

In addition to the emissions thresholds associated with the major source definition, the EPA is considering reporting thresholds set with the requirements for TRI. That program has reporting criteria based on the number of full-time employees; primary NAICS; chemicals a facility manufactures, processes, or otherwise uses; and activity levels. As a result, the TRI reporting thresholds are not based on facility air emissions; therefore, those thresholds have less relevance for this proposed action. For many reasons including emissions controls that reduce emissions, the amount of a HAP emitted to air is very different from the amount manufactured, processed, or otherwise used by a facility. For this reason, the TRI program's reporting thresholds are not being proposed as the primary approach for setting reporting thresholds for non-major sources under this subpart. A benefit to this approach is that any data that would be collected under this action would likely include sources not reporting to the TRI program and would fill gaps in the agency's data collection.

Factor 2: The EPA also is considering which pollutants should be reported. As previously described, a policy under which major sources to report all HAP is most supportive of EPA's needs for HAP data. For sources other than major sources (also known as ''area sources'' under CAA section 112 and hereafter referred to as ''non-major'' sources), the EPA is considering both whether to require air toxics [21] other than listed HAP and which HAP (or other) pollutants should be reported.

Regarding air toxics other than listed HAP, the EPA is considering two possible approaches: (1) requiring air toxics that are already required by States and (2) requiring air toxics that are required by the TRI program. Either of these approaches would provide additional detailed data for the EPA to analyze air toxic emissions in the context of listing new HAP. Both approaches also would constrain reporting to pollutants that are already being collected, which would have a lower burden than other conceivable approaches. In the case of an approach based on TRI air toxics (called chemicals by the TRI program), additional burden beyond a State-based approach would be incurred by owners/operators because those owners/operators are currently reporting facility total data to TRI and would have to report more detailed data to the NEI. On the other hand, if an owner/operator is already reporting to TRI, then the incremental effort for such a facility is lower when compared to a facility not reporting air toxics data at all, because the aggregated information is currently collected and reported.

For the first approach (*i.e.,* requiring States to report additional air toxics that they already collect), the EPA observes that such data are largely being submitted voluntarily under the current AERR. Furthermore, since different States collect different air toxics, it would be challenging for the EPA and owners/operators to keep track of State requirements to ensure compliance with a Federal rule that relied on State rules for defining what pollutants were required by that State. In addition, EPA's need for other (non-HAP) air toxics data is not currently as significant as the need for HAP data because the use of the additional air toxics is largely limited to consideration of listing new HAP. Also, this more limited need for the data is already met to some degree by the facility total data from TRI and from voluntary reporting by some States. Based on these considerations, the EPA is not proposing to use State requirements to set the required pollutants for reporting by owners/operators (*i.e.,* beyond the HAP proposed for collection).

EPA is also considering using the required TRI chemicals to determine which pollutants should be reported under the AERR. As described above, this proposed action envisions that States could apply for approval to report HAP on behalf of the owners/operators of facilities who would otherwise report emissions data directly to EPA. If the EPA implemented a requirement that all chemicals required by TRI would also need to be reported to the NEI, States choosing to report HAP would need to revise their emissions reporting rules not only to collect HAP, but to also collect the additional air toxics as well. Given the more limited need for other air toxics data besides HAP at this time (*i.e.,* primarily for considering listing as HAP), EPA's current assessment is that the additional burden on States that choose, on behalf of owners/operators, to report all air toxics reported to TRI is not warranted in these proposed revisions.

Another aspect of this factor is that some pollutants may be added to or removed from the list of HAP over time. For major sources, any new HAP would be required to be reported and any exempted HAP would no longer be required if a policy requiring all HAP were to be finalized based on this proposed action. For non-major sources, however, a newly identified HAP would require an emissions reporting threshold to be set through future regulatory revisions.

Factor 3: The EPA is also considering the degree of human health impact on communities as a factor in setting emissions reporting thresholds. The focus of such reporting thresholds is to ensure that non-major sources that have significant potential health impacts are included in the emissions reporting. A reasonable approach for all pollutants and facility types is to consider estimated risk based on the available NEI HAP emissions that have been voluntarily reported by States or included from the TRI program. To develop and assess risk-based reporting thresholds, the EPA used the data available from the 2017 AirToxScreen.[22] EPA understands that there are limitations to be considered when looking at these results, including data gaps due to voluntary HAP reporting and TRI data available only for certain facilities. These limitations are described as part of the AirToxScreen limitations website [23] as well as the technical documentation available with the latest AirToxScreen results.[24] Given these limitations, the EPA has developed an approach that would use the available data in a way to lessen any impacts of incomplete data.

The approach taken to develop the proposed reporting thresholds is fully documented in a separate Technical Support Document (TSD) [25] and is

[21] Although it has become common practice to use the terms ''air toxics'' and ''hazardous air pollutant'' interchangeably, air toxics is a broad term that includes all compounds of some recognized toxicity and is not limited to those HAP identified by the CAA and EPA HAP listings. For example, a more extensive listing of air toxics is included by TRI-listed chemicals, available via the TRI website at *https://www.epa.gov/toxics-release-inventory-tri-program/tri-listed-chemicals.*

[22] The EPA 2017 AirToxScreen, *https://www.epa.gov/AirToxScreen.*

[23] U.S. EPA, AirToxScreen Limitations website, *https://www.epa.gov/AirToxScreen/airtoxscreen-limitations.*

[24] U.S. EPA, AirToxScreen Technical Support Documentation, *https://www.epa.gov/AirToxScreen/airtoxscreen-technical-support-document.*

[25] U.S. EPA, Technical Support Document: Revisions to the Air Emissions Reporting

briefly summarized here. First, the EPA modeled air quality pollutant concentrations around facilities and post-processed those results to use only concentrations no closer than 100 meters from each emission point within the facility. This 100-meter approach avoids overly high concentrations that can occur within the ''fence lines'' of facilities. ''Fence line'' is a phrase used to denote the outer perimeter boundary of the land on which a facility operates. Typically, members of the public would not be exposed to concentrations that exist within the fence line. Both major and non-major facilities can vary in land coverage, and this approach is an approximation that assumes that 100-meters is an adequate distance between an emission point and the associated fence line for purpose of this analysis. In doing so, EPA has avoided including high concentrations of HAP that can occur within the fence line of major and non-major sources and instead focuses on concentrations to which the public would more typically be exposed. In this analysis, about 95 percent of the distances between emission release points and the associated location of maximum risk from the release point was between 100 and 2500 meters, and the remainder were even farther away. The EPA used the resulting modeled concentrations to compute cancer risk estimates using pollutant-specific unit risk estimates (UREs) [26] and other health impacts (*e.g.,* respiratory, neurological) with the reference concentration (RfC) for the most impacted organ system. Generally, the EPA used the same UREs and RfCs to calculate cancer risk and non-cancer hazard index (HI) as are currently used in other EPA regulatory actions, and the TSD provides exceptions to that general approach.

Using the cancer risk and HI estimates, the EPA calculated the level of emissions (''adjusted emissions'') that would be needed to cause one in a million risk and/or a 0.5 HI for each release point and HAP at all facilities in the 2017 data. This calculation is possible because the cancer risk and HI results from the modeling performed can be scaled linearly based on emissions. To guard against including release points and pollutants that contribute very minor risk to the overall facility risk, the EPA excluded any release point/pollutant combination that contributed to less than 20 percent of the cancer risk and HI in the 2017 modeled estimates for the associated facility.[27] The emissions scaling approach allows for the large variety of stacks and fugitive releases with varied parameters to contribute to the information with which the EPA could develop emissions reporting thresholds. Dropping the release point/pollutant combinations that contributed less than 20 percent of the cancer risk and HI also removes the smaller sources from the data, which avoids including in the analysis those types of emissions within facilities that may be less consequential to overall cancer risk and HI at those facilities. Rather than rely on a single facility or selected facilities, the approach provides for a distribution of possible emissions reporting thresholds so that the EPA can ensure that emissions reporting thresholds are both robustly based on available data and not overly low causing undue burden.

The EPA evaluated several approaches for using the distributions of adjusted emissions to set an emissions reporting threshold. Ultimately, the EPA settled on the 10th percentile of the adjusted emissions. Before arriving at this conclusion, the EPA evaluated the distributions of adjusted emissions data by using histograms. Both the raw data and log-transformed data were evaluated. While a handful of the log-transformed distributions approximated a normal distribution, most of the distributions had a significant high value bias or low value bias. Because most histograms did not appear normally distributed, the EPA has chosen not to use an approach that would rely on standard deviation from the median of adjusted emissions. The EPA also evaluated using the median values of the distributions of adjusted emissions to set an emissions reporting threshold, but these median values were often several orders of magnitude higher than emissions levels estimated to cause significant risks based on the 2017 Air Toxics Data Update.

In reviewing the range of values from the distributions of adjusted emissions, the EPA determined that the 10th percentile of the adjusted emissions provided a reasonable reporting threshold for each pollutant. Percentiles below that level too often approached the minimum emissions levels causing risk in the 2017 Air Toxics Update, and percentiles above that level may not be rigorous enough to ensure that the EPA collects sufficient data to be protective of human health.

The EPA is also considering how to collect data from non-major facilities that have the potential to cause significant and ongoing impacts without requiring many smaller, lower impact facilities to report. As illustrated by the previous example of gas stations, some emissions sectors tend to have many small individual sources that can be included in the NEI as county total emissions rather than be included as point sources. To tailor reporting for non-major sources to specific industries, the EPA analyzed the available 2017 NEI HAP emissions data to assess the contribution of emissions from each NAICS code to the total point source emissions for each pollutant. The EPA applied a threshold of 1 percent contribution by NAICS grouped to the first 4 digits of the NAICS code for each pollutant. The EPA set this 1 percent threshold to be a conservative approach to identify NAICS-pollutant combinations for consideration in any proposed policy approaches before further reviewing each NAICS for relevance in supporting objectives of this proposed action. By merging the 4-digit NAICS with the full list of NAICS codes, the EPA created a short-list of NAICS-pollutant combinations of interest.

The EPA further excluded a NAICS-pollutant combination if: (1) the NAICS is not currently widely reported as point sources by States for other reasons and either (2) the NAICS is in an agricultural production sector or a retail sector more likely to contribute emissions from many small sources that would better be captured as nonpoint emissions, or (3) the NAICS is in a service sector (*e.g.,* advertising) that is not expected to include significant pollutant emissions. Some NAICS were specifically included when they were used for activities that emit significant amounts of high-risk pollutants such as ethylene oxide or hexavalent chromium. With this approach, the EPA is attempting to strike an appropriate balance between the agency's need for information with the burden that reporting requirements impose on owners/operators and/or States. While the EPA utilized its technical discretion to exclude these NAICS-pollutant combinations at this time, the agency recognizes that it may be appropriate to revisit these exclusions in the future.

Requirements (Proposal), April 2023, available in the docket for this proposal.

[26] For assessments of HAP, the EPA generally uses UREs from EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process like that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate.

[27] More information on EPA's approach to set risk-based emissions reporting thresholds is available in Section 3 of the TSD for this proposal. Section 3.1 of the TSD further addresses issue of dropping some data values as part of establishing proposed thresholds.

To understand the impact of any potential reporting thresholds, the EPA has estimated the number of additional non-major sources from the 2017 NEI that would have been included for mandatory HAP reporting had the EPA compiled the 2017 NEI using HAP reporting thresholds based on the 10th percentile thresholds and NAICS selection approach described above in addition to special threshold adjustments proposed in section IV.A.9. This analysis showed that about 115,000 non-major sources could be added to reporting requirements that currently affect about 13,400 major sources. In making these estimates, the EPA has made numerous assumptions that would tend to overestimate the number of facilities that would need to report, to provide conservative estimates for purposes of burden estimates. The EPA estimates the actual number of facilities to be lower. More information on this analysis is available in the TSD for this proposal.

Additionally, while owners/operators and States would be newly required to report for more facilities, States voluntarily reported HAP for the 2017 NEI (and therefore collected HAP from owners/operators largely via State requirements) for about 59,000 facilities, which is about 46% of the approximately 129,500 facilities EPA estimates would report under this proposal rule. As a result, the incremental burden increase of EPA's HAP collection approach would be lower than if all facilities needed to be newly reported under the proposed AERR revisions. In the cases in which a State does not choose to report HAP on behalf of owners/operators under this proposal, the HAP reporting requirements for such facilities could change in two possible ways. First, the reporting requirements could shift from being a State requirement to an EPA requirement for owners/operators of facilities within States that use CAERS in some way or that eliminate their State reporting rule. Second, the reporting requirements could become duplicative for owners/operators within States that choose to not use CAERS in any way and retain their State reporting rule. For those pollutants owners/operators are already reporting to the State, there is little increase in burden. For those additional pollutants (if any) that would be required under this proposed rule, owners/operators will have an incremental burden for those additional pollutants but would not need to learn about emissions reports in general. Further, the expected increase in facilities and burden needs to be considered in light of the need by EPA, States, and the public for data that allows for better understanding and reducing public health risks to communities. While the current AERR voluntary HAP collection program gathers a lot of data, the voluntary data does not necessarily have those pollutants that EPA's analysis shows are most important at those facilities and does not include all the facilities that the analysis shows should be collected to inform risk assessments and other EPA analyses.

Based on these considerations, this action proposes to expand the definition of point sources at 40 CFR 51.50 to mean a stationary or portable facility that (1) is a major source under 40 CFR part 70 for any pollutant, or (2) has PTE or annual actual emissions of pollutants greater than or equal to the reporting thresholds in Table 1A to Appendix A of this subpart, or (3) has a primary NAICS code listed in Table 1C to Appendix A of this subpart and annual actual emissions of pollutants greater than or equal to the HAP reporting thresholds (presented in Table 1B to Appendix A of this subpart). Additionally, the EPA is proposing as part of this definition that, in assessing whether emissions levels exceed reporting thresholds, all provisions of this subpart related to emissions estimation approaches would apply, including §§ 51.5 and 51.10 of this subpart.

To further clarify the definition of point sources based in part on primary NAICS (situation #3 in the paragraph above), the EPA additionally proposes a definition of primary NAICS. The EPA proposes that primary NAICS means the NAICS code that most accurately describes the facility or supplier's primary product/activity/service and that the ''primary product/activity/service'' is the principal source of revenue for the facility or supplier. This definition is being proposed so that the AERR can be consistent with the non-regulatory definition of primary NAICS used by the U.S. Census bureau. This proposed definition would serve for purposes of this subpart for both identifying point sources and reporting primary NAICS.

To set the point source definition, the EPA is proposing to expand the current Table 1 to Appendix A of Subpart A of Part 51 into four tables (Tables 1A through 1D of Subpart A of Part 51). Table 1A provides the proposed point source reporting thresholds for CAPs, which the EPA proposes would remain unchanged. Table 1B provides the proposed HAP initial reporting thresholds for non-major sources. Table 1C provides a proposed list of primary NAICS for non-major sources, and Table 1D provides a proposed list of individual compounds to be reported for groups of chemicals with a single reporting threshold from Table 1B. More information on Table 1D is provided in section IV.I.14 of this preamble.

9. Special Cases of Emissions Thresholds for Non-Major Sources

The risk-based analysis above was not completed for five situations, which are covered in this section: (1) mercury compounds, (2) pollutants included in the 2017 NEI but without URE or RfC, (3) revisions or publication of new URE or RfC, (4) a special case for dioxins/furans, and (5) the treatment of Pb as both a CAP and HAP.

The risk-based approach was insufficient for mercury compounds because they have multi-pathway (air, water, soil) effects that were not captured by the analysis described above.[28] Without further evaluation to consider a more inclusive approach, the above approach may set too high a reporting threshold for mercury. It is important to ensure complete mercury reporting from sources because, in addition to using mercury data for risk analysis, the EPA reports trends in total national mercury emissions based on international agreements such as the Minamata Convention on Mercury and the Convention on Long-Range Transboundary Air Pollution. Evaluation of the available 2017 NEI data shows that the reporting threshold resulting from the mercury HI in the approach from section IV.A.8 of this preamble (0.15-ton) would require reporting for only 22 out of about 16,000 sources of mercury currently compiled in the 2017 NEI. Based on the 2017 emissions data to capture 95 percent of the mass of mercury nationally, a reporting threshold of 0.0026 tons (5.2 lbs) would be needed. To capture 99 percent of those known values, a reporting threshold of 0.0003 tons (0.6 lbs) would be needed.

The EPA also is considering that mercury emissions in its divalent form is the portion of mercury emissions of most concern. Unfortunately, sources often have little information about the form of the mercury emitted. Measuring

[28] Like mercury, other HAP can be persistent/bioaccumulative (PB–HAP) pollutants that have multipathway effects. Other examples include arsenic, cadmium, dioxins/furans, lead, and PAHs. For this proposal, EPA considered only the inhalation pathway for all PB–HAP pollutants. The inhalation-based thresholds for the PB–HAP, except mercury, were deemed appropriate for this proposal, but EPA could consider multipathway effects in other future rulemaking efforts that could result in different emissions reporting thresholds.

divalent mercury is much more difficult than simply measuring the total mercury emitted.

Based on these considerations, the EPA is proposing a mercury reporting threshold of 0.0026 tons (5.2 lbs), which is based on the value that captures 95 percent of currently best available data about mercury from point sources. Irrespective of the form(s) of mercury reported, the reporting threshold is proposed to be based on total mercury. The proposed reporting threshold is about two orders of magnitude lower than the incomplete HI-based approach described above, which the EPA proposes is reasonable given what is known about multi-pathway exposures for mercury. The EPA additionally proposes that mercury would be reported in its more specific forms when such data are available, but that total mercury would be reported when more specific forms are not available.

The EPA considered how to set a default emissions reporting threshold for all remaining pollutants without an URE or RfC. Without risk data to use to inform such an approach, EPA has proposed to use the major source threshold of 10 tons/year for a single pollutant. For the third special case, the EPA is considering that it may be useful to have a mechanism by which the Agency would revise reporting thresholds for pollutants in the case that a significant revision to an existing URE or RfC becomes available following new scientific findings that could significantly impact EPA's understanding of risk posed by such a pollutant. One example of this situation is provided by ethylene oxide (EtO), when the EPA determined EtO was a much more potent carcinogen than previously realized.[29] Rather than being able to rely on an existing requirement to collect data more quickly as is being proposed here, the EPA needed to collect data ad-hoc from 2019 through to 2022 to obtain additional emissions data about these facilities. The data collection process took additional time, delaying a response that could have more quickly addressed public health concerns. This delay would have been avoided if emissions data reporting requirements had, at that time, included a provision such as the one the EPA is now considering.

The EPA has a tiered, prioritized list of appropriate chronic health benchmark values and, in general, the list prioritization places greater weight on the EPA-derived health benchmarks than those from other agencies.[30] The EPA has a prioritization process aimed at incorporating the best available science with respect to dose-response information for air toxics. This information is obtained from various sources and prioritized according to (1) conceptual consistency with EPA risk assessment guidelines and (2) level of peer review received. Where the EPA lacks dose-response information with higher priority (*e.g.,* IRIS), the Agency uses other information sources, such as from the Agency for Toxic Substances and Disease Registry (ATSDR) and the California EPA. To ensure the EPA could collect emissions data for HAP that receive updated health benchmarks that meet the EPA criteria and would receive prioritization, it would be necessary to adjust the health-based emissions reporting thresholds included in this proposal.

The EPA occasionally identifies new health benchmarks for pollutants that do not have them or revises the available benchmarks to reflect a new understanding of a HAP's increased or decreased toxicity. When the available toxicity information about pollutants changes in the future, the EPA expects that it will propose updated emissions reporting thresholds, take comment, and potentially issue final revisions to the HAP emissions reporting thresholds of this subpart. At this time, EPA plans to conduct such revisions in the future via very targeted rulemaking to amend just those HAP emissions reporting thresholds where the toxicity information has changed.

To streamline future actions associated with any revised health benchmarks, the EPA proposes that it may use the following formulas to develop updates for the point source HAP reporting thresholds of this subpart. For changes to UREs, the updated reporting threshold would be calculated using the formula: Updated reporting threshold = (reporting threshold in AERR × URE in 2022)/ updated URE, where the ''reporting threshold in AERR'' refers to the reporting thresholds provided in the proposed Table 1B to Appendix A of this subpart. For changes to RfCs, the updated reporting threshold would be calculated using the formula: Updated reporting threshold = (reporting threshold in AERR × revised RfC)/RfC in 2022.

Further, the EPA proposes that only those HAP reporting thresholds that the EPA publishes in the **Federal Register** (after notice and comment) 6 months before the end of an inventory year would apply for reporting emissions for that inventory year. For example, any reporting threshold published before July 1, 2027, would be relevant for emissions reporting of 2027 emissions, with those reports being due in 2028. This timing may not leave sufficient time for States to revise their HAP reporting regulations if they are reporting on behalf of owners/operators. Thus, the EPA recommends that States should consider the possibility of drafting their HAP reporting requirements such that they would refer to Table 1B to Appendix A of this subpart rather than list the same thresholds in their own rules. The EPA additionally proposes to publish any updates to emissions reporting thresholds on its Air Emissions Inventories website to help States and owners/operators to be able to find the new reporting thresholds more easily.

Some pollutant reporting thresholds included for non-major sources in the proposed Table 1B to Appendix A of this subpart are listed as 10 tpy, which is the major source threshold. If a point source had emissions of 10 tons, then it would presumably be subject to these proposed reporting requirements based on its status as a HAP major source, which would eliminate the need for including such reporting thresholds in the table. However, to support the possibility that an emission reporting threshold could be updated based on changes to a pollutant's URE or RfC, the 10-ton reporting threshold would be retained in the proposed Table 1B to Appendix A of this subpart to provide the ''reporting threshold in AERR'' value needed for the updated reporting threshold calculations proposed above. Additionally, including those pollutants in Tables 1B and 1D allows for a more comprehensive list of pollutants to inform owners/operators and States of EPA's expectations and so that the pollutant group relationships listed in Table 1D can be provided.

The fourth special case is dioxins/furans. These pollutants were not included in the risk-based approach described above since they were not included in the 2017 NEI and were not a part of the risk modeling work on which the approach relied. Given the extremely high toxicity of some dioxins/furan pollutants (called congeners), the EPA is considering the approach taken by the TRI program. In addition, while dioxins/furans are not listed as a group on the published list of HAP, these HAP are often treated as a group for various purposes. For example, the TRI program

[29] U.S. EPA, Evaluation of the Inhalation Carcinogenicity of Ethylene Oxide (Final Report), EPA/635/R–16/350F, 2016.

[30] The health benchmark review process is described at *https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system#process.*

sets a reporting threshold for these compounds in the aggregate of 0.1 gram manufactured, processed, or otherwise used. For TRI reporting, when owners/operators report dioxins/furans, they must submit the mass of each of the congeners of dioxins/furans.

The EPA proposes the non-major reporting threshold for reporting dioxins/furans would be based on the TRI reporting threshold of 1.1 E–07 tons (~0.1 gram) and would apply to the sum of dioxins/furans mass. To meet this requirement, owners/operators would need to sum the mass of the individual congeners. By proposing this threshold for the AERR, the EPA is aligning the thresholds as best as possible to reduce complexity and burden. The EPA's proposed approach for the AERR is a less stringent threshold than the TRI threshold because facilities that manufacture, process, or otherwise use dioxins/furans would likely not emit all of that material to the air. As such, the EPA is not adding any burden on facilities to recognize that they may need to report to the AERR, but rather to estimate their dioxin/furan emissions at the additional level of detail proposed in the AERR as compared to the facility total emissions reported to TRI.

Finally, with respect to the Pb reporting threshold, the EPA is considering that Pb has a role for both CAP reporting and HAP reporting, since it falls under both NAAQS and air toxics provisions of the CAA. The EPA is not proposing to change CAP reporting thresholds (including Pb) in Table 1A to Appendix A of this subpart and is not proposing to change the current AERR requirement to report all CAP emissions if any CAP is above the PTE reporting thresholds (or Pb actual emissions threshold). The EPA approach for risk-based reporting thresholds described in section IV.A.8 results in a 0.074 tpy Pb reporting threshold. The EPA is considering that if it were to modify the CAP reporting threshold for Pb to be 0.074 tpy, this would have the effect of requiring reporting for all CAPs at facilities with Pb exceeding the 0.074 tpy threshold. The EPA does not intend to require CAP emissions (other than Pb) as point source for such small emissions levels. Based on these considerations, the EPA is proposing to retain the 0.5 tpy actual emissions reporting threshold for CAP reporting and additionally propose a Pb reporting threshold of 0.074 tpy actual emissions for purposes of HAP reporting.

Under the proposed approach, all States would continue to report Pb for point sources as required based on the CAP reporting thresholds. States that optionally report HAP on behalf of owners/operators would also report Pb for sources based on the HAP reporting threshold, and any other HAP from those facilities that would be required by this proposed action, and any other pollutants, including CAPs, that the State chooses to report. In States that do not report HAP on behalf of facilities, owners/operators would themselves be responsible for reporting Pb directly to the EPA for any facility that emits over the HAP reporting threshold (0.074 tpy) and that does not exceed the CAP reporting thresholds (for any CAP) and thus would not be required to be reported by a State.

Under the current AERR, some States voluntarily report Pb emissions for sources below the required reporting thresholds for CAPs. Thus, under the proposed approach, it is possible that the EPA could receive Pb data from both a State and an owner/operator for the same facility. In this case, the EPA would need to select one of these data values to include in the NEI. If an owner/operator is required to report (and does report) Pb emissions data for a facility (*i.e.,* the State is not approved to report on their behalf), but the State also voluntarily submits that data for the same facility, then the EPA will use the data from the owner/operator. The EPA would plan to note any difference between the emissions submitted by the State and the owner/operator in quality review materials provided to both parties.

10. Pollutants To Be Required or Optional for Point Sources

The EPA is considering which pollutants would be reported by owners/operators of facilities once a facility has been determined to be a point source. This action does not propose changes to which CAPs would be reported. With the proposed revision to require HAP, the EPA is considering how to handle cases in which a facility is required to report HAP but does not exceed the reporting threshold for CAPs. The term ''incidental CAPs'' will be used hereafter to refer to CAP emissions that would be reported only because a facility is a point source due to its HAP emissions. This situation is exemplified by a facility that emits one ton of nickel per year (exceeding the proposed Ni reporting threshold of 0.0021 tpy) but does not exceed the 100 tpy potential-to-emit reporting threshold for $PM_{2.5}$. An ideal policy should include a mechanism to prevent the discrepancy that would result when the facility reports the nickel emissions of one ton and zero $PM_{2.5}$ emissions, since nickel is a part of $PM_{2.5}$.

To address this issue, the EPA is proposing to require reporting of incidental CAPs by owners/operators that report HAP for point sources, and by States when a State has been approved to report HAP on behalf of owners/operators. To support this requirement, the EPA is additionally proposing the definition of incidental CAPs to mean ''a criteria pollutant or precursor emitted from a facility that meets the point source reporting definition due to emissions of HAP but has emissions of criteria pollutants and precursors below reporting thresholds for those pollutants.'' To inform this proposed approach, the EPA is considering whether a voluntary approach or a requirement would work best and the nature of any requirement.

Under a voluntary approach, owners/operators or States would not be required to report incidental CAPs, but such emissions could be reported voluntarily. This would impose a lower burden but may create inconsistencies in the NEI data at the facility level when CAP data are not voluntarily reported (as described by the example provided above about a facility reporting nickel without reporting $PM_{2.5}$). To address any such inconsistencies, the EPA could augment the NEI by summing any HAP reported without associated CAPs. For example, if a facility were to report 1 ton of nickel, 0.2 tons of cadmium, and 0.3 tons of antimony as their only PM HAP, then the EPA could sum these values to include 1.5 tons of $PM_{2.5}$ in the NEI. While avoiding inconsistency, this approach would create partial data for $PM_{2.5}$ that would appear to be complete, and thus could cause confusion that would be better to avoid by estimating or collecting total $PM_{2.5}$.

The EPA also is considering the possibility of using the required throughput (activity) data reported by owners/operators for the HAP to estimate the CAP emissions on behalf of owners/operators. This approach slightly reduces burden as compared to the proposed approach of requiring incidental CAP, though it complicates the NEI process and adds annual emissions data to the NEI after owners/operators have already submitted. In the past, the EPA has found that if owners/operators or States do not submit complete emissions, they can be surprised by EPA's additions to their data prior to NEI publication. Further, there is no guarantee that all sources of the incidental CAP at a facility also have emissions of HAP, making any estimate by the EPA based on throughput data used to estimate HAP potentially incomplete. In EPA's experience, these disadvantages are better avoided.

A requirement to report incidental CAPs has the advantages of collecting additional CAP emissions data for a more detailed NEI and boosting consistency between emissions of HAP and their associated CAPs (like VOC and $PM_{2.5}$). Such a requirement would also have the disadvantage of additional burden on owners/operators to estimate and report more pollutants.

In considering a requirement to report incidental CAPs, the EPA is considering two possibilities for implementation: (1) States could be required to report CAP emissions of such sources rather than owners/operators, consistent with the overall CAP reporting approach taken in the AERR or (2) owners/operators could be required to report CAPs directly to the EPA consistent with the HAP reporting requirement. To implement the first approach, all States would need to modify their State regulations to update the definition of which sources would report CAPs to include HAP reporting thresholds. Such a modification would be necessary under the first approach, regardless of whether the State intends to be responsible for reporting HAP emissions on behalf of owners/operators. This poses a significant disadvantage.

The EPA is proposing the second approach listed above for owners/operators to report incidental CAPs. This approach does not require States to modify their CAP reporting regulations and still allows States to report incidental CAPs if they report HAP emissions. Under the proposed approach, the State HAP submission application and approval process described in section IV.A.6 of this preamble would, therefore, also include the reporting by States of incidental CAPs associated with such facilities. The proposed approach also works well with the requirement for owners/operators to report emissions using CAERS, because CAERS assists owners/operators with emissions factors for both HAP and CAPs associated with their emissions processes and provides other advantages to streamline reporting. Additionally, the EPA plans that future versions of CAERS would have the direct access to the source tests reported to CEDRI to support use of source test data for estimation of incidental CAP. The EPA expects the source test data to be useful for this, because of the frequent approach taken by NESHAP rules to collect a surrogate pollutant report, such as filterable $PM_{2.5}$, to ensure compliance with HAP emissions limits. Thus, the incremental burden for a facility reporting to the EPA directly via CAERS to report incidental CAPs would be lower than if CAERS were not required. Since some such facilities may not already be regulated for CAPs by States, some may be less likely to have source testing or other emissions factor data. In these cases, owners/operators could simply use the default emissions factors provided by the EPA in CAERS when available.

Based on these considerations, the EPA proposes that owners/operators would be required to report incidental CAPs associated with HAP being reported when they are required to report HAP but would not otherwise be required to report CAP (*i.e.,* they are not a major source for CAP). This requirement would impact reporting emissions for HAP major sources and for non-major sources when required to report HAP.

If applying to the EPA to report HAP on behalf of owners/operators, a State would need to consider the incidental CAP requirement when designing any updated emissions collection regulations. The proposed Table 1B to Appendix A of this subpart includes which criteria pollutants are associated with each HAP and would determine the CAPs expected to comply with this propose incidental CAP reporting requirement. This approach has the advantages previously noted and, in addition, it solves the same collection and consistency challenge for States by providing a framework for any States that choose to report HAP on behalf of owners/operators.

In addition to incidental CAPs, the EPA is considering which HAP would be reported by owners/operators of facilities that meet the point source definition. As described above, this action proposes that owners/operators of HAP and CAP major sources report all HAP. This proposed requirement would be consistent with EPA's obligations under the Act to regulate all pollutants from such HAP major sources and includes CAP major sources to have available to the agency a complete suite of pollutants from all large emitters.

For non-major sources, the EPA proposes that owners/operators would be required to report only those HAP that are greater than EPA's HAP reporting thresholds, initial values for which are presented in the proposed Table 1B to Appendix A of this subpart. To identify this proposed approach for non-major sources, the EPA compared this proposed approach to an alternative by which owners/operators of non-major sources would report *all HAP* when any one HAP has emissions greater than or equal to the proposed reporting thresholds. To choose an approach, the EPA is weighing the additional burden associated with reporting all HAP relative to the importance of additional data that would be collected if all HAP were required.

To understand the effects of this proposed action, the EPA evaluated the relative impact of the HAP pollutant requirements. The incidental CAP impact is expected to be small because it would add just one or two pollutants per facility and the requirement could be met using emissions factors. Thus, the incremental CAP impact was not separately analyzed from the total HAP impact. The EPA used the 2017 NEI data to estimate the number of additional combinations of facilities and HAP pollutants as a surrogate to estimate incremental burden from each policy choice relative to the option of reporting all HAP for HAP major sources. Table 1 below provides these results by including a ''burden'' factor calculated using the estimated number of facility-pollutant combinations associated with a policy option divided by the estimated number of facility-pollutant combinations associated with all pollutants from the identified HAP major facilities.

These relative burden estimates are imperfect because they rely on the 2017 NEI that is known to be incomplete (since HAP reporting is currently voluntary), but they still represent the best data available to the EPA at the time the analysis was performed. To compare the burden between the proposed non-major approach and the alternative non-major approach, the EPA counted the number of records in the 2017 NEI with HAP emissions. In the proposed case, the EPA included only those records associated with the HAP at a facility for HAP exceeding the proposed thresholds. For the alternative case, the EPA included all HAP records at a facility when any HAP exceeded the proposed thresholds. Based on these counts, the EPA estimates a 40% increase in burden associated with the alterative that the EPA is not proposing.

The EPA has considered whether a 40% burden increase to collect additional HAP data (below risk-based reporting thresholds) from non-major sources would be warranted. In considering this, the EPA has been unable to identify a reason to collect those additional HAP (unlike for major sources, which as noted starting in section IV.A.4 of this preamble, the Act directs EPA to consider all HAP). While the data would certainly be more complete under the alternative approach, the risk-based reporting thresholds that the EPA is proposing would provide substantially more data

than the Agency currently has. Rather than impose additional burden, the EPA is proposing to require that owners/operators of non-major sources would report emissions only when those emissions are greater than or equal to the HAP reporting thresholds, presented in Table 1B to Appendix A of this subpart, but subject to revision as described above. The EPA urges commenters to provide comment to it regarding any factors the Agency may have missed in selecting the proposed approach.

In addition to the burden of the various policy options for HAP emissions reporting, the EPA evaluated the distribution of sources across communities for informational purposes.[31] The results in Table 1 provide three types of areas where facilities emit pollutants in amounts that classify those sources as major sources or levels of HAP for non-major sources that meet the proposed reporting thresholds of this action. Table 1 illustrates the demographic make-up of the populations located within 5 km of the facilities that would be required to report under the proposed policy options. The demographics are based on indicators from the Bureau of Census' 5-year American Community Survey (ACS).[32] The column ''Nationwide'' represents the nationwide average percent demographics for comparison. The following three columns ''CAP Major,'' ''HAP Major,'' and ''Non-Major,'' represent the average percent demographics of the populations living within 5 km of the facilities in each group of facilities. For this analysis, the EPA used a 5-km distance to try to capture the appropriate demographics for near-field exposures. Based on previous air dispersion modeling of HAP emissions from over 1,600 facilities in 22 source categories, the average distance of the maximum individual cancer risk (MIR) is about 2 km from the facility. A distance of 5 km was chosen because it captures 95 percent of MIR locations for these 1,600 facilities. Section 6 of the TSD provides additional details. Regarding race and ethnicity, the data show that on average, the populations living around facilities affected by this action are above the percent national average. While the national average population for African Americans is 12 percent, the percentage of this demographic group near facilities is between 15 and 17 percent, depending on the facility type. Similarly, the Hispanic/Latino population average is 19 percent, and the percentage of this demographic near facilities is 22 to 23 percent. For the Other Multiracial population, the average nationally is 8 percent while the percentage of this demographic near facilities is 9 to 10 percent. In addition, the populations living around facilities affected by this action are above the percent national average for ''Below Poverty Level,'' ''Over 25 and without a High School Diploma,'' and ''Linguistically Isolated.'' Since the reporting thresholds are largely based on risk contribution, these results show that owners/operators will report HAP from facilities emitting at levels contributing to risk in both low-income areas an in communities with a higher minority population than average.

TABLE 1—PERCENT OF POPULATION BY DEMOGRAPHIC FOR POPULATIONS NATIONWIDE AND WITHIN 5 KM OF CAP MAJOR FACILITIES, HAP MAJOR FACILITIES, AND NON-MAJOR FACILITIES

Demographic group	Nationwide	CAP major: population within 5 km of 4,067 facilities	HAP major: population within 5 km of 7,552 facilities (including HAP/CAP major)	Non-major: population within 5 km of 6,096 facilities
Total Population [a]	328,016,242	69,683,592	117,946,858	93,000,649
Race and Ethnicity by Percent				
White	60	50	52	52
African American	12	17	16	15
Native American	0.7	0.4	0.4	0.4
Hispanic or Latino (includes white and nonwhite) [b]	19	23	22	23
Other and Multiracial	8	9	9	10
Income by Percent				
Below Poverty Level	13	16	16	15
Above Poverty Level	87	84	84	85
Education by Percent				
Over 25 and without a High School Diploma	12	14	14	14
Over 25 and with a High School Diploma	88	86	86	86

[31] This analysis was completed prior to a few minor revisions to the NAICS list and emissions thresholds (added 5622xx for Waste Treatment and Disposal and 62231x for Specialty Hospitals). No facilities are in the 2017 NEI used in this analysis for 62231x. The EPA also revised the cobalt threshold after this analysis was done. The EPA has reprocessed the facility analysis and about 2,000 facilities were added since the EJ analysis was completed. The EPA believes that the results of the analysis are still highly representative of the proposed reporting criteria because the analysis included more than 17,700 facilities.

[32] U.S. Census Bureau American Community Survey Data, *https://www.census.gov/programs-surveys/acs/data.html.*

TABLE 1—PERCENT OF POPULATION BY DEMOGRAPHIC FOR POPULATIONS NATIONWIDE AND WITHIN 5 KM OF CAP MAJOR FACILITIES, HAP MAJOR FACILITIES, AND NON-MAJOR FACILITIES—Continued

Demographic group	Nationwide	CAP major: population within 5 km of 4,067 facilities	HAP major: population within 5 km of 7,552 facilities (including HAP/CAP major)	Non-major: population within 5 km of 6,096 facilities
Linguistically Isolated by Percent				
Linguistically Isolated	5	8	7	7

[a] The nationwide population and all demographic percentages are based on the Census' 2015–2019 American Community Survey 5-year block group averages and include Puerto Rico. The total population count within 5 km of all facilities is based on the 2010 Decennial Census block populations.
[b] To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

Table 2 below provides the estimated number of known facilities from the 2017 NEI expected to be impacted by these proposed HAP reporting requirements for which the average percent of the population within 5 km exceeds the national average for different demographics. These results show that a significant number of the known facilities for which the proposed action could collect better data are located near areas of interest for environmental justice issues.

TABLE 2—NUMBER OF FACILITIES FOR WHICH THE POPULATION WITHIN 5 KM EXCEEDS THE NATIONAL AVERAGE FOR DIFFERENT FACILITY CATEGORIES AND DIFFERENT DEMOGRAPHICS.

Demographic group [a]	CAP major facilities	HAP major facilities (includes HAP/CAP major)	Non-major facilities
Total Number of Facilities	4,067	7,552	6,096
Race and Ethnicity			
White	2,393	4,878	4,306
African American	958	2,608	1,231
Native American	731	1,287	1,664
Hispanic or Latino (includes white and nonwhite) [b]	974	1,657	1,396
Other and Multiracial	679	1,088	1,014
Income			
Below Poverty Level	1,812	4,082	2,649
Education			
Over 25 and without a High School Diploma	1,793	3,959	2,606
Linguistically Isolated			
Linguistically Isolated	811	1,338	1,012

[a] Demographic data are based on the Census' 2015–2019 American Community Survey 5-year block group averages and include Puerto Rico. The total population count within 5 km of all facilities is based on the 2010 Decennial Census block populations.
[b] To avoid double counting, the ''Hispanic or Latino'' category is treated as a distinct demographic category for these analyses. A person who identifies as Hispanic or Latino is counted as Hispanic/Latino for this analysis, regardless of what race this person may have also identified as in the Census.

11. Reporting Release Coordinates

In conjunction with the proposed requirements to report HAP emissions, the EPA is considering the need for accurate location information of HAP emissions releases to be able to perform appropriately detailed assessments of risk using models. The EPA estimates concentrations and associated risk from HAP emitted from facilities using the AERMOD modeling system [33] and uses HAP emissions in other models for various analyses. These models rely on emissions data as input, and the most complete modeling approaches include emissions at the many individual release points that can exist at facilities. Large facilities can have hundreds of individual release locations, and the proximity of those releases to people and communities is an important aspect of proper risk estimation for populations. Emission releases are

[33] AERMOD modeling system home page, EPA, *https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models#aermod.*

compiled in the NEI as either stack releases or fugitive releases.

The EPA proposes a requirement that owners/operators and States reporting emissions data directly to the EPA would report release point locations that are distinct from the facility location. This proposed requirement would apply for both stack locations and fugitive release locations. To arrive at this proposed approach, the EPA is considering a variety of factors described in this section.

Stack and fugitive releases in the NEI are already required to be reported by the current AERR. In addition, stack parameters such as height, release diameter, exit gas temperature, and exit gas velocity are also required so that models can simulate the buoyancy of emissions plumes and dispersion in surrounding areas. For fugitive releases, the current AERR also requires parameters to characterize the shape of the fugitive release as 2- or 3-dimensional, the width, length, and height of the emissions release, and the orientation of the release shape. In both cases, however, the current AERR does not require that release point locations be specific to each release point. Rather, it allows States to report only the overall facility location, and, in that case, the EPA uses the facility location to set default release point locations for that facility when States do not provide specific release point locations.

The current AERR approach was promulgated in 2015 (80 FR 8787, February 19, 2015). In that final rulemaking, the EPA changed the requirement for States to provide X Stack Coordinate (longitude) and Y Stack Coordinate (latitude) only at the facility location, rather than for the stack locations. In that final action, the EPA explained that ''most states do not have accurate location values for each individual release point within a facility; instead, they frequently report the same locations for all stacks within a facility'' (80 FR 8792, February 19, 2015). In addition, the EPA stated that ''the vast majority of facilities are geographically small enough that such a simplification does not reduce the usefulness of the data and we encourage States to optionally report individual stack locations to add accuracy beyond the single facility center location. The EPA may also add such individual stack locations where the agency believes it has accurate data'' (80 FR 8792).

The context of that AERR revision was within the requirements for collecting CAP emissions. The primary use of the NEI for CAP pollutants is for Eulerian grid modeling such as the Community Multiscale Air Quality (CMAQ) modeling system,[34] for which emissions sources are mapped to grid cells for modeling. These grid cells are typically 4- or 12-km, which is the context for the statement made in the 2015 AERR revision that ''the vast majority of facilities are geographically small enough that such a simplification does not reduce the usefulness of the data'' (80 FR 8792). For the case of such grid modeling, using a single facility-wide latitude/longitude for stacks would at worst, misplace some of the emissions from a facility into a neighboring grid cell when a facility size is such that it crosses a grid cell boundary. Given other modeling uncertainties of Eulerian grid modeling, this additional uncertainty would not be a concern for most modeling applications in the relatively few cases where it occurred. In cases that need more locational detail, the EPA could revise the inventory to correct any release point locational inaccuracies caused by the current AERR's approach to the release point coordinate requirements. The EPA received no comments regarding this revision during the comment period for the June 20, 2013, proposed rule (78 FR 37164).

In the context of the HAP emissions reporting requirements proposed in this action, the EPA is revisiting the requirement for accurate release point locations. The EPA's experience with risk modeling using HAP emissions inventories has been that using default facility locations for all release points provides lower quality results than when models use more detailed data. Using imprecise locations can provide inaccurate risk information that could overstate or understate cancer risk significantly. Research has concluded that improved locational data and release parameters can reduce uncertainty in a risk assessment by up to 2 orders of magnitude.[35] These modeling results are especially sensitive to the distance between the residential receptor and the emission sources, especially for facilities that have a large industrial footprint.

Because risk is very related to proximity of the source to populations, when a large facility has emissions releases that border neighborhoods, the risk can be greatly understated if EPA were to use a single central facility-wide location. The EPA's modeling guidance for urban air toxics modeling[36] explains that ''each source will need to be classified as a point, area, volume, or line source,'' and that ''building the source inventory usually begins with mapping the locations of emissions sources.'' Also in the guidance, subsections in Section 1.3 indicate how modelers should define each of the different types of release points and specify ''location of the source'' (point source characterization), ''location, geometry, and relative height'' (for 2-dimensional release points, called ''area sources'' in the guidance). Likewise, Section 7.2 of the ''Air Toxics Assessment Reference Library, Volume 2, Facility-Specific Assessment''[37] explains that model inputs needed by the Human Exposure Model (HEM) require ''the geographical location (latitude and longitude) of each source being simulated (with ''source'' in this context being each release point at a facility) and states that ''the model requires that coordinate data be obtained for each emission source in the analysis, and that each emission source is modeled individually.''

As further evidence of this need, EPA has previously found it necessary to collect limited sets of this data from certain industries to support modeled risk analysis for the Risk and Technology Review (RTR) program required by CAA sections 112(f)(2) and 112(d)(6).[38] These one-time requests included collection of release point location and other parameters for stack and fugitive releases. As explained above in Section IV.A.1, these one-time collections tend to impose sporadic and reoccurring ''start-up'' burden on owners/operators associated with expending time and resources on understanding and responding to the requests. While the mandatory risk reviews under CAA section 112(f)(2) have been completed for most of the source categories listed under CAA

[34] Community Multiscale Air Quality Modeling System home page, U.S. EPA, *https://www.epa.gov/cmaq*.

[35] Jing, Q., Venkatram, A., Princevac, M., Pankratz, D., Wenjun., Q., *Modeling Dispersion of Buoyant Emissions from a Low Level Source in an Urban Area,* American Meteorological Society, The Conference Exchange, 2010. See also *https://ams.confex.com/ams/pdfpapers/160624.pdf.*

[36] Dispersion Modeling of Toxic Pollutants in Urban Areas and Appendices, U.S. EPA, Document No. 454–R–99–021, July 1, 1999; *https://www.epa.gov/scram/air-modeling-guidance-air-toxics-modeling.*

[37] Air Toxics Risk Assessment Reference Library, U.S. EPA, *https://www.epa.gov/fera/air-toxics-risk-assessment-reference-library-volumes-1-3.*

[38] Examples include Plywood and Composite Wood Products Manufacturing (*https://www.epa.gov/stationary-sources-air-pollution/plywood-and-composite-wood-products-manufacture-national-emission*), Ethylene Oxide Emissions Standards for Sterilization Facilities (*https://www.epa.gov/stationary-sources-air-pollution/ethylene-oxide-emissions-standards-sterilization-facilities*), and Petroleum Refining Sector (*https://www.epa.gov/stationary-sources-air-pollution/comprehensive-data-collected-petroleum-refining-sector*).

section 112, the EPA may conduct future risk reviews that are discretionary under the CAA. Further, the EPA does have the continuing obligation to conduct a technology review under CAA 112(d)(6) for each HAP standard every 8 years. Under this proposal, data for these future reviews would already be available to the agency rather than needing to issue a continuous and never-ending stream of individual data collection requests. Having the data available will allow EPA to be timely in meeting these CAA obligations.

In the previous AERR revision, we identified one reason for the change of release point location data to be optional as the lack of available information from States. The collection approach proposed by this action would avoid this limitation because it would allow for owners/operators to directly report release point locations and parameters in support of the proposed requirement to collect and submit HAP emissions data. As defined by 40 CFR 2.301(a)(2)(i), emissions data includes those parameters necessary to characterize the emissions, which, in the context of HAP emissions, includes the release locations and parameters required in Table 2a to Appendix A of Subpart A of Part 51.

Another relevant consideration for release point locations is the ease with which such data can be obtained now. Global Positioning System (GPS) applications are readily available on ubiquitous cell phones for employees of both small and large companies to compile such information. For stack releases, coordinates for the center of a stack can be readily obtained either with a GPS approach or using readily available online mapping software to pinpoint the locations of stacks and fugitive releases.

Based on these considerations, the EPA proposes that any owners/operators reporting emissions data directly to the EPA (other than small entities as per section IV.A.12 of this preamble) would be required to provide specific release point locations that are distinct from the facility location. Considering the complexity of facilities and that release points frequently emit both CAPs and HAP, the EPA proposes that this requirement be applied to all release points reported in the facility inventory (*i.e.,* not only those release points that emit HAP). In addition, to keep the quality assurance of the incoming data manageable, this approach will allow the EPA to have detailed release parameter data for SO_2 and $PM_{2.5}$, which also can be modeled using AERMOD and fine-scale modeling tools as part of permitting and other NAAQS programs. To be consistent with requirements across the inventory collection process, the EPA additionally proposes that State programs would be required to report all release points using release point locations that are distinct from the facility location. These proposed requirements apply for both stack locations and fugitive release locations.

12. Reduced HAP Reporting Requirements for Small Entities

In developing this proposal, the EPA convened a Small Business Advocacy Review (SBAR) Panel in compliance with section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). In addition to EPA's Small Business Advocacy Chairperson, the SBAR Panel consisted of the Director of the Air Quality Assessment Division of OAQPS, the Administrator of the Office of Information and Regulatory Affairs (OIRA) within the OMB, and the Chief Counsel for Advocacy of the Small Business Administration (SBA). The SBAR Panel recommended many accommodations for small entities to reduce their burden while still allowing this proposal to collect data needed to meet EPA's objectives under the Clean Air Act. A copy of the full SBAR Panel Report is available in the docket for this action.

The SBAR Panel recommended, among other things, that the EPA propose allowing any small business subject to revised reporting requirements under this proposal to report aggregated emissions for the facility as a total fugitive emissions value rather than the detailed emissions by process and release point. Since the EPA is not proposing to change reporting thresholds for criteria pollutants, this recommendation only applies to HAP emissions reporting and any incidental CAP emissions (as described in section IV.A.10 of this preamble).

During the SBAR Panel, the EPA observed that risk modeling using facility total emissions would be more conservative than using more detailed emissions that could include stack releases, because all emissions would be modeled as ground-level fugitive emissions. With more specific data about emissions releases (*e.g.,* through stacks raised above ground level), the modeling includes more dispersion of pollutants that can lower modeled concentrations at the ground level thereby lowering modeled risk. The EPA additionally observed that if modeled risk from facility total emissions were high enough, the Agency would have an interest in collecting more detailed data to better assess risk. While aggregated data (facility total emissions) are not as useful to the EPA as the more detailed data, this approach balances EPA's needs for these data with the burden on small businesses. Under this proposed approach, EPA's available data is less complete, although still helpful, and the burden on small businesses is reduced when compared to the requirement to report the full suite of detailed data that the EPA is proposing to require for other sources that are not small businesses.

In addition, because States are free to have emissions collections that include sub-facility detail irrespective of any final AERR provisions, States may collect more detailed data than would be required by the AERR. The EPA observes that EPA, States, and owners/operators have a shared interest in ensuring that the EPA has the more detailed data to support risk assessment and other work.

Based on these considerations, the EPA proposes to provide owners/operators the option to report a facility's total emissions instead of the detailed data otherwise required when: (1) they meet the small entity definition as proposed by this action, (2) the owner/operator has never been notified that the EPA has modeled a cancer risk for the facility of 20/million or more, or the EPA has made such a notification less than 180 days prior to the next point source emissions reporting deadline, and (3) estimates of emissions with the process-level detail that would otherwise be required by this proposed action are not required by a State.

The EPA is considering the facility total cancer risk level above which an owner/operator would not be able to use the optional facility-total reporting accommodation (item 2 in the previous paragraph). The cancer risk level range under consideration is from cancer risk of 1/million, which is the level used to develop the proposed emissions reporting thresholds for HAP to 100/million, which is a level the EPA uses to help formulate emissions reductions strategies as part of NESHAPs and other HAP regulatory programs. In addition, the EPA is considering the degree of uncertainty that can exist when estimating risks through modeling and is recommending that a modeled cancer risk between 10/million and 30/million would be appropriate to warrant more detailed emissions reporting. Using a cancer risk of 1/million for this purpose would not provide much burden reduction because 1/million is the basis of the proposed HAP reporting thresholds, above which non-major sources would need to report. Beyond a

cancer risk of 30/million, the upper uncertainty range is more likely to reach 100/million, for which the EPA certainly needs better HAP data.

As previously noted, the EPA is proposing that if its modeling shows 20/million or more cancer risk, small businesses would need to report more detailed emissions. EPA is taking comment on a cancer risk range of 10/million to 30/million for this potential threshold. In this proposed cancer risk range for comment, the EPA is considering that this range represents a 10-fold to 30-fold accommodation for small businesses beyond achieving less than 1/million cancer risk as laid out for EPA in the CAA. The target of cancer risks of 1/million or lower is included at CAA 112(c)(9)(B)(i), which describes that the EPA may delete a source category from the list of categories if, among other requirements, the EPA determines that no source in the category emits HAP in quantities which may cause a lifetime 1/million risk of cancer. Likewise, CAA 112(f)(2)(A) directs EPA to promulgate emissions standards that ''shall provide an ample margin of safety to protect public health'' and to promulgate standards beyond standards set by CAA 112(d) if those standards ''do not reduce lifetime excess cancer risks . . . to less than one in one million.''

The EPA encourages commenters to provide feedback on the proposed choice of the midpoint of this range of 20/million estimated cancer risk to provide accommodations to small businesses. The EPA seeks to learn about any considerations that the EPA may have failed to consider in proposing this midpoint.

In addition to allowing for facility-wide reporting in certain situations to reduce burden on small entities, the EPA is considering how best to reduce burden for reporting the facility inventory. For owners/operators that are not small entities, the current AERR requires States to report the attributes for the facility (*e.g.,* name, address) as well as component attributes for emissions units, release points, processes, and controls. These data elements are required under the current AERR, but States report the facility inventory separately from emissions because facility attributes do not vary every year. After the first report for a facility, States under the current AERR and States and owners/operators under these proposed revisions would need only to report modifications to the facility inventory after the first year. For example, if a facility adds or removes a unit, then those changes would be submitted but the other facility attributes could likely be retained without resubmission. In the case of facility-wide emissions reporting, the facility inventory would not necessarily need sub-facility data to support the emissions reports, since emissions would not need to be allocated to the units and processes within the facility.

In addition to the facility total emissions, the EPA needs to know which units are present at facilities and which units are subject to NESHAPs or other air emissions regulations. As described in section IV.I.8, the EPA is proposing that States and owners/operators of permitted sources would be required to provide the regulatory codes that apply to units and/or processes. To fulfill EPA's need for this information while reducing burden, the EPA is proposing that small entities would only need to report a list of their units, including all required unit-level data elements. This would reduce burden while still allowing the EPA to identify which units at each facility are subject to regulations.

The EPA provided an analysis for the SBAR Panel that estimated the number of small entities expected to report based on EPA's proposed HAP emissions reporting thresholds. This analysis showed that the collision repair industry characterized by NAICS 811121 (Automotive Body, Paint, and Interior Repair and Maintenance) is unique in that it has the most small entities of any industry that the EPA is considering including in the proposed rule according to the 2017 Economic Census data, and that much smaller number of the largest collision repair facilities (about 2,000) are estimated to fall within the emissions reporting thresholds under consideration. Given that the EPA is already receiving data through States from about 2,300 of such sources, the EPA is unlikely to reduce the number facilities for which emissions data must be reported below the number it is already receiving. The EPA reviewed other NAICS in this way, but no other NAICS presented a similar situation. In other industries, the EPA either estimates that many more sources would need to report based on these proposed requirements or the EPA lacks sufficient existing emissions data for facilities with those NAICS to perform the same analysis.

To balance the potential burden with the need for information and considering the large number of businesses in the collision repair industry, the SBAR Panel recommended that the EPA consider explicitly excluding small entities in the collision shop industry from new reporting requirements. Such an approach would still collect HAP data from many more facilities than are available to the EPA currently, while not burdening small entities. To address this panel recommendation, the EPA proposes to exclude small entities (except for major sources) with primary NAICS 811121 from any HAP reporting requirements under the AERR. This proposal reflects this accommodation in Table 1C of Appendix A of this subpart, which lists primary NAICS codes subject to non-major source HAP reporting requirements.

Another concern identified during the SBAR Panel was that small entities that are not already reporting emissions data to the EPA or a State may not have the necessary experience and resources to develop emissions estimation approaches where none are readily available. The SBAR Panel additionally noted that small entities would have the lowest burden when the EPA provides an emissions estimation method or there are already some other readily available emissions estimates to use because that business must report emissions to the State or TRI. The SBAR Panel Report also noted that small entities may have source test data with which emissions estimates could be made. The Panel recommended that, consistent with these concerns, a small entity would not be expected to report emissions for pollutants when the EPA does not provide a way to estimate emissions and there is no other readily available data for that pollutant.

The EPA is considering how best to address these SBAR Panel recommendations. For current AERR requirements regarding State reporting, the EPA does not address the availability of emissions estimation methods for facilities. The presumption of the current regulations is that States, in collecting data from facilities to report to EPA, would ensure that the requirements to report all CAP are met when any CAP exceeds the reporting threshold, irrespective of whether the EPA provides an emissions calculation method.

The EPA has observed in working with States under the current AERR that many States rely on the EPA WebFIRE database for emissions factors for use by owners/operators to calculate emissions in State collection systems. In the absence of source test data or site-specific emissions factors created by the facility, the collections would therefore use an EPA approach and when none is available, would be less likely to report the pollutant. Many States with HAP collection programs have also developed emissions factors, and State reports for many HAP include emissions

based on these State factors. As a general matter for emissions reporting under the current AERR, when EPA, a State, or a trade association does not provide emissions calculation methods for a process/pollutant combination (even when emissions from such a combination is likely to exist), the EPA has observed that emissions data reported by States is much less likely to include emissions for that process/pollutant combination.

Based on this experience, the SBAR Panel recommendation is consistent with EPA's understanding of the practical reality of the data collection process for all businesses currently reporting to States. Namely, when EPA, States, or trade associations do not provide an emissions calculation method for a given process/pollutant combination and owners/operators do not have source tests or other readily available data, emissions reports do not include emissions for those process/pollutants. The EPA recognizes that this could be occurring irrespective of whether those processes/pollutants are required to be reported under the current AERR and State programs. As described in the next section, the EPA intends to provide an emissions estimation tool for small entities to use in support of implementing the proposed requirements. The emissions estimation tool would provide a way for small businesses to estimate their facility-wide emissions to assess whether their emissions exceed the non-major HAP emissions reporting thresholds. If they do exceed the thresholds and the owner/operator determines they must report, the emissions estimation tool would allow those estimates to be submitted to EPA (and States) via CAERS. The EPA expects that providing this tool will assist with reducing situations where required data are not reported. In this section, the EPA also addresses how development and use of this tool would lessen the burden on small entities if the provisions of this proposal were finalized.

13. Emissions Estimation Tool for Small Entities

The SBAR Panel recommended that the EPA develop an emissions estimation tool to help small entities estimate facility-wide emissions. The emissions estimation tool could be used by small entities to help them determine if their facility-wide emissions are above HAP reporting thresholds and to provide an emissions value for small entities to submit when emissions exceed the reporting thresholds. The SBAR Panel recommended that the EPA adopt emissions estimation approaches that rely on information that small entities can readily gather in the normal course of business.

To address these recommendations, the EPA plans to develop an emissions estimation tool to help small entities estimate facility-wide emissions. The EPA would develop this tool between the time this rule is proposed and the first year of any new point source reporting (see section IV.F of this preamble for timing information). While CAP emissions may be included in this tool, the EPA would prioritize HAP emissions because other than the addition of incidental CAP to reporting requirements, the EPA is not considering changing CAP reporting thresholds with this proposal. The emissions estimation tool would include incidental CAPs as relevant, depending on the HAP. The greatest, and most urgent, need for assistance will be for those small entities that do not have to report for any pollutants under the current AERR.

With this tool in mind, the EPA is considering the SBAR panel recommendation described in section IV.A.12 of this preamble that the EPA should not expect small entities to develop new emissions estimation approaches when none are available. The EPA agrees in principle with this recommendation but also wants to maintain a straightforward but flexible implementation of the proposed requirements. The EPA has proposed the criteria for point source reporting to include major source status, and for non-major sources, primary NAICS codes and emissions levels. The EPA believes that adding a regulatory exemption based on emissions estimates generated by a yet to be established and evolving tool would add unnecessary complexity to the structure of the rule. This is in part because States can choose to report HAP on behalf of owners/operators. Thus, if the planned tool were to provide a regulatory exemption, States could also be expected to rely on EPA's tool, limiting their autonomy for implementation of HAP reporting requirements. While additional considerations could be included in a proposed rule to avoid that limitation, the EPA expects that such additions would add complexity and confusion that the EPA is seeking to avoid. Further, such a regulatory exemption which relied on use of such a tool could increase the burden on small entities (*i.e.,* could increase recordkeeping and reporting burden compared to the current proposal).

Further, given EPA's observations that common practice under the current AERR is for States and owners/operators to rely on EPA, State, or trade association emissions estimation approaches when better information is not available, a logical conclusion is that this situation would continue to occur under these proposed revisions to the AERR. The EPA would expect that in circumstances where better data were available for estimating emissions, the emissions estimation tool would not be used. Such an approach would be consistent with the planned AERR requirement to use the best available emission estimation methods (see section IV.I.6 of this preamble). Similarly, when emissions estimates are made by an owner/operator for TRI or to meet State requirements, those emissions would be appropriate for reporting emissions to the EPA under these proposed requirements. The EPA emissions estimation tool could be used when these other emissions estimation approaches are not available, including when a State is also relying on EPA's tool to support owners/operators reporting to them, so States can report to the EPA on their behalf.

When none of these other emission estimation approaches are available, and no emissions are estimated by the emissions estimation tool, the EPA would not expect owners/operators of small entities to develop their own emissions reporting approaches because the burden associated with doing so is not warranted. If the EPA is sufficiently concerned about an emissions source, then the EPA could develop an emissions estimation approach and include it in its emissions estimation tool to assist small entities. The EPA could do so using other data available from larger businesses including emissions reports and source test data (as described in section IV.C of this preamble), or if needed, issue a specialized data collection separate from this proposed rule.

The SBAR Panel had many additional recommendations about the development and outreach associated with an emissions estimation tool. It recommended that the EPA work with small entities and trade associations to develop emissions estimation tools that would properly reflect the emissions processes and pollutants associated with each industry. It also recommended that as the EPA incorporates new information into its emissions estimation tool, the EPA should provide that information for industry and other parties to review and provide feedback. In addition, the SBAR Panel recommended that the EPA should provide adequate time for such feedback and for revising the tool based

on the feedback, dissemination, and training before requiring a new tool to be used for any given emissions reporting year. It further recommended that the EPA coordinate with Small Business Environmental Assistance Programs (SBEAPs) in each State to support the outreach and developing guidance for small entities. Finally, the SBAR panel recommended that the EPA provide a list of units and processes for which small entities could select for emissions reporting for review and feedback.

As previously described in section IV.A.12 of this preamble, the EPA is proposing to provide an optional accommodation for small entities to report emissions as a facility total under certain conditions and is proposing that the accommodation would not be available if EPA's risk modeling shows estimated cancer risk of 20/million or more. If a final rule were to exclude the proposed accommodation for facility-total emissions reporting, the SBAR panel recommended that the EPA make sure that, when requiring emissions to be provided for higher level of detail, emissions calculation methods are available for use by a small entity that reports for any such facility.

To address the development and outreach recommendations of the SBAR Panel, the EPA is considering an ongoing development and review approach for the emissions estimation tool. First, in developing the initial tool prior to any new reporting for small entities, the EPA would consult with the public including industry representatives and other interested parties. This initial development would begin sometime after receiving comments on this proposal and would end prior to the first deadline for point source reporting under any revised requirements. The EPA would include in the tool emissions factors from a variety of sources. For the initial release of the tool, the EPA plans to provide the tool and underlying data at least 12 months before the first reporting deadline, giving 3 months for feedback. The EPA would consider such feedback and incorporate changes in the tool before releasing the initial version of tool in advance of any new reporting deadlines for small entities.

The EPA expects that development of the tool would evolve iteratively each year. The EPA would plan to release any revisions to the tool each year for public review and feedback and adjust the tool in advance of the next emissions inventory reporting deadlines. If the use of the tool changed, the EPA would update the training materials. This iterative approach would be coordinated with the ongoing iterative CAERS development approach that the EPA has been using very successfully for the past 3 years. The EPA would plan to funnel outreach for these efforts through SBEAPs within each State.

The EPA is considering how best to implement such an emissions estimation tool. Currently, the EPA is considering first ensuring that it includes key industrial processes that can be estimated at a facility level, relying on activity information that is readily available to small entities. Such industrial processes might be fuel combustion, solvent evaporation, and activities that create toxic dusts. Emission rates would depend on whether emissions controls are present and the type of controls if present. Emission factors would be used to translate some activity measure at a facility (*e.g.,* fuel usage) to emissions. To use such an estimation tool, an owner/operator would need to (1) identify its emitting activities from a list that the EPA would provide and (2) enter total facility information for fuels, other materials, energy used, or other information that could even include the number of employees. The type of information used in the emissions estimation tool would depend on the available data for each emitting activity. The tool would show the estimated emissions levels and which ones (if any) were above the reporting thresholds.

The EPA is also considering the possibility of misuse of the tool by owners/operators to avoid reporting responsibility. For example, we have considered the possibility that an owner/operator might intentionally enter low activity data into EPA's tool to ensure emissions were below the applicable reporting threshold. The EPA's conclusion is that this would violate the requirement under § 51.5(a) of this proposed rule to use the best available information to estimate emissions. Further, if the facility was actually emitting at or above the applicable reporting threshold but not reporting those emissions, that too would be a violation of the proposed requirements. The EPA plans to develop this tool to assist facilities with determining whether they emit at or above the applicable reporting threshold (and thus would be required to report) and to help them estimate emissions for reporting. Use of the tool, however, does not excuse an owner/operator, or a State, from complying with all applicable requirements. As part of using the tool, owner/operators would need to follow the directions provided as part of the estimation tool. The EPA also expects the tool would include a mechanism for users to indicate that the information entered is complete and accurate to the best of their knowledge. In addition, to avoid future misunderstandings, the tool would create an electronic report that would include the name and business of the person using the tool, the input data entered by the user, the resulting facility-wide emissions, and whether any of those emissions exceed an emissions reporting threshold. This information would not be collected by the EPA in the first instance, unless the report was submitted as an emissions report to the EPA either voluntarily or because the owner/operator has determined that it is required to report. However, we anticipate that future EPA directions, or guidance, associated with using the tool could recommend that owners/operators retain these reports and/or other information they used for assessing facility-wide emissions to determine whether they must report.

If a small business determines that emissions estimates exceed one or more HAP reporting thresholds, those facility-wide emissions could be reported to the EPA to meet reporting requirements, so long as the small business meets the conditions that permit optional facility-wide emissions reporting. The EPA intends to make the reporting of the tool emissions values easy for small entities by providing for an automatic transfer of information already entered into the emissions estimation tool into the CAERS reporting forms. This approach would further reduce burden on small entities. Finally, during any such submission, the EPA expects that CAERS would support an official certification that the information provided is complete and correct, consistent with EPA's certification requirements for electronic data collection.

14. Definition of Small Entities

To implement the small business accommodations described in section IV.A.12 of this preamble, the EPA is proposing a definition of small entity to be consistent with CAA Section 507(c). This definition limits small entities to those that meet all of the following criteria: (a) has 100 or fewer employees, (b) is a small business concern as defined in the Small Business Act (15 U.S.C. 631 *et seq.*), (c) is not a major source, (d) does not emit 50 tons or more per year of any regulated pollutant, and (e) emits less than 75 tons per year or less of all regulated pollutants. The SBA small business concern size standards are available at 13 CFR121.201.

EPA is proposing this definition for two primary reasons. First, excluding major sources from the definition best supports the needs for data from major sources as previously described in sections IV.A.1 through IV.A.3 of this preamble. EPA's obligations under the CAA require process-level data from major sources, including control technologies employed. Using this definition, the proposed accommodations for small entities would not interfere with getting that necessary data from major sources.

Second, these proposed requirements are for record keeping and data reporting, which have much lower burden associated with each facility than would a proposal that includes requirements to install control devices. EPA's estimated yearly average per-facility burden for reporting emissions data starting in 2027, is just 27 hours when using in-house personnel to accomplish emissions reporting.[39] This number of hours is reasonable given the information that would be collected and its importance to EPA analyses in support of the public interest. While still ''small'' under the SBA definition, larger facilities (*i.e.,* those with more than 100 employees) could be more likely to emit pollutants at levels of environmental risk of concern and interest by EPA. The EPA would be able to use the additional process-level emissions data from these facilities to improve understanding of emissions from small entities at the process level and to include such sources in EPA's Technology Reviews.

Even so, the EPA is considering whether the CAA definition for small entities is the most appropriate because it does not provide as much burden reduction as would a definition based in part on the SBA definition. For the primary NAICS under consideration to define non-major sources for this proposal, the SBA definition includes owners/operators with between 200 and 1,500 employees, and for certain NAICS define small businesses based on the annual receipts of the company between $8 million and $41.5 million. As part of the SBAR Panel process, the EPA estimated the number of small entities that could be affected by the rule using a definition based on 100 employees for all NAICS codes as compared to a definition based on the SBA NAICS-specific thresholds. More details on the analytical approach are available in the supporting materials to the SBAR Panel Report included in the regulatory docket for this proposal. The EPA updated the SBAR Panel analysis with the final NAICS and reporting thresholds included in this proposal, and the analysis results are included in the TSD for this proposal. Through this analysis, the EPA estimates that using a definition of 100 employees would require reporting for about 34,000 small entities, allowing them to use the proposed small business accommodations. That same analysis estimated that using the SBA small entity definition would require reporting from about 43,000 small entities. This analysis is limited by the available data because the 100-employee threshold that is used to represent the CAA small entity definition does not reflect the exclusion of major sources or the emissions-based criteria that are part of the CAA definition. As such, EPA's estimate of 34,000 most likely overestimates the number of additional small entities that would be subject to the proposed AERR revision, in part because some major sources are also small entities.

Given this information, the EPA is considering a ''SBA Definition Alternative'' that would modify the proposed definition to replace the 100-employee threshold with the NAICS-based thresholds available from the SBA definition. This alternative would still exclude major sources from being within the definition of small business but would include more non-major small entities in the definition. The EPA encourages commenters to provide information about benefits of the reduced burden on more owners/operators in comparison to the reduced data detail that the EPA would have available to estimate risks and analyze for purposes including Technology Reviews.

15. Reporting HAP and CAP for the Same Emissions Processes

Under the current AERR relying on voluntary HAP reporting by States, the EPA has observed that some States report CAPs and HAP using separate unit and/or process identifiers for pollutants emitted from the same process. For example, a State could report emissions for a boiler burning oil using process identifier ''1'' to report VOC and process identifier ''2'' to report benzene, when in fact both pollutants are emitted from the same process and therefore should use the same process identifier. Downstream analytical steps that utilize emissions inventories rely on computer processing because of the hundreds of thousands to millions of data records included in point source inventories. The computer software uses the process identifier as one of the unique emissions source identifiers. In this example, the software would treat the VOC and benzene as if they were emitted from two sources at the facility, rather than from a single process for the boiler.

For many uses of emissions inventories, inconsistent process-level identifiers pose no problem, but the situation can create some problems. First, it complicates QA of the inventory, such as identifying whether certain expected pollutants may be missing from processes and ensuring that the inventory includes consistent information across pollutants for the same process, such as the source classification code (SCC). Second, using different SCCs for the CAPs and HAP emitted from the same process (but not reported at the same process) could cause a miscalculation of co-pollutant impacts from emissions controls. For example, when a computer program processes an emissions inventory for control strategy development, that program would not recognize that a VOC emissions control device assigned at the process level should also impact the benzene emissions because benzene is a part of VOC. This problem could occur due to mismatched process identifiers, SCCs, or both. Third, chemical speciation calculations on emissions inventories can be adversely affected by inconsistent process-level reporting, because HAP emissions can be used to improve the chemical species of CAPs for use in models. Using the VOC and benzene example, when the VOC and benzene are reported with different processes, then the computer software could not use the reported benzene to inform the chemical speciation of the VOC from the same process.

To address these considerations, the EPA proposes to include at 40 CFR 51.40(b) a provision stating that when reporting process-level emissions data, States and owners/operators would be required to use the same unit, process, and release point identifiers for all pollutants emitted from the same unit, process, and release point at the facility. Such an approach allows inventory users to better understand the full suite of pollutants for each process, enabling improved ability to consider ancillary benefits or the potential for unintended adverse impacts of controls on co-pollutants from the same process.

To address the recommendations of the SBAR Panel Report, this proposed requirement would not apply to small entities that elect to report HAP emissions as a facility total as per the

[39] See Appendix A, Table A–2 of the Supporting Statement for the Air Emissions Reporting Requirements (AERR) EPA ICR # 2170.09 for this proposal, available in the docket for this action.

proposed accommodations described in section IV.A.12 of this preamble. In this case, small entities would not report HAP at the process level and the need for a process identifier would not apply. Thus, if a facility owned by a small business meets the AERR CAP reporting thresholds, then a State would need to collect CAPs from the small business and report them to EPA. If the State collects HAP on behalf of the same facility in accordance with these proposed requirements, then the EPA is proposing that the State would need to allow the small business to report HAP as a facility total. However, if the State collects HAP on behalf of the facility and the State reporting requirements include mandatory process-level reporting (*i.e.,* going beyond these proposed requirements), then the State would be expected to report the process-level emissions to EPA.

16. Option To Include PFAS as a Required Pollutant

The EPA is considering whether this action should include reporting of per- and polyfluoroalkyl substances (PFAS). PFAS compounds are persistent in the environment and accumulate in body tissues, and exposure to PFAS compounds has been linked to adverse health effects in humans and animals. There are currently no health benchmarks for the inhalation toxicity of PFAS compounds; however, PFAS point source emissions into air can deposit PFAS into nearby drinking water bodies. The EPA has derived chronic, noncancer reference doses (RfD) for oral exposure to perfluorooctanoic acid, perfluorooctyl sulfonate, GenX, and perfluorobutane sulfonate, with assessments for several additional PFAS compounds in progress. While PFAS are not currently HAP, current evidence suggests a need for better identification and characterization of PFAS point source emissions in air.

The EPA's 2021 PFAS Strategic Roadmap tasked the Office of Air and Radiation with building the technical foundation to address PFAS air emissions, in part by identifying PFAS sources and developing monitoring approaches for stack emissions. Certain PFAS were added to the TRI chemical list under section 7321 of the National Defense Authorization Act (NDAA) for Fiscal Year 2020. The NDAA sets the reporting threshold for individual PFAS compounds at 100 pounds (*i.e.,* 0.05 tpy). As previously described for HAP, TRI does not provide the level of detail needed for detailed modeling for PFAS.

EPA also is considering the limitations in our understanding of PFAS. For example, measurement methods are unavailable to measure many of the individual compounds making up the collective group of PFAS compounds. While the EPA continues to develop additional measurement methods and more such methods will be available over time, they are not available currently. Additionally, toxicity data are available for only a handful of compounds in this group currently, but ongoing EPA work in this area is expected to provide additional toxicity data in the future. These limitations would need to be accommodated by any regulations concerning the reporting of PFAS. For example, while the EPA has done risk analysis to support the threshold levels for reporting HAP (described in IV.A.8 of this preamble), the EPA does not, at this time, have sufficient PFAS and risk data to use a similar approach for PFAS. The Agency must therefore find another approach to propose reporting thresholds for PFAS if it were collected under this subpart. As with other pollutants as described in sections A.4 and IV.I.6 of this preamble, EPA is proposing that owners/operators would not need to measure PFAS emissions if measurements were not already available. Rather, owners/operators would be required to use PFAS source measurements for annual emissions reporting purposes when available and use estimation techniques for reporting when measurements are not available.

Given these considerations, the EPA seeks comment on the following ''PFAS Option'' for how the Agency could include PFAS reporting requirements in a final action. Regulatory text to implement this option is described and included here in the preamble. First, the title of proposed 40 CFR 51.12(b) would be changed to ''Hazardous air pollutants and Per- and Polyfluorinated Substances.'' Second, EPA would include at the end of proposed 40 CFR 51.12(b)(1) ''and PFAS as listed in Table 1E to Appendix A of this subpart.'' The EPA would additionally add Table 1E to list the PFAS subject to reporting, consistent with the PFAS list included as part of the TRI. The EPA would further add paragraph (3) to proposed 40 CFR 51.12(b) to read ''For point sources other than major sources, reported PFAS must include any pollutant listed in Table 1E to Appendix A of this subpart when the annual actual emissions of that pollutant or pollutant group is greater than or equal to the PFAS reporting threshold.'' The threshold would be 0.05 tpy of total emitted PFAS-based on the TRI requirements set by Congress.[40] Finally, the EPA would change proposed 40 CFR 51.15(1) to read ''If the EPA has approved a HAP and PFAS reporting application as per § 51.1(d)(2) and § 51.1(d)(3) of this subpart, a State must report emissions of HAP and PFAS consistent with § 51.12(b) and (c) of this subpart. A State may report one or more HAP or PFAS voluntarily through the 2025 inventory year and may not report HAP or PFAS without an approved application starting with the 2026 inventory year.''

The EPA recognizes that aligning with the TRI requirement sets a reporting threshold for the purposes of the AERR that uses the same value for a different purpose, because the TRI reporting threshold is based on single PFAS manufacturing, processing, and otherwise use of the given PFAS and therefore may not capture emissions from sources with cumulative PFAS emissions in air greater than or equal to 0.05 tpy. Nevertheless, this PFAS Option, if included in the final rule, would set an air emissions reporting threshold at the 0.05 tpy level.

By proposing this threshold for the AERR, the EPA is aligning the thresholds as best as possible to reduce complexity and burden. The EPA's proposed approach for the AERR is a less stringent threshold than the TRI threshold because facilities that manufacture, process, or otherwise use PFAS would likely not emit all of that material to the air. As such, the EPA is not adding any burden on facilities to recognize that they may need to report to the AERR, but rather to estimate their PFAS emissions at the level of detail proposed. Collecting PFAS emissions data using these proposed requirements could be a step towards meeting OAR's goals from the EPA PFAS Strategic Roadmap. The EPA is soliciting comment on the PFAS option for including mandatory reporting on PFAS in the final rule.

B. Collection of Emissions From Point Sources Not Reported by States

The EPA's mission includes protecting human health and the environment for the entire population, and emissions inventory data are a foundational piece of such work. To meet this mission, the EPA intends for the NEI to be a complete accounting of emissions from all facilities that meet the point source reporting thresholds defined by this subpart; however, this objective cannot be met when certain

[40] See Section 7321 of the National Defense Authorization Act for Fiscal Year 2020, Public Law 116–92 (Dec. 20, 2019). There, the threshold for reporting is expressed as 100 pounds which is equivalent to 0.05 tons.

facilities are not included. Furthermore, the communities near such facilities may not have equitable access to emissions data about those facilities when compared with other communities. The EPA cannot account for the impacts of those sources on their communities without the same detailed emissions data as is available for other sources. The EPA has identified cases in which point source emissions are not included in the NEI, even though their PTE or actual emissions exceed the CAP reporting thresholds in the current AERR. In all cases, the EPA proposes that owners/operators would report both HAP and CAP data to the EPA under this subpart. The HAP reporting provisions described in section IV.A of this preamble apply to such owners/operators; therefore, this section addresses several cases where CAP emissions would also need to be reported and clarifies reporting requirements for facilities operating in Federal waters.

The EPA is proposing regulatory revisions to address these issues for two reasons. First, the EPA created the NEI program using input from many stakeholders and is considering updates to the AERR based on additional input. For example, the EPA Regional offices have noted the lack of emissions data in some areas of Indian country and the resource challenges that some tribes have, which make it difficult for a tribe to apply for TAS or to collect emissions data. Regional offices adjacent to areas of Federal waters with offshore oil activity, fish processing ships, deep water ports, and wind turbine construction have also noted the lack of emissions data for those activities. Second, the cases of missing facilities described above impede the ability of the Agency to meet its mission because it does not have the foundational data about emissions sources necessary to assess impacts from those sources, among other limitations. In addition, since emissions from more sources could be reported because of the HAP requirements of this proposed action, the problem of missing sources could expand if not addressed by this proposal.

1. Facilities on Land Not Reporting Under the Current AERR

As previously described in section III.A.3 of this preamble, some facilities are not reported because the facility is not located within the geographic scope of the State's (defined previously in this preamble to include local agencies and tribes that have obtained TAS for submission of emission inventories) implementation planning authority. This can occur, for example, for a facility that operates within an Indian reservation for a tribe that has not obtained TAS for submission of emission inventories.

States may not report certain other facilities when EPA issues a Federal permit, even though the facility is located within the geographic scope of a State's implementation planning authority. When the State has developed its emissions inventory collection program based on only those facilities for which the State issues operating permits, the State or local agency might assume that it is not obligated to report the emissions because it has not permitted the source.

The primary challenge with collecting data from such sources under the current AERR is that reporting is only provided from States. The reported emissions data are, therefore, somewhat limited to what States collect and report. In the case of facilities that are located on lands outside the geographic scope of a State's implementation planning authority and are rightly not reported by a State, the current AERR structure does not provide a mechanism for collecting that data.

For facilities that have EPA-issued, rather than state-issued, operating permits, the EPA has evaluated the current AERR to determine if States are correct when they do not report emissions data for these facilities. The existing version of this subpart says at 40 CFR 51.15(b) that ''[e]missions should be reported from the following sources in all parts of the State, excluding sources located within Indian country.'' This language suggests that there is no exemption for sources where the State does not issue an operating permit. Additionally, 40 CFR 51.25 reads ''[b]ecause of the regional nature of these pollutants, your State's inventory must be statewide, regardless of any area's attainment status.'' Further review of the current AERR finds no exemptions for facilities that are not permitted by the State. As a result, the EPA does not need to propose any additional requirements in this action for States reporting CAPs. However, to ensure clarity with regards to the existing requirements, the EPA proposes to add the clarification to § 51.1(c)(1) of this subpart that ''a lack of state permitting for point sources or pollutants associated with them does not exempt a facility or pollutant from being reported by the State.''

In the case of sources missing from the inventory because the facility is located outside the geographic scope of a State's implementation planning authority, the owner/operator reporting approach of this proposed action, described in section IV.A.5 of this preamble, already provides for reporting HAP and incidental CAPs directly from owners/operators of those facilities. This requirement has not been previously included in the AERR. To resolve the problem of missing sources from the NEI, the only additional requirement needed in this proposed action would be to require owners/operators to report CAP emissions to the EPA for facilities that meet the CAP reporting thresholds in Table 1A to Appendix A of this subpart, and that are within Indian country where not already reported by a tribe or State.

The EPA is also considering those owners/operators of certain sources located within an Indian Reservation in Idaho, Oregon, and Washington who must register and report certain emissions data to EPA Region 10 under 40 CFR 49.138. This regulation is part of a set of regulations that have been incorporated into Federal implementation plans for 39 Indian reservations for those three States. The set of regulations is known as the Federal Air Rules for Reservations (FARR) in Idaho, Oregon, and Washington. The EPA has proposed revisions to the FARR on October 12, 2022 (87 FR 61870), and the EPA has also considered these proposed changes in relation to the proposed requirements of the AERR. The current requirements specify at § 49.138(b) that it applies to ''any person who owns or operates a part 71 source or an air pollutant source that is subject to a standard established under section 111 or section 112 of the Federal Clean Air Act.'' The rule also applies to other owners/operators of air pollutant sources including sources that have a PTE of 2 tpy or more of any air pollutant, except for sources meeting criteria for a significant list of exemptions.

Under the current and proposed FARR registration rule, the owners/operators subject to the requirements of § 49.138 must register their air pollution source with the Regional Administrator of EPA Region 10 (initially and annually) with specific requirements for information to be included in such registration. The provision for registration includes reporting of information to the Regional Administrator that is very similar to the facility inventory and annual emissions reports included in this proposal. Emissions reporting under § 49.138 is limited to Particulate matter, PM_{10}, $PM_{2.5}$, SO_X, NO_X, CO, VOC, Pb, NH_3, fluorides (gaseous and particulate), sulfuric acid mist (H_2SO_4), hydrogen sulfide (H_2S), total reduced sulfur (TRS),

and reduced sulfur compounds, including all calculation for the emissions estimates. The requirements include specific provisions, similar to section IV.A.6 of this preamble, that specify the priority of which emissions estimation approaches should be used. This existing rule requires additional activities, the specifics of which are not critical to this preamble. While the current rule does not include any specific electronic submission or formatting requirements, for the past 7 years sources have been voluntarily submitting their registration and emissions reports through an electronic reporting system called the FARR Online Reporting System (FORS). The revisions proposed to 40 CFR 49.138 included requiring electronic reporting via FORS.

In comparison to the requirements of this proposal, 40 CFR 49.138 impacts the same major sources within the affected Indian country. In addition, 40 CFR 49.138 would impact some of the same non-major sources covered by this proposal because the 2-ton PTE reporting threshold in that rule is much lower than the major source PTE thresholds for CAPs and actual emissions thresholds for HAP in this proposal. Without creating a limited exception within this proposal, those sources would have duplicative requirements since many of the pollutants required in that rule overlap with pollutants the EPA is considering requiring under this subpart. Lastly, there are differences in the pollutants being reported between 40 CFR 49.138 and this proposal because (1) this proposal does not include reporting of emissions of fluorides, H_2SO_4, H_2S, TRS, or reduced sulfur compounds, and (2) this proposal includes many more HAP than are required under that rule.

As a result of these considerations, this action proposes to require owners/operators of facilities located within Indian country and not being reported by a tribe or State to report all CAPs directly to EPA when the PTE or actual emissions of one or more such pollutant exceeds the reporting thresholds in Table 1A to Appendix A of this subpart. This requirement is complementary to the previously described HAP reporting requirements. For facilities meeting the CAP PTE thresholds, owners/operators would need to report all CAP pollutants and the incidental CAP requirement would not be relevant to those facilities.

To avoid unnecessary burden for owners/operators of facilities for which emissions data must be reported to the EPA under 40 CFR 49.138 as described above, the EPA also proposes that certain owners/operators would be exempt from the requirements of this subpart for reporting emissions of any pollutants already being reported under 40 CFR 49.138. The EPA additionally proposes that owners/operators in that situation may, at their option, report such exempt pollutants to the EPA electronic reporting system along with any information that is required to be reported under this subpart. The limited exemption to the AERR requirements would only apply to data that are already being reported to the EPA under 40 CFR 49.138 for facilities on Indian reservations in Idaho, Oregon, and Washington. If a facility is subject to requirements in the AERR and 40 CFR 49.138, then the owner/operator of that facility would still be required to report under the AERR for those data that are not reported under 40 CFR 49.138.

While the proposed approach avoids some duplication of burden, the EPA recognizes a different approach could further reduce duplicative reporting. The EPA intends to adapt CAERS so that it would allow emissions reporting to the EPA through CAERS to meet the compliance requirements of 40 CFR 49.138. To do this, the EPA would ensure that all elements of 40 CFR 49.138 would be met as part of electronic reporting via CAERS. Once EPA develops and provides a CAERS compliance approach for owners/operators to meet reporting requirements of 40 CFR 49.138, EPA expects that CAERS would replace the current FORS data collection system.

2. Facilities Within Federal Waters

Under the current AERR, States are not obligated to report emissions from offshore facilities operating in Federal waters because States generally do not have jurisdiction over such sources. The EPA has jurisdiction over certain air emissions activities within Federal waters, including OCS sources subject to regulation under CAA section 328. To address this gap in emissions data, the EPA is proposing provisions to address: (1) which owners/operators of facilities in Federal waters would need to report, (2) what data would need to be reported, and (3) how that data should be reported. The EPA is requesting comment on whether these reporting requirements would be duplicative.

First, regarding which owners/operators operating in Federal waters would report under this proposed action, the EPA is aware that many facilities already report emissions data to the Bureau of Ocean Energy Management (BOEM), which in turn reports these data to EPA. To avoid such facilities being subject to AERR requirements, the EPA proposes at § 51.1(a)(2) that owners/operators would be required to report for facilities that operate within Federal waters, including (1) deepwater ports subject to CAA requirements under the Deepwater Port Act, and (2) OCS sources as defined in CAA section 328(a), with the exception of: owners/operators of facilities that are regulated under 43 U.S.C. 1331 *et seq.* (the Outer Continental Shelf Lands Act) and that are located (a) offshore of the North Slope Borough of the State of Alaska, or (b) offshore of the United States Gulf Coast westward of longitude 87 degrees and 30 minutes (*i.e.,* offshore Texas, Louisiana, Mississippi, and Alabama).

Second, the EPA is considering which data would need to be reported by owners/operators of these facilities. Many OCS sources and other facilities in Federal waters are subject to the requirements of Federal or State title V operating permit programs that contain emissions reporting requirements and, in some cases, require permittees to annually quantify actual emissions for purposes of calculating permit fees. For those facilities subject to title V emissions reporting and/or emissions quantification requirements, the EPA proposes that owners/operators should use the same approaches to identify the emissions sources of such facilities and to estimate and submit emissions data under this subpart. Emissions sources at such facilities may include portable sources (*e.g.,* drill rigs), operation of units that, if on land, would be stationary sources (*e.g.,* boilers, control devices, chemical processing equipment, refrigeration units), and marine vessels (*e.g.,* engines that power the movement of service vessels within 25 miles of an OCS source, and marine vessel engines used for other purposes when stationary).

In addition, the EPA proposes to require owners/operators of facilities in Federal waters (as described above) to report all CAPs when the PTE or actual emissions of one or more such pollutant exceeds the reporting thresholds in Table 1A to Appendix A of this subpart. This requirement is complementary to the previously described HAP reporting requirements. For facilities meeting the CAP thresholds, owners/operators would need to report all CAP pollutants and the incidental CAP requirement would not be relevant to those facilities.

Third, the EPA is assessing how these owners/operators should report emissions data. In addition to meeting the other point source reporting requirements under this subpart, the EPA proposes a requirement for facilities operating in Federal waters to report emissions using the Federal

waters region codes provided in the EPA electronic reporting system. Because these Federal water regions are extremely large, the EPA expects that most facilities will only operate within a single area, but when portable facilities operate in multiple areas of Federal waters, owners/operators would need to report those emissions separately with different Federal waters region codes.

Lastly, to support this proposed approach, the EPA further proposes the definition of Federal waters to mean those waters over the ''Outer Continental Shelf'' as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

The EPA also recognizes the possibility of duplicative reporting related to any reporting that may be required by permits and/or for assessing title V permit fees. To help avoid duplicative burden, the EPA urges commenters to describe any duplicative burden that this proposal may cause for emissions reporting.

C. Source Test Reporting

To improve the data available to the EPA, States, and sources to estimate emissions, the EPA proposes to require electronic source test reporting (as first explained in section III.A.3 of this preamble) from point sources for certain source tests. This action would require such reporting for source tests already required to be performed, to help improve emissions factors. An emissions factor is a key tool used in the creation of emissions inventories, for example, to estimate air pollutant emissions from a normally operating, point-source process or activity (*e.g.,* fuel combustion, chemical production). An emissions factor relates the quantity of pollutants released to the atmosphere from a process to a specific activity associated with generating those emissions. For most application purposes, emissions factors are intended to represent the average emissions for all emitting processes of similar design and characteristics (*i.e.,* the emissions factor represents a population average). As such, emissions factors provide an emission rate that may be appropriate for use by owners/operators of facilities when site-specific source measurements of an emission process are not available. While greater uncertainty is associated with use of emissions factors as compared to site-specific source measurements, it is nevertheless important to ensure that emissions factors are high quality.

EPA's most recent approach to develop emissions factors has been prepared in response to a review of EPA's emissions factors program by the National Academy of Sciences and EPA's Office of Inspector General. In 2006, that review resulted in the Inspector General report previously referenced in section IV.A.3 of this preamble. As described in EPA's most recent documentation on emissions factor calculation procedures,[41] the EPA revised its emissions factor calculation approach in response to that report. The EPA's emissions factor procedures rely on direct measurement of releases from point source processes or activities (*i.e.,* a sample of the process emissions is collected and analyzed). Hereafter, such measured emissions data from a source will be referred to as ''source test data.'' EPA's progress on improving emissions factors is limited to the available source test data received by the Agency.

As previously described in section IV.A.4 of this preamble, this action proposes to require emissions reporting of annual total HAP from owners/operators. The benefit of this HAP emission collection program, however, depends on the quality of the annual emissions data reported by owners/operators of facilities. The quality of the annual emissions totals depends in part on the availability and quality of the emissions factors, which in turn depend on the availability and quality of HAP emissions source test data.

While the Inspector General report highlighted the lower-than-desired quality of published emissions factors, the EPA has thus far been unable to revise many of these factors and continues to be limited in part by the lack of source test data. This limitation remains despite EPA's efforts to revise its regulatory framework of stationary source emissions reporting to include electronic source test data reporting as a component of industry-specific regulations included in 40 CFR parts 60, 61, 63, etc.[42] The pace of progress on improving these factors to date has been limited in part by the gradual nature of adding industries and pollutants one regulation at a time. In addition, since those regulations address specific pollutants and, in some cases, allow for reporting of emissions of one pollutant (such as filterable $PM_{2.5}$) to serve as a surrogate for other pollutants (such as specific HAP metals), sources do not always conduct tests for, and the EPA does not receive data for, non-surrogate pollutants.

In addition to the recommendations of the Inspector General Report, States have long expressed their concerns with the many missing emissions factors in addition to the low-quality emissions factors included in EPA's AP–42 and WebFIRE emissions factor compilations. These State concerns have been compiled and included in the docket for this proposed action. Despite these concerns, these emissions factor compilations largely remain a foundational piece of emissions inventories. The States and the CAERS application use AP–42 and WebFIRE emissions factor data to support owners/operators of facilities by providing the emissions factors directly within the emissions calculation tools used during emissions reporting. While owners/operators are expected to use site-specific source test data to calculate and report emissions when available and appropriate for that use, the emissions factors are often the only emission rate information available. Thus, improving the quality of the emissions factors is central to improving emission inventory quality overall.

With this proposed action, the EPA is seeking to improve emissions factors to support improved emissions inventories via the proposed collection of additional source test data. The EPA has recently completed the updates to the WebFIRE system that automates most of the emissions factor development processes described by the emissions factor procedures document previously mentioned. As a result of these efforts, the EPA issued its first set of revised emissions factors for public review in November 2021.[43] Now that the development procedure infrastructure is largely completed, the EPA finds that increasing the amount of source test data by obtaining information from the thousands of emissions processes and hundreds of pollutants included for stationary sources in the NEI is a logical progression in emissions factor improvement. By improving emission factors, emissions estimates are improved as well, supporting the needs for high quality data to support EPA's regulatory and non-regulatory activities as described in section IV.A of this preamble.

To assess the feasibility of further collection of source test data and gathering information to design the proposed approach, the EPA is

[41] Recommended Procedures for Development of Emissions Factors and Use of the WebFIRE Database, U.S. EPA, EPA–453/B–21–001, November 2021, *https://www.epa.gov/air-emissions-factors-and-quantification/procedures-development-emissions-factors-stationary.*

[42] A complete list of regulations that require reporting to CEDRI is available on EPA's website at *https://www.epa.gov/electronic-reporting-air-emissions/cedri#list.*

[43] See *https://www.epa.gov/air-emissions-factors-and-quantification/documentation-supporting-draft-and-final-emissions-factors.*

considering (1) whether source test data are readily available or could be readily available, (2) how such data could be collected electronically and efficiently, (3) which existing data would be of interest to the agency, and (4) how to phase in any new reporting requirements.

The EPA is aware that direct measurements of facility or process emissions are conducted for a variety of reasons, including characterizing process emissions and/or control device performance, assessing changes in process or control device operation on emissions, and demonstrating compliance with Federal, State, local, or tribal air regulations. Emissions testing may also be conducted as part of performance evaluations such as relative accuracy test audits (RATAs). Performance evaluations include linearity checks (which measure an instrument's ability to provide consistent sensitivity throughout its operating range) and routine calibrations of continuous emissions monitoring system (CEMS) equipment, which provide emissions data much more frequently than testing. Emissions data from CEMS are mostly used for compliance purposes but can also be used for emissions factor development. The reasons why such testing and evaluation occurs includes both the CAP and HAP aspects of air quality planning and implementation. Thus, these activities are conducted for a larger range of pollutants than would be available from reporting required by regulations under 40 CFR parts 60, 61, and 63, including those that have been updated for electronic reporting and those that continue to require testing and reporting by other means. Based on this information, it appears to the EPA that additional unreported test data are readily available.

To aid owners/operators in planning and reporting the results of emissions tests, the EPA developed the Electronic Reporting Tool (ERT), and CEDRI. Further, the EPA has required their use in the revised regulations previously described. The ERT is used by companies that perform emissions testing for industrial sources and has been in use for over 10 years. As the EPA has promulgated regulations to require electronic reporting with the ERT, it has modified the ERT and CEDRI to make sure that they support the source measurement methods required by those regulations. As a result, the EPA has been collecting source test data for selected pollutants from facilities regulated by those revised rules for many years. The ERT and CEDRI collection infrastructure, in addition to the recently implemented WebFIRE emissions factor calculation procedures, will help ensure an efficient approach for data collection and emissions factor development.

Information collected by the EPA from the companies that perform source measurements for industrial sources supports the idea that electronic reporting for all pollutants via the ERT is commonly supported by these companies. The EPA understands that it would be rare to find any of these companies unfamiliar with the reporting via the ERT. Some of our experience suggests that companies may find it more difficult and more costly to prepare and submit reports in hard copy (*i.e.,* paper test reports) rather than reporting electronically, since much of the data collection process has been made electronic.

The EPA also is considering whether source test data should be reported to the EPA directly by owners/operators or via the States. States currently collect some test data as part of their implementation of source permits and compliance, for example, when States require such tests for their own reviews of emissions from stationary sources. Given this current reporting, it is reasonable to expect that some States may want to provide source test data to EPA. Such an approach might parallel reporting that is currently done for CAP emissions and can be done for HAP emissions. Including States in such reporting could have the advantage of potentially meeting the needs of those States that wish to be intermediaries or review the facility source test prior to it being reported to the EPA for use in emissions factors.

The possible disadvantage of States reporting the source test data could be the added complexity that such an approach may cause. With the existing CEDRI approach currently in place, States have a period during which they may optionally review the source test results and advise the EPA regarding the validity of the source test and any data quality concerns that the State may have. In addition, when current EPA regulations require source tests, they require that data to be reported directly from owners/operators of stationary sources. Any difference that might be proposed from that current approach could have a further disadvantage of causing inconsistencies for owners/operators in how to report source test data. Specifically, reporting under such an approach could depend on whether the requirement to report for a pollutant and process was under any finalized version of this proposed action or under one of the other subparts of 40 CFR that require such reporting. As a result of these significant disadvantages, the EPA expects that any proposed action would be most efficiently and effectively implemented through direct reporting of source test data to the EPA from owners/operators and continuing to allow for State review and comment.

The EPA has additionally reviewed the requirements of the ERT to ensure that the data collected with the ERT would be sufficient for the purpose of generating emissions factors. To be able to use the source test data for purposes of emissions factors, the EPA has identified four additional types of information that are necessary to provide a complete characterization of a unit's emissions in relation to its operation. These are (1) the capacity of the unit being tested, (2) the load of the unit during the testing period, (3) the level of activity of the unit and operating conditions of the unit during the testing period, and (4) process data (*e.g.,* temperatures, flow rates) pertaining to the unit and its control devices during the testing period. All four of these are key components to ensuring emissions factors appropriately represent unit operation. For example, NO_X emission rates from a unit operating at 50 percent load using natural gas with 50 gallons per hour of ammonia injection differ from a unit operating at 95 percent load using fuel oil with 75 gallons per hour of ammonia injection. As a result, correctly computed emissions factors from these separate modes could differ as well. Without the full information, the EPA may not be able to discern the differences in unit operation and incorrectly combine source test data, which could lead to emissions factors erroneously assigned to certain combinations of units, processes, and controls.

As a result of these considerations, the EPA proposes to require owners/operators of point sources to report performance test results and performance evaluations that meet the following conditions: (1) data would only be reported (under this proposed rulemaking) when they are not otherwise reported to the EPA based on regulations listed at *https://www.epa.gov/electronic-reporting-air-emissions/cedri#list; (2) the data are gathered to meet any other EPA or State requirement; (3) the data are supported for reporting by CEDRI or an analogous electronic reporting system; and (4)* the results were not from a project, method, device, or installation (or any component thereof) that was produced, developed, installed, and used only for research purposes. This final criterion

was added to avoid any potential conflict between the definition of confidential data and the treatment of ''emission data'' in accordance with 40 CFR 2.301. More information on the issue of confidential data for this proposed action is available in section IV.H of this preamble.

The EPA is seeking comment on these criteria. Specifically, the EPA would be interested in knowing of examples of tests that meet these criteria, but which do not meet the EPA's objective as described in this section to support emissions factors. If such examples exist, the EPA is further interested in suggestions of how to revise, or supplement, the criteria to avoid collecting such information that does not meet the objective of this section.

Additional aspects of EPA's proposed approach to collect source test data include the following. The proposed reporting, if finalized, would be limited to include source tests and performance evaluations beginning on the effective date provided in the final rulemaking. It would require submission of data via CEDRI, including the four types of information as previously noted: (1) capacity of the unit being tested, (2) the load of the unit, in terms of percent capacity, during the testing period, (3) the level of activity of the unit during the testing period (*e.g.,* input consumption rate, product consumption, heat input, and/or output production rate), (4) operating conditions of the unit during the testing period, and (4) process data such as temperatures, flow rates, pressure differentials, pertaining to the unit and its control devices during the testing period. The ERT would need to be used when it supports the source test or performance evaluation and, in other cases, a spreadsheet-based approach could be required. Finally, each report would need to be submitted by the scheduled date required by the State or Federal action motivating the test. When no such date exists, the report would be required within 60 days of completing the source test or performance evaluation.

D. Reporting for Certain Small Generating Units

With this proposed rulemaking, the EPA seeks to solve long-standing challenges associated with emissions from certain types of intermittent combustion sources. Interest in emissions and ozone formation on high energy demand days (HEDDs) has led the EPA to consider collecting information from sources that operate to offset electricity demand from the electricity grid during these times. The EPA already collects detailed data from EGUs through the Clean Air Markets Program, which requires reporting of hourly data from CEMS as specified by 40 CFR part 75. In addition to these sources, other electricity units including small generating units (less than 25 MW or otherwise not subject to reporting under 40 CFR part 75 or the mercury air toxics NESHAP at Subpart UUUUU of 40 CFR part 63) and backup generators (BUGs) are run periodically both to offset grid-based energy needs at energy intensive facilities and to generate electricity for the grid. These sources may contribute significantly to tropospheric ozone on high-temperature days in some areas, leading to public health concerns. As climate change is expected to result in warmer summers, the use of this distributed generation could increase. While such data are important to better understand the environmental impacts of these sources, the EPA is not currently collecting such data from States or owners/operators.

Without data collection, EPA's understanding of these sources is limited. First, the EPA lacks important details about intermittent activity of these sources. For understanding ozone impacts, the EPA and States have a compelling need to know when emissions occur on a finer temporal resolution than typical annual emissions (*i.e.,* which days). Without such information, past studies [44] have shown that efforts to model HEDDs fail to fully characterize ozone formation on such days.

Second, the EPA has reason to question the emission rates that would be appropriate for estimating emissions from such sources. Existing emission rates (*i.e.,* emissions factors) for all units of any type are based on emission source testing methods that are correctly used during steady State operation of the emission unit to achieve valid emission tests. By contrast, the operation of these intermittent sources means that they are frequently turned on and off, which has an unknown impact on the resulting emissions. As an illustration of the issue, it is common knowledge that engines run more efficiently (thus more cleanly) once they have warmed up. To the extent that units run periodically spend more time in an inefficient State of operation, they would be expected to have higher emissions rates. However, the impact of such operation is not well understood, and the EPA is not aware that it has been quantified.

Over the past two decades, States and multi-jurisdictional organizations have discussed with the EPA the possible importance of intermittent sources on air quality. While some proposals have been put forward to reduce the problem of emissions from these types of intermittent units, the full understanding of the problem has been limited based on lack of available data.

In a 2017 publication, researchers from the University of Wisconsin-Madison linked peak electricity demand to high levels of air pollution.[45] Using data collected from 27 States between 2003 and 2014, the researchers showed that the electricity used to power air conditioners increased emissions of SO_2, nitrogen oxides, and carbon dioxide (CO_2) by an average of almost four percent for each pollutant per degree Celsius increase, above a certain reporting threshold.

While they have received more attention in recent years, emissions from these small generating units have been historically challenging to track, a fact that has contributed to EPA's aim to understand and improve the data in this sector. The EPA recognizes that emissions from small generating units may increase as extreme weather and temperature events are likely to become more frequent.[46] Alongside this potential rise in emissions are increases in public health risks from tropospheric ozone formation, as well as nitrogen oxides and PM emissions.

As a result of past investigations, some States have explored how they can gather information about intermittent sources. For example, the Maryland Department of Environmental Quality (MDEQ) requires that Curtailment Service Providers (CSPs) provide data to the State under COMAR 26.11.36.04.

[44] Northeast States for Coordinated Air Use Management, *High Electric Demand Day and Air Quality in the Northeast,* 2006. *https://www.nescaum.org/documents/high-electric-demand-day-and-air-quality-in-the-northeast/final-white-paper-hi-electric-demand-day-06052006.pdf.* Ozone Transport Commission, Stationary and Area Source Committee, HEDD Workgroup, *White Paper: Examining the Air Quality Effects of Small EGUs, Behind the Meter Generators, and Peaking Units during High Electric Demand Days* 2016. *https://otcair.org/upload/Documents/Reports/HEDD_Workgroup_White_Paper_Final_2016-11-10.pdf.* Ozone Transport Commission, Stationary and Area Sources Committee, *Strategies to Reduce Emissions of Nitrogen Oxides on High Electric Demand Days,* 2017. *https://otcair.org/upload/Documents/Meeting%20Materials/OTC_HEDD_Workgroup_Strategies_Whitepaper_Final_Draft_08282017.docx.*

[45] Abel et al., *Response of Power Plant Emissions to Ambient Temperature in the Eastern United States,* Environ. Sci. Technol., 50, 10, 5838–5846, 2017. See also *https://www.acs.org/content/acs/en/pressroom/newsreleases/2017/may/keeping-cool-in-the-summer-leads-to-increased-air-pollution.html.*

[46] U.S. Global Change Research Program, *Fourth National Climate Assessment, Volume II, Impacts, Risks, and Adaptation in the United States,* Chapter 4: Energy Supply, Delivery, and Demand, 2018. *https://nca2018.globalchange.gov/.*

CSPs are entities that administer electricity demand response programs by working with companies that use and generate electricity to decrease electricity demand by deploying capacity from smaller units like BUGs that can reduce demand from the electricity grid. The Maryland regulation requires CSPs to report information about the units they administer, including unit capacity, manufacturer, and model as well as the types of fuel used and information about the days and hours of operation. It also sets an exclusionary threshold based on output. It excludes emergency stationary engines with an output less than 500 horsepower (hp) and excludes non-emergency stationary engines with an output less than 500 hp that serve as a primary source of power for agricultural equipment or industrial equipment. While this information only partially addresses the needs for the State, discussions with MDEQ identified that the information collected has helped the State understand the scope of the intermittent unit emissions. This example provides some evidence that partial data collection can inform the larger temporal patterns in emissions associated with intermittent sources.

The EPA is also aware that federally enforceable regulations can limit the ability of source operators to deploy older or more polluting engines. Examples of such regulations include the NESHAP for Reciprocating Internal Combustion Engines (RICE) in 40 CFR part 63, subpart ZZZZ; the New Source Performance Standard (NSPS) for Stationary Compression Engines in 40 CFR part 60, subpart IIII; and the NSPS for Stationary Spark Ignition Engines in 40 CFR part 60, subpart JJJJ. These rules define allowable emission rates and, as a result, limit the types of sources that can be deployed. These rules do not restrict use of units that meet the emissions standards, which can be deployed for electricity generation during HEDD periods, and these rules do not collect information that would help understand the impact of such sources.

The EPA also is considering the uncertainty associated with emissions rates from units that are operated intermittently, as previously described. This consideration is important because it impacts whether the EPA would require reporting of emissions values and/or other emissions data such as fuel use and unit types. If emission values (*i.e.,* mass of pollutants) were provided alone, then whatever emissions rates were selected by data reporters would be the basis for the emissions. In this case, the EPA would not be able to adjust the emissions based on any improved emissions rate data that may become available. Additionally, with emissions values alone, the EPA would not be able to explore the impact of different emissions rates on the ability of the data to better predict modeled air quality. Thus, based on the limitations that would be imposed, the EPA is proposing to collect information on fuel use or heat input and unit types.

The EPA is considering all the factors described above and has weighed the importance and long-standing need for the data to understand ozone formation in some areas, the uncertainty associated with emissions rates, and the potential burden of the various options available. The EPA is considering the potential burden that could be caused by requiring emissions or activity data reporting from States from small generating units used to reduce electricity demand or meet that demand during peak energy needs. Any requirements imposed on States by this proposed action could in turn be imposed by States on their sources for collection by the State and subsequent reporting to EPA. The EPA also recognizes the great deal of uncertainty about units associated with HEDDs and has included in this preamble one proposed approach, one additional option, and 2 additional alternatives that the agency is considering.

Based on these considerations, the EPA is proposing requirements for some States and certain owners/operators. First, the EPA proposes that States would report facility inventory information (*e.g.,* unit characteristics) and daily fuel use or heat input data for units that operate during the year at point sources (as defined by this proposed action) and that meet specific criteria. Those criteria are (a) the hourly or daily emissions and activity data from the unit are not otherwise reported to the EPA, (b) the unit was operated to offset electricity demand from the electricity grid, and (c) the unit is located at a facility that operates on land. This approach is intended to collect data for the appropriate units and avoid duplication with any reporting done as part of other EPA requirements. By limiting reporting to those small generating units for which hourly or daily heat input data are not otherwise reported, EPA would ensure that data reported to the EPA to comply with 40 CFR part 75 or other regulations would not need to be re-reported under the AERR.

Second, the EPA proposes to require owners/operators of facilities located outside the geographic scope of States' implementation planning authority to report for units at point sources that meet the same criteria as the units that would be reported by States. For the purposes of this preamble, the units covered by the proposed requirement just described will be referenced as ''small generating units''.

Third, the EPA proposes a definition of small generating units to mean ''any boiler, turbine, internal combustion engine or other unit that combusts fuel on an occasional basis to generate electricity for the electricity grid or for on-site use by a facility other than for emergency use.'' Because the proposed reporting requirement would not cover any units already reporting to the EPA and would cover units only at point sources that are already being reported to EPA, the EPA does not believe that the definition needs to specifically identify by size which units are ''small,'' since larger units are presumably reporting because of their size based on other regulations.

The data elements that the EPA proposes would be reported include identification of each small EGU used to offset electricity demand from the electricity grid for a given year; the unit's rated capacity in hp and kilowatts; the unit's manufacturer and model; the installation date of the unit; source classification code (including the fuel type); and for each day of operation: the emissions reporting period, reporting period type as daily, date of activity, fuel used or heat input and associated units of measure, and optionally the start hour and end hour of operation. These small generating units would need to be reported to reflect the data fields included in proposed Table 2A to Appendix A of Subpart A and Table 2C to Appendix A of Subpart A. Finally, the EPA proposes that this reporting would start with the 2026 inventory year and that the deadline for such reporting would be one year and 15 days after the year after the inventory year (*e.g.,* the deadline for reporting 2026 emissions would be January 15, 2028).

Under these proposed requirements, States would have the flexibility to either collect the data from the CSPs (where such entities exist) or from the owners/operators of facilities that operate small generating units. This implementation could include other entities, such as large energy companies, that also have agreements with other companies to deploy small generating units periodically under certain circumstances. The EPA expects that collecting that data from the CSPs or other types of companies with demand reduction agreements would provide the lowest burden option for States.

Additionally, the EPA expects that the CSPs and other companies aggregating demand side reductions could be in the best position to gather from the owners/operators of small generating units the data that needs to be reported as part of their normal operations. This design could reduce burden because the number of CSPs and other companies with demand reduction agreements within a State could be far smaller than the number of facilities with small generating units that operate in any particular year.

The proposed requirements would require activity data for small generating units in addition to the State's best estimate of annual emissions for small generating units that are already required under the current AERR and proposed to continue to be included under this action. The EPA recognizes the challenges of estimating such emissions based on the measurement challenges for startup/shutdown conditions noted above regarding emissions factors.

The EPA is proposing these requirements in part based on the idea that by obtaining data from some of the small generating units (*i.e.,* those operating at point sources as defined by this proposal), enough information could be collected about temporal patterns to allocate emissions from the remaining small generating units. Those other emissions from small generating units are currently covered in the NEI as part of the nonpoint county-total emissions based on overall State fuel consumption and available emissions factors. Under the proposed requirements, the EPA would collect more limited data from point sources as defined and extrapolate that the temporal patterns apply to the portion of nonpoint fuel combustion data associated with small generating units.

The proposed requirements have at least two limitations. First, since the nonpoint fuel combustion emissions are based on standard emissions factors, they may not accurately reflect startup/shutdown related emissions from such units. Second, the proposed requirements are incomplete because they limit the units required to be included to only those units at point sources as defined by the proposed point source definition in this action. Many BUGs and other units deployed for demand reduction are located at retail establishments that are unlikely to be major sources (because of low emissions) and are specifically excluded from the definition of non-major sources by the NAICS codes the EPA is proposing to be included in this proposal. Not having all units would create two challenges: (a) the EPA would need to determine with some other data source what portion of the nonpoint fuel combustion should be temporally allocated based on the data collected because this proportion may vary with each year in relation to temperatures and the deployment of units for demand reduction; and (b) the incomplete set of units also would not include the spatial detail that would otherwise be achieved by having coordinates for all individual units operated to meet peak energy needs.

As part of the proposed requirements described above and to avoid the associated limitations, the EPA is co-proposing and requesting comment on one option and two alternatives. None of these options addresses the limitation of emissions factors during startup and shutdown, but they do either collect activity data from more units or limit the data collection to reduce burden. The proposed requirements described above are referenced below as the ''preferred alternative.''

The EPA proposes an option to require a one-time collection from all small generating units for a single year. The EPA is considering including this ''One-time Collection Option'' in addition to the preferred alternative and is also considering whether to use the One-time Collection Option as the sole approach in any final action. To accomplish the one-time collection, the EPA would require CSPs and other operators or aggregators of small generating units (not States or owners/operators of point sources) to report to the EPA the same data elements as are described in the preferred option (*i.e.,* the facility inventory and daily fuel use or heat input) for either the 2024 or 2025 inventory year. The EPA would select which year in the final rule. The deadline for such reporting would be October 31 the year after the inventory year (*e.g.,* for 2024 reporting, October 31, 2025).

The One-time Collection Option would help the EPA to determine whether and how to implement an annual reporting requirement, and it could inform the development of some predictive model to avoid a need for annual reporting. For example, a one-time study could allow for correlation between the one-time data and other routinely available data (such as temperature, fuel prices, and electricity prices), such that the EPA could use such other data to calculate emissions from intermittent generation for subsequent emission inventory years. A one-time collection could also provide locations of units included in CSPs to improve spatial allocation of nonpoint emissions to the model grid cells for air quality modeling. In addition to providing more detailed data, an advantage of a one-time collection requirement is that it would have a lower burden on the CSPs than would an ongoing requirement. The disadvantage of a one-time requirement is that a correlation may not be found, and thus this rule would need to be further revised, delaying the receipt of such information by the EPA and States.

The EPA is also co-proposing and requesting comment on two alternative approaches that would replace the preferred alternative. With Alternative D2, the EPA proposes to expand the preferred alternative to require data from States for all small generating units that are not otherwise reported to the EPA rather than only those at point sources. Alternative D2 would not expand the point source definition in a way that would require reporting of annual emissions. Rather, Alternative D2 would require States to report the facility inventory information, estimated annual emissions, and daily activity data as described under the proposed approach, but only for small generating units. Other point source requirements for facilities with such units would apply only for those facilities that meet the point source definition included in this proposal. For example, a retail facility that is excluded because of its primary NAICS code for HAP reporting and otherwise does not emit pollutants at levels required to be reported as a point source would only need to be included in the State report for the small generating units that operated during the reporting year. If the EPA finalizes Alternative D2, the same State deadlines for point source reporting would apply. Under this alternative, no adjustment would be made for owners/operators of facilities within Indian country. Alternative D2 has the advantage of collecting more detailed data but the disadvantage of higher burden on States and the entities from which they collect that data.

Finally, the EPA is co-proposing and requesting comment on Alternative D3, which would reduce burden on States relative to the preferred alternative by requiring reporting about small generating units from only those States that have ozone non-attainment areas and those States linked to downwind non-attainment areas as would be identified in whatever transport regulatory action has most recently been promulgated by the EPA on January 1st of the emissions year. One disadvantage of Alternative D3 is that the EPA does not currently have data about whether the small generating units within non-

attainment areas are the only ones that are important in terms of impacting air quality within non-attainment areas, because the EPA does not have data on any such units irrespective of their location. In general, the EPA is aware that emissions sources outside of non-attainment areas can contribute to ozone within those areas, and small generating units could be a type of source that could contribute. In the preferred alternative, emissions data from small generating units at all point sources would be collected, and the EPA could use that information to determine which small generating units contribute to higher ozone concentrations within non-attainment areas. The advantage of Alternative D3 is that it would decrease the number of potential States required to report from 50 to 23, the number with ozone non-attainment areas, plus States linked to downwind non-attainment areas. Alternative D3 would have the same requirements for the types of units and the data fields to report as the preferred alternative but would limit the States and owners/operators that would need to report.

E. Provisions for Portable and Offshore Sources

As previously noted, the EPA intends for the NEI to include a complete accounting of point sources that meet the emissions reporting thresholds included in this proposed action. The current AERR does not clearly address some atypical cases, which include portable facilities (*e.g.,* asphalt plants) and offshore sources (*e.g.,* oil rigs, drilling engines on barges, windfarm installation vessels) within State waters. This action seeks to address both the definition of a portable facility and to ensure that such sources are reported to the NEI.

While portable facilities can move, they are not necessarily considered with the nonpoint or nonroad mobile source portion of the NEI. Under the current AERR, when these portable facilities meet the point source reporting threshold, States can report them as point sources without specific location information. In reporting portable facilities, States use a placeholder county code of ''777'' to indicate that those sources move around a State throughout the year. In this way, no location coordinates are then required for reports of portable facilities. The problem with the current approach is that the location of emissions is not available for modeling the air quality impacts of the source. If a portable source remains in a single location for a long enough period, then it could conceivably have impacts on local air quality and States. The EPA, States, and the public may, therefore, benefit from location information to properly account for the facility.

Some States are currently reporting atypical sources to the NEI, but it is not clear that all such sources are being reported from all States. Some of these facilities have emissions that exceed the point source PTE CAP reporting thresholds, and with new HAP reporting thresholds that may be adopted based on this proposed action, additional portable facilities may need to be reported. A robust offshore source inventory of drill rigs is available for facilities operating in Federal waters under the jurisdiction of the Bureau of Ocean Energy Management, and the EPA is proposing in section IV.A.B of this preamble to collect data from facilities operating in Federal waters under EPA jurisdiction. These facilities, however, do not include facilities operating in State waters (*e.g.,* oil platforms, drilling engines on barges, construction activities, wind turbines). Emissions from these sources should be reported by States as point sources when such sources exceed the point source reporting thresholds. Finally, reporting emissions for portable facilities requires a specific treatment of county codes and location information, and the requirements for that type of reporting are not explained in the current AERR requirements.

Based on these considerations, the EPA proposes to clarify that both portable facilities and offshore facilities within State waters should be considered when States determine which sources should be reported to meet point source requirements of this proposed action. The EPA also proposes to add a definition of portable facility to mean ''a facility that does not have a fixed location such as an asphalt plant or portable land or sea-based drilling rig.'' In addition, this action proposes to include an explanation to use county code ''777'' to reflect the lack of county specificity when such sources are moved among counties over time. Facilities reported in this manner would still need to be reported for their emissions within a State. This proposal also includes an exception for the requirement of submitting facility air centroid coordinates or for release point coordinates for portable facilities.

The design of this proposed action leaves open the possibility that the owner/operator of a portable facility may need to report emissions when the annual emissions of the facility exceed any of the emission reporting thresholds used to define point sources. Two special cases for reporting could arise from these scenarios. All cases that reference operations within States and Indian country include operations within any waters associated with those areas (*e.g.,* State waters).

First, the EPA proposes that portable facilities operating solely within Indian country where a tribe or State does not report CAP or HAP emissions data would be required to report emissions and to designate the tribe in which it operated using the EIS Tribal Code provided by EPA. In this case, owners/operators of a portable source would follow the same reporting requirements as for stationary facilities. For example, this proposed requirement would mean that owners/operators of portable sources would report CAP and HAP directly to EPA when neither a tribe nor a State reports that emissions data.

Second, the EPA proposes a requirement that portable facilities operating across State and/or Indian country boundaries would report directly to the EPA any emissions not reported by those States and/or tribes. Relevant CAP or HAP emissions would need to be reported by State and/or by tribe per other requirements of the rule. The EPA proposes that owners/operators could optionally include the specific time periods during which they operated in each region with their emissions reports. This case includes both tribes that do not report CAP or HAP and States that do not report HAP.

This ''base alternative'' approach as just described would not resolve the potential issue of portable facilities that remain in a single location for a period that could impact local air quality. It also does not resolve the temporal aspect of such emissions. The information currently available to the EPA is that examples of such sources are not widespread enough to warrant the additional complexity associated with reporting a portable facility's emissions at multiple locations and/or multiple time periods. However, the EPA continues to seek information on the potential for portable facilities to adversely impact local air quality, what type of information would be useful to collect to better understand any air quality issues caused by such sources, and how the EPA could most effectively collect information from such sources.

The 2017 NEI includes emissions reported by States from more than 1,300 portable facilities such as asphalt plants. While most of these facilities are reported to emit actual emissions levels below the CAP PTE reporting threshold, some of these facilities included significant emissions for specific pollutants. For example, 41 portable facilities have between 20 and 177 tons

of NO_X, and 5 facilities have between 20 and 243 tons of VOC. Two portable facilities contributed more than the proposed emissions reporting threshold of Pb emissions (0.074 tons). While these amounts are small nationally, they could significantly impact the local air quality if the source was stationary for a significant period within a year.

Because the EPA recognizes that such portable sources, if stationary for long enough, could be an important local source, the EPA is proposing an option that may be included in the final rule, but is not currently included in the base alternative. The EPA is proposing that in addition to the base alternative, this ''Portable Definition Option'' would include a categorization of portable facilities to put them into two groups: (1) those that report as portable facilities as in the base alternative and (2) those that report as stationary sources. The EPA proposes that the two categories of portable facilities would have different reporting requirements as follows. Facilities would be defined as portable and required to report as portable sources only for periods when the source remains within a 1-km radius for fewer than 30 days. Facilities would be defined as stationary and be required to report as a stationary point source when the facility operates within a 1-km radius for 30 days or more. This Portable Definition Option would require the point source report to include the county identifier and coordinates of the centroid of its operations during each time period. The EPA would provide additional data formats that would support a requirement for States and owners/operators to provide portable facility locations for each 30-day (or more) period using the start and end dates of operation within a 1-km radius (*i.e.,* a single location could be provided associated with each 30-day period). The EPA urges commenters who have information about such portable sources to comment about the advisability of EPA's proposed requirements under the Portable Definition Option.

The EPA is also considering Alternative E1, that would replace the base alternative described above. Rather than require States to report portable sources as point sources, Alternative E1 would require States to report portable sources aggregated as county totals but include monthly emissions rather than annual emissions as in the base alternative. This alternative would allow States to track and aggregate all such portable facilities but report only by county and month. While the tracking of emissions from such sources would still be needed by States on a facility-specific basis, this option reduces the reporting complexity for States. For Indian tribes, this option would work in conjunction with the additional proposed requirements described in section IV.L of this preamble to report emissions from their boundaries disaggregated by the portion of their lands overlapping each county. This alternative would not be available to owners/operators. If the EPA were to adopt Alternative E1 in any final action, the EPA proposes that owners/operators would still be required to report as described in the base alternative. The EPA urges commenters to provide their ideas on the advisability of this alternative.

F. Reporting Deadlines for Point Sources

In this proposed action, the EPA is proposing the dates by which point source requirements would be required to be met for States and owners/operators that are reporting emissions directly to EPA. We are also considering the interaction between the two types of deadlines. In this section, we discuss and propose State deadlines first followed by deadlines for owners/operators.

1. Deadlines for States for Point Sources

The current AERR requires States to report point sources by December 31 of the year after the inventory year. Thus, for the 2020 inventory year, the current State deadline is December 31, 2021. In the past, the EPA has used its enforcement discretion to allow States a 2-week grace period to complete their emissions because of the holiday season in which the current deadline occurs. In this action, the EPA proposes to include what is now an unofficial grace period in the current AERR deadline for the 2023 through 2026 inventory years by setting the deadline to January 15 that occurs 1 year and 15 days after the end of the inventory year. For example, the deadline would be January 15, 2025, for the 2023 emissions inventory year. The EPA also proposes a phase-in to earlier point source deadlines starting with the 2027 inventory year based on a variety of considerations described in this section.

While most States receive data from point sources between March and October, most States do not start submitting point source emissions for the previous year until December. As a result, any problems that the States encounter in reporting their emissions in December often cannot be resolved in time to meet the current AERR deadline. In more rare cases, States have changed their software for handling emissions data, and it is either not working properly or not completed in time for States to meet regulatory deadlines.

During the time between when States collect point source emissions data and when it is submitted, the States' role is to perform QA on emissions data, resolve any quality issues by having owners/operators resubmit their emissions, format the data for submission to EPA, and complete the EPA submission while resolving any QA errors sent by EIS. States also assess fees on the owners/operators of point sources based on emissions levels. The EPA is not aware of all the challenges that States face to complete these tasks but is aware of some of them as described next.

States can have difficulty meeting any changes made to the EIS data elements or formatting requirements. For example, even with 18 months advanced notice, webinars, repeated reminders, and frequent newsletters that included information about changes to the EIS data format for controls, many States were left unaware of those changes as late as the fall of 2021 when the data were due in just a matter of weeks. The EPA recognizes that, even if States are working to ensure they meet any changes to the reporting approach, they may have limited time and resources to do so. States have also expressed concerns with their information technology departments when those departments are responsible for maintaining and revising State emissions reporting systems.

Despite the challenges meeting the existing deadline, the needs and expectations for faster data turnaround continue to grow. While the public has become accustomed to hourly updates on ambient air quality, the emissions data lags years behind. The EPA's uses of the NEI all benefit from more timely receipt of data because the EPA can then use it to inform regulatory and non-regulatory analysis and decisions. With the current AERR deadline, the States have 1 year to submit their point source data, which is two-thirds or more of the time between the end of the inventory year and the first NEI point source release. The EPA has reduced the time it takes after receiving the data to combine State data with other data sources, quality assure the data, and augment the data to fill gaps or exclude flagged data that have not been addressed by States. While EPA continues to streamline its point source data processing efforts, only so much more improvement can be expected when States take the majority of the overall time it takes to release the inventory. By considering earlier State reporting deadlines, the EPA hopes to

achieve further improvement in timeliness of the point source NEI.

Other EPA emissions inventory programs collect data directly from owners/operators, and their deadlines are earlier. For example, the TRI program collects data for a given reporting year from owners/operators by July 1 of the following year,[47] releases a preliminary dataset by the end of July, and publishes the National Analysis dataset a few months later, typically mid- to late-October. The data are published from TRI before the NEI data are even due to be submitted by States. Another example is the GHGRP, which collects data from owners/operators by the end of March and publishes its results by October or November.[48] While the States add value to the NEI reporting process by reviewing emissions data from point sources, the current approach requires more time than may be warranted.

The current timing of the NEI is unsatisfactory to EPA, some States, and the public. While everyone wants emissions data sooner, the collection, review, and publication of data for the NEI takes time, and resources are not always sufficient. Decisions and environmental improvements based on new information are delayed when the data take longer to produce.

The disadvantages of less timely data have been known for years; however, the EPA is aware that one of the root causes of the time constraints have been resource limitations for the States. Until recently, the EPA has not had a potential solution to aid States in meeting their reporting requirements. By using CAERS for collecting emissions data from owners/operators of point sources, States now have a new option to assist in gathering, reviewing, and submitting high quality emissions data more quickly.

State efforts to report for the NEI involve four primary steps for each inventory year: (1) configure a data reporting system; (2) support owners/operators using the reporting system, including training; (3) review data submitted by owners/operators for errors until owners/operators resolve them; and (4) format data from the State system and submit it to the EIS. CAERS can reduce burden for states because the EPA makes sure that it is maintained with the latest AERR reporting requirements, which greatly reduces the State burden for maintaining the emissions reporting system. Since CAERS is integrated with the latest QA checks and uses the latest available emissions factors (including state-provided factors), States also can expect that data collected with CAERS is more likely to use the best available emissions estimation approaches. Finally, since CAERS converts and submits the data to the EIS, States can expect that the burden of that part of their role to be largely eliminated.

In addition to the benefits of the existing CAERS approach for States, the EPA intends to further integrate CAERS with the WebFIRE database to provide direct access for owners/operators to the latest emissions factors and emissions rates they have reported to CEDRI (this would not change the public availability of the data in WebFIRE). Because this proposed action would require owners/operators to report certain source tests, this future CAERS advancement will streamline the use of these data by owners/operators and States. Usually, these source test data provide a better estimate of emission rates from facilities than do average emissions factors more traditionally used by States in their data systems. As a result, CAERS provides States a mechanism for both improved timeliness and improved emissions data quality.

While the need for more timely data is clear, the challenges for States of any changes to an earlier deadline are significant. The EPA is considering that any proposed change in deadlines would need to be weighed against the time States would need to adapt to any new timing requirements as well as any other changes finalized based on this proposed action. While some States may have sufficient resources to continue to report data using their own data systems, they may need to change regulations and processes to adapt to an earlier deadline. The EPA has heard from States that it can take 2–3 years to change their emissions reporting regulations. Thus, States that must change those regulations to meet an earlier deadline would need time to do so.

Other States that choose CAERS to help augment their emissions data collection and reporting approach may also need to change their reporting requirements, and they would need sufficient time to migrate from current processes to a CAERS-based approach. Depending on a variety of factors, this process can take between 1 and 3 years.

Based on these considerations, the EPA proposes to add 15 more days to the point source reporting deadline through the 2026 inventory year. The deadlines for point source reporting for the 2023 through 2026 inventories would be within 12 months and 15 days of the end of the inventory year (*e.g.,* for the 2022 inventory year, by January 15, 2024). This deadline and others are summarized below in section IV.S of this preamble.

The EPA additionally proposes to establish point source reporting deadlines shorter than one year for inventory years 2027 and beyond. We propose to do this through a phase-in of earlier deadlines. With the preferred approach, the EPA proposes that for the 2027 through 2029 inventory years, States would report point source data to the EPA within 9 months of the end of the inventory year (*e.g.,* for the 2027 inventory year, by September 30, 2028). Then, starting with the 2030 inventory year and for every inventory year thereafter, States would be required to report point source data to the EPA within 5 months of the end of the inventory year (*e.g.,* for the 2030 inventory year, by May 31, 2031). The EPA is proposing to collect this data sooner than the current AERR requires because having more current data benefits EPA's work. Further, many States already have their data collected from owners/operators much earlier and submit it earlier than the current AERR deadlines. Other States can adjust to collect data earlier so they can report it earlier. CAERS could provide States an option for assistance with such an adjustment.

In addition to this preferred approach, the EPA seeks comment on alternatives for phase-in of these earlier dates more gradually.[49] Alternative F1 could provide for a slower phase-in of earlier point source reporting deadlines. The EPA is considering that the inventory year for the first deadline change could occur for inventory years 2028 or 2029. The EPA is considering that the second deadline change could occur for inventory years 2031 or 2032.

The EPA is also seeking comment on Alternative F2, which provides alternative reporting dates for the earlier deadlines. The EPA urges commenters to suggest alternative deadlines, provide rationale supporting those other deadlines, or provide support for the deadlines proposed. For the first deadline change (under the preferred approach, starting for the 2027 inventory), the EPA is considering alternatives of August 31 and October 31. For the second (and final) deadline change, the EPA is considering

[47] The TRI deadline is described in 40 CFR 372.30(d).

[48] The GHGRP deadlines are described in 40 CFR 98.2(i).

[49] Faster phase-in of earlier reporting dates is not under consideration due to EPA resource and other implementation aspects necessary to support states in joining CAERS.

alternatives of April 1, April 30, and June 30.

While the phase-in described in the preferred approach is the fastest approach under consideration, the EPA urges commenters to provide information and analysis if they believe such an approach may be too rapid, and which of the alternative phase-in dates would work better and why, or why the preferred approach is a good solution.

In addition to the preferred approach and the alternatives on which the EPA is specifically soliciting comment, the EPA will consider appropriate combinations of phase-in timing as well as alternative deadlines. The EPA urges commenters to suggest alternative combinations of phase-in schedules and new deadlines if they believe that some other combination is appropriate, provide information and rationale that supports other combinations, or provide support for the preferred alternative.

2. Annual Emissions Deadlines for Owners/Operators of Point Sources

As previously described in this preamble, the EPA is proposing annual emissions data reporting to the EPA from owners/operators of point sources, which can be either for HAP alone for facilities within States or both CAPs and HAP for facilities within Indian country and Federal waters. Additionally, owners/operators of point sources within Indian country may be required to report data for intermittent sources of electricity generation under certain circumstances. The EPA proposes deadlines for these requirements in this section.

To explore the options for reporting by owners/operators, the EPA is considering four factors: (1) the amount of time it takes to prepare reports, (2) the availability of EPA's CAERS reporting system for each annual reporting cycle, (3) other emissions reporting deadlines that owners/operators must meet, and (4) coordination with State deadlines. Consideration of these factors allows for a phase-in for owners/operators that synchronizes with any phase-in of earlier deadlines for States that may be finalized.

First, the information an owner/operator needs to report emissions is largely collected during the year of the emissions inventory. For example, owners/operators keep track of their facility production rates throughout the year, fuel usage, and other throughput and activity data used to estimate emissions from each unit and process. For sources with CEMS, throughputs and emissions are available within days. Source tests performed during the year that would be required to be used under this action can be completed and reported to the EPA within 60 days. Emissions factors needed by sources are available on a continuous basis through AP–42 and WebFIRE, through CAERS, or via a State reporting system. For these reasons, the EPA expects that the data needed for owners/operators to report emissions to the EPA would be available at most within 60 days after the end of the inventory year.

Second, the EPA has only been using CAERS for three emissions inventory years. For each of these, the EPA has successfully met objectives for including the States and associated owners/operators expected for each reporting year. While this proposed action, if finalized, is likely to greatly expand the adoption and use of CAERS, the EPA expects that it can continue the success of past experiences for future inventory cycles. The release date for CAERS for each inventory year is expected to be between February 1 and February 28 of the year after the inventory year.[50] Thus, any deadlines that the EPA would consider should need to leave sufficient time between the CAERS release date and any due dates to accommodate owners/operators who report directly to the EPA under any final action taken on this proposal.

Third, other EPA reporting program deadlines are also important to consider from the perspective of owners/operations. For the GHGRP, reports are due by March 31 of each year and for the TRI, reports are due by July 1 of each year. The EPA understands that different owners/operators could have different needs associated with any proposed timing requirements in this action. Some owners/operators may appreciate keeping the deadlines incremental, so that each requirement could be met in turn. This approach would allow industry staff to inform decision makers and report certifiers of the reports before they are sent. Other owners/operators could prefer the idea of consolidating reporting to multiple systems through CAERS, as well as consolidating deadlines.

Finally, the EPA is also considering the relationship of the data being collected by each of the programs. The NEI program to relies on GHG emissions from the GHGRP where such reporting is required. This action does not propose allowing for owners/operators to voluntarily report GHGs to the NEI program (though States could continue to report them voluntarily). Therefore, the data connection between the GHGRP and the NEI is limited to the facility characteristics as well as the activity, such as fuel consumed, that may be used to estimate emissions both of GHGs and of pollutants required under any final version of this proposed action.

The NEI program and the TRI program both collect emissions from each program's unique list of chemicals. As previously described, to meet programmatic needs, this action proposes to collect HAP emissions for individual units, processes, and release points within facilities. This proposed requirement is analogous to the current voluntary HAP reporting by States for NEI. For reporting by owners/operators, the HAP emissions estimated at the more detailed resolution for NEI could inform the air emissions portion of the TRI reporting requirement. In fact, the CAERS approach has recognized this potential connection between NEI and TRI for HAP; therefore, the EPA designed TRI–MEweb to access the emissions sums reported to CAERS for stack emissions and fugitive emissions when preparing a TRI reporting. This connection suggests that it may be beneficial to have an AERR deadline for owners/operators be prior to the TRI reporting deadline.

In addition to the other emissions reporting requirements, the EPA recognizes potential benefits of coordinating reporting deadlines for owners/operators with the proposed State reporting deadlines previously described. This coordination is particularly relevant considering that some States may choose to report HAP on behalf of owners/operators. The available options are for owners/operators to report before States submit data, at the same time, or after States' submissions. To address this issue, we explore a complex but streamlined example envisioned by this proposed action, whereby a State chooses to reduce its overall burden by participating in CAERS for CAPs but not adopt HAP reporting. In this case, owners/operators in that State would use CAERS to report HAP emissions directly to the EPA and report CAPs to the State. We expect that owners/operators would prefer to submit all their emissions together, rather than have different deadlines for different pollutants. With this example, the State would then need time to quality assure the CAP emissions and resolve any concerns with owners/operators. For this example to work, the owners'/operators' deadline would necessarily need to precede the State deadline so that the State would have sufficient time to perform its review prior to passing

[50] For the 2022 inventory year, the EPA released CAERS for reporting on February 6, 2023.

the data along to EPA. While other examples exist, the EPA has been unable to find another approach that addresses the needs for the implementation options included in this proposed action.

As previously described, this action also proposes a phase-in of earlier deadlines for States. As a result, deadlines for owners/operators would need to be adjusted in accordance with any changes to State deadlines.

Based on these considerations, the EPA is proposing a requirement in which reporting from owners/operations would gradually increase. The EPA would allow reporting to be optional in the first year and then mandatory after that, as follows: Starting in the 2024 emission inventory year, owners/operators of facilities could optionally submit annual emissions data and any required daily fuel consumption for specific units by May 31, 2025. This would allow those owners/operators to report data directly to the EPA for any reason. The EPA additionally proposes that for the 2025 inventory year, any owner/operator of a point source that is located outside the geographic scope of the State's implementation planning authority would be required to report annual emissions data and any required daily fuel consumption for small generating units by May 31, 2026. Other owners/operators could continue voluntary reporting for the 2025 inventory year and then be subject to mandatory reporting for the 2026 inventory year. This would allow for a gradual increase in owner/operator reporting to ensure the CAERS system can best support owners/operators through the process. This approach would also allow the EPA to obtain data from sources within Indian country sooner than it otherwise would to fill a current gap in EPA's understanding of emissions.

For the 2026 emissions inventory year, this action proposes that all owners/operators subject to reporting for point sources would complete submission of annual emissions and any required daily fuel consumption for specific units to the EPA by May 31, 2027. This requirement would apply both to point sources within Indian country as well as point sources within States that have not been approved for submission on behalf of owners/operators. Owners/operators within States that have been approved to report HAP on their behalf would not be subject to this proposed deadline (but rather to whatever deadline is imposed by the State).

The proposed May 31 deadline is earlier than the TRI reporting deadline to address the relationship that exists between this proposed action and existing TRI requirements. The EPA is considering that an earlier date may not allow sufficient time for owners/operators to transition to submitting reports directly to the EPA for some or all their pollutants. In addition, for States that want to align their requirements with this date to provide owners/operators reporting CAPs to the State, the May 31 date provides States 7 months and 15 days to complete their tasks and meet the January 15 reporting deadline proposed for States for the 2024 and 2025 inventory years.

Starting with the 2027 emissions inventory year and every year thereafter, this action proposes that owners/operators of point sources would complete submission of annual emissions and any required daily fuel consumption for specific units by March 31 of the year following the inventory year. The first date for meeting this requirement would be March 31, 2031, for the 2030 inventory year. This earlier date aligns with the second State earlier date phase-in to the proposed State reporting requirements of May 31, 2031.

The EPA is aware that some industries may, due to workload concerns, have an interest in not aligning the proposed reporting deadline from facilities with the GHGRP deadline of March 31. Though the proposed approach described above would change the deadline for owners/operators from May 31 to March 31, the EPA continues to evaluate this proposed approach, and is requesting comment and additional information on the expected impacts of that proposed deadline. The EPA would also consider a later deadline for owners/operators that would be either April 15, April 30, or May 15 of the reporting year. The EPA urges commenters to describe additional considerations about which the EPA may not be aware of to advise on a reporting deadline for the final rule.

3. Summary of Reporting Deadlines and Phase-In Years

Table 3 below provides a summary of the proposed point source reporting deadlines for annual emissions of the preferred approaches proposed in sections IV.F.1 and IV.F.2 of this preamble. These deadlines would not apply to the collection of source test data. This proposed phase-in approach is dependent on an assumed final promulgation date prior to June 2024. If a final version of this subpart were delayed beyond June 2024 or if comments on this proposal lead to an approach for a final rule, the EPA may delay the phase-in of earlier deadlines.

TABLE 3—SUMMARY OF PROPOSED POINT SOURCE REPORTING DEADLINES FOR ANNUAL EMISSIONS DATA

	Deadline in months after end of inventory year for reporting to the EPA	
Phase	States	Owners/operators
Phase 1: 2022 through 2024	12 months and 15 days	n/a.
Phase 1: 2025		5 months (within Indian country).
Phase 1: 2026		5 months (all facilities).
Phase 2: 2027 through 2029	9 months	5 months.
Phase 3: 2030 and beyond	5 months	3 months.

G. Point Source Reporting Frequency

EPA is considering the frequency of point source reporting and is proposing that point source reporting be done for the same sources every year beginning with the 2026 inventory year. This proposed approach would eliminate the reduced reporting requirements on interim (non-triennial) years for point sources and would not affect the frequency of reporting nonpoint or mobile sources.

By way of background, the current AERR requires point source reports from States for two categories of point sources: Type A and Type B (Table 1A to Appendix A of this subpart). States must report every year for Type A sources (which are point sources that exceed PTE reporting thresholds of 250 tpy for most CAP and 2,500 tons for CO, NO_X, and SO_2). No annual (*i.e.,* only triennial) reporting threshold exists specifically for Pb, but Pb emissions are required to be reported annually when a source meets the PTE reporting

threshold for other pollutants above the Type A reporting thresholds. States must report every third year for Type B sources, which have lower reporting thresholds than the Type A sources. For parts of a State in attainment for a relevant NAAQS, the criteria pollutant and precursor PTE reporting thresholds for Type B sources are 100 tpy. For CO, the PTE reporting threshold for Type B sources is 1000 tons/year, and the Pb actual emissions reporting threshold is 0.5 tons. For nonattainment areas with a Serious designation or above, lower reporting thresholds for Type B sources exist for some pollutants, depending on the NAAQS for which an area is in nonattainment. As explained more below, the EPA is now proposing to do away with our approach to distinguish between Type A and Type B sources.

The current triennial approach, which was designed in part to reduce burden on States, stems from the CAA section 182(a)(3) requirement for ozone for which States must submit a revised inventory no later than the end of each 3-year period after submission of their SIP base year inventory required for Marginal nonattainment areas and above. The EPA has continued this 3-year approach despite the expansion of the NEI to include PM and optionally HAP and GHGs.

The EPA has found that the inventory for each year is important and useful to contribute to a variety of activities the EPA performs under the CAA. Having more information every third year and less information for other years has made it difficult for the EPA to effectively utilize the NEI data for certain purposes such as evaluating emissions trends, regulatory modeling, and non-regulatory modeling including national efforts to estimate risks from HAP. As described in sections IV.A.1 through IV.A.3 of this preamble, current HAP data needs to be readily available for having accurate information to support technology reviews and filling gaps in the MACT standards as per the LEAN decision previous described. Additionally, EPA's AirToxScreen will have access to more complete and current data to inform the public, support prioritization of compliance activities, and to inform understanding of risks faced by disadvantaged communities in support of various environmental justice priorities.

The EPA has also experienced challenges with the current approach of more limited point source data on non-triennial years. For example, the Great Recession occurred between December 2007 and June 2009. Real gross domestic product did not regain its pre-crisis peak level until the third quarter of 2011. Thus, the bulk of the impact on industrial sources and reductions in their emissions occurred during 2009 and 2010, two years when the NEI collected only the Type A data. Thus, the point source emissions inventory for those years did not reflect the full extent of the impacts on emissions of the Great Recession.

Similarly, impacts from the COVID pandemic started in 2020 (a triennial inventory year in which we collected data from both Type A and Type B sources) and has continued into 2022. The pandemic has caused both activity decreases and facility closures for some industries as well as increases in activity for other industries. Other impacts to emissions-related activities caused by supply chain problems and price changes to fuels that may also have impacted emissions. The EPA anticipates that any potential impacts of the pandemic and industrial recovery on emissions could only be partially captured under the current AERR relying on Type A sources for non-triennial years.

Because of greater data limitations for non-triennial years, the EPA has traditionally tried to rely on the triennial NEI for regulatory modeling of criteria pollutants, for example, for ozone transport analysis or an RIA for a new NAAQS. However, using a triennial NEI has not always been possible, because a modeling year is selected not only based on the emissions inventory, but also on the meteorological conditions that, in some years, lead to the formation of more ozone and more exceedances of the ozone NAAQS. When the EPA updates a NAAQS or transport rule and needs to perform an RIA and when States need to develop SIPs, it is important to use a modeling year that exemplifies the problem to be solved (*e.g.,* a modeling year that models ambient air above the level of the NAAQS). This year is not always a triennial NEI year because of meteorological conditions and/or overly active fire seasons. In fact, EPA's most recent regulatory modeling platform was developed for 2016, which is not a triennial NEI year. A large amount of additional coordination with the States and multijurisdictional organizations was needed to refine the 2016 emissions to reflect 2016 for Type B sources that had not been reported to the NEI.

For regulatory analysis of HAP in support of future technology reviews under CAA 112(d)(6) and discretionary risk review, the EPA needs the most currently available data. For these reviews, the data need includes not only the actual emissions, but also the control technologies and other changes made to industrial facilities and their associated emissions rates for HAP. This is particularly important for the Technology Reviews for which the EPA is responsible for conducting periodically for each industry and in which the EPA considers developments in practices, processes, and control technologies. The emissions inventory data form the baseline emissions for Technology Reviews, which are a key component of EPA's analyses of potential control options, emissions reductions, and cost-effectiveness. The latest data about the controls and technologies at the facilities, provided by an emissions inventory, allow EPA to create a more effective and credible review. About 25 sectors per year need to undergo Technology Reviews each year, to meet the review schedule of every 8 years. If a HAP reporting requirement is finalized, continuing with a triennial approach would mean that the EPA would not always have the most up-to-date information for the Technology Reviews. Current limitations have required the EPA to conduct one-time efforts for providing additional data that could have already been available via a standardized NEI process.

Annual HAP reporting will provide other benefits in addition to those discussed above. For example, the EPA has recently committed to providing annual updates of its air toxics data. The annual AirToxScreen will provide updated emissions and risk information, to both document the ongoing risks posed by some facilities and to provide communities with the information they need to understand those risks. The EPA intends to produce these updates annually to take advantage of the best available data and to help inform emissions trends, ideally to show progress in reducing risks to communities. Therefore, a triennial approach to collecting point source data would reduce the effectiveness of these efforts because all sources would not be updated on the same timescale.

Not only does the EPA have an interest in having the most current information, but EPA's work with stakeholders has provided insights into the challenges owners/operators face when EPA includes outdated data in its NEI releases. For example, in the recent AirToxScreen releases for 2017 through 2019, some commercial sterilizer facilities had either ceased operating or installed additional controls to reduce ethylene oxide emissions. During review of these data prior to release, States and EPA regional office representatives heard from these facilities and informed EPA that they

wanted the agency to use the more current data because emissions were lower. Because these changes in operations had not occurred in the historical years, rather than adjust the modeled concentrations and risks in these historical years based on more current information, EPA added notices on the website for each of these facilities to indicate when operations ceased or when controls had been installed that would reduce emissions after the year of the AirToxScreen release. Similarly, when EPA used data that was several years old in support of regulatory decisions, in cases when one-time information collections could not be accomplished due to timing or other constraints, industry has commented about EPA's flawed data and insisted that more current data be used. With an annual approach for reporting emissions, the EPA could best reflect emissions controls and lower emissions in the NEI data, AirToxScreen, and regulatory assessments.

Finally, as the EPA strives to best serve the public, EPA's ability to receive updated and timely emissions data provides a foundational piece of information needed to support many aspects of EPA's mission. This need is already illustrated by other EPA emissions data collections such as TRI, the GHGRP, and the Air Markets Program, which all collect data annually using consistent criteria each year.

As described, the EPA has identified several limitations with the existing approach for which we receive more limited data 2 out of every 3 years. It is important to resolve those limitations as quickly as possible to limit future impacts. The primary reasons for the triennial approach were (1) the original CAA basis of the rule as previously described, (2) the burden on States, and (3) the burden on the EPA to create an NEI every year. Each of these reasons has less weight now than it had for previous AERR revisions, as described in the following paragraphs. At the time these decisions were made, the burden on owners/operators was not considered; however, we are considering these burdens now. Even with these additional burdens on owners/operators considered, the EPA expects the benefits of the data collection to be justified.

Regarding the original CAA basis for ozone and triennial periodic inventories, the EPA notes that inventories *at least* every three years are necessary to administer the ozone nonattainment area RFP provisions of section 182 (*i.e.,* rate-of-progress, RFP, and milestone compliance demonstration provisions). The EPA also notes that the timing of ozone NAAQS nonattainment designations, which has implications for the inventory year that a State may select for their baseline inventory for the nonattainment area, does not necessarily align with the triennial inventory years established in the AERR. Thus, the EPA has allowed States to select the initial baseline inventory year (which serves as the RFP baseline year) using either the most recent triennial year or the year of the effective date of designation for that NAAQS. While there may be valid planning reasons for States to choose a non-triennial year, the practical ability for States to do this can be constrained by the availability of adequate inventories during non-triennial years. Moreover, with respect to the attainment demonstration obligation, modeled attainment demonstrations for ozone and PM may require base years other than triennial years to reflect meteorological conditions conducive to the nonattainment problems faced by a State. Thus, even though the Act requires a minimum triennial inventory approach for ozone nonattainment areas, experience suggests that having annually updated inventories provides benefits for criteria pollutant implementation in addition to the other benefits that will occur. Importantly, nothing in section 182 prohibits the EPA from requiring updated inventories on a more frequent basis.[51]

Since the 2008 promulgation of the AERR, technology for data collection and compilation has advanced significantly. Starting with the 2008 inventory year, the EPA provided the EIS to collect data electronically from States, and many States have developed their own electronic reporting approaches. The EPA has further refined and improved the EIS over time to provide additional QA, quality control (QC), and summary information features for State and the EPA inventory developers to help streamline the process and ultimately reduce burden for both States and EPA's NEI program. In addition, the EPA developed and released the CAERS application in 2019, which can support States that wish to have a more modern and robust emissions reporting system that meets AERR requirements. While the step of transferring State's emissions collection and reporting systems to CAERS has an initial up-front (though voluntary) burden, the longer-term information technology, and programmatic efficiencies of sharing a reporting system with the EPA and other States would be significant.

Although the motivations and new developments described above build a strong case for collecting the same point source data every year, the EPA is considering some additional information in evaluating the advisability of such an approach. This additional information includes what States have been reporting for non-triennial years voluntarily and the experiences of States that are already using CAERS for emissions reporting.

The EPA recognizes that States have reported voluntarily more sources than required on non-triennial years. For the 2019 inventory year, for which States were required to submit only Type A sources, 34 out of 82 State, local, and tribal agencies submitted roughly the same number of point sources as they submitted for the 2017 triennial year. This means that these States voluntarily submitted their triennially required sources instead of the fewer sources required. Some differences between years are to be expected because facilities open and close. These submissions represented about 11,000 facilities out of about 54,000 facilities submitted by agencies for either year, when considering those facilities that reported NO_X, SO_2, or VOC. Thus, because these 11,000 facilities represent about 20% of the 54,000 total facilities, we estimate that the incremental actual burden associated with requiring the same sources every year is about 20 percent lower calculated on a per-facility basis than it would be if these agencies were not already sending in such data. These States would meet an annual point source requirement without additional effort or burden (if the frequency change were the only change).

To build on the 2017 and 2019 analysis, we compared emissions between 2017 and 2019 for those sources with 2017 emissions less than Type A reporting thresholds and which had emissions in both 2017 and 2019. Sources that were not reported in both years were dropped. For NO_X the median emissions increase or decrease between 2017 and 2019 was less than 5 tons, which given the 100 tpy PTE reporting threshold is a small difference. This suggests that many sources do not change much from one year to the next. However, the NO_X changes for any one facility ranged from an 1,800-ton decrease to a 2,800-ton increase. In all, 672 facilities had emissions of 100 tons

[51] See CAA section 182(a)(3)(A), which states that ''*No later than* the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1) of this section'' (emphasis added).

or more in 2017 and more than a 25 percent increase or decrease in emissions in 2019. Similarly, for SO_2, the median change between 2017 and 2019 was less than 1 ton, and the range of changes were a 1,900 ton decrease and a 4,600-ton increase. There were 347 facilities with emissions of 100 tons or more in 2017 and more than a 25 percent increase or decrease in emissions in 2019. For some of the uses of the NEI by the EPA and certainly for SIP inventories, the magnitude of these changes can be impactful in local areas. Thus, the EPA observes that including year-specific inventory data is important to promoting the quality and use of the NEI for the purposes laid out in sections IV.A.1 through IV.A.3 of this preamble and in this section.

In discussions with States as part of the routine interactions associated with creating the NEI and as part of ongoing outreach for CAERS, State emissions inventory staff have volunteered the information to the EPA staff that they collect these point sources because of State regulations, and it is less work for them to report all the point sources every year rather than taking extra steps to limit what is reported in the non-triennial years. This response speaks to the benefit (for the vast majority of States with annual reporting regulations that include additional sources beyond those required by the AERR) of streamlining, automating, and taking the same approach each year.

The EPA also is considering the experiences of States that are already using CAERS for emissions reporting. Transitioning to CAERS for these States has had its own one-time challenges, in part because the system is new. Other than those initial challenges, however, the States' experience using CAERS for the 2018 through 2020 inventory years has been that their work is primarily focused on supporting facilities and quality assuring data, rather than setting up their data system or formatting data from the State system and submitting it to the EIS.[52] Since CAERS includes the QA checks in EIS for owners/operators to get feedback and make corrections while reporting, once the data has been accepted by CAERS, it largely can flow to the EIS without much effort for States.

Based on these considerations, the EPA proposes to change the reporting thresholds so that they are the same for all years (EPA will no longer distinguish between Type A and Type B sources). Further, the EPA proposes implementation of this requirement to take effect the first non-triennial year after promulgation of the final rulemaking for this proposed rulemaking (expected to be 2027).

The EPA is also considering whether the 2027 inventory year is too soon for some States to implement changes that would enable them to collect data from all point sources that otherwise would not be reported until the 2029 inventory year. Thus, the EPA is considering Alternative G2 to use the 2028 inventory year as the first year for implementation of the same reporting thresholds every year. The EPA is interested in comments about the feasibility of the base alternative of a 2027 inventory year requirement (data would be due by September 30, 2028, under the preferred phase-in alternative described in section IV.F.1 of this preamble) when compared to Alternative G2 that would use a 2028 inventory year requirement (data would be due by September 30, 2029, under the preferred phase-in alternative).

Irrespective of the implementation challenges for States, the EPA is proposing that owners/operators within States not reporting on their behalf would report annual emissions data for the same sources every year beginning with the 2026 inventory year. As previously described, the EPA is proposing that owners/operators operating facilities within Indian country and Federal waters would report annual emissions data for all applicable sources beginning with the 2025 inventory year. The requirement for annual reporting by owners/operators is based on the importance of year-specific data for many sources and EPA's ability to implement CAERS for many new reporters. Nevertheless, the EPA is interested in comments providing information and analysis about the feasibility for sources to report directly to the EPA voluntarily for the 2024 inventory year in two cases: (1) facilities that are within the geographic scope of a State's implementation planning authority and (2) all other facilities. In the first case, if there would be unforeseen challenges for States or owners/operators in the case where owners/operators are reporting HAP when the State is reporting CAPs, it would be helpful for commenters to provide information on any such challenges so the EPA can better evaluate the options it is considering in this rulemaking.

A provision of the current AERR in 40 CFR 51.35 provides States the opportunity to submit Type B point sources over a 3-year period to spread out their emissions inventory work rather than have a reporting burden spike in the triennial years. For point sources, this existing provision at § 51.35(a)(2) says that States may ''collect data for one-third of your sources that are not Type A point sources.'' That provision continues by including ''Collect data for a different third of these sources each year so that data has been collected for all of the sources that are not Type A point sources by the end of each 3-year cycle. You must save 3 years of data and then report all emissions from the sources that are not Type A point sources on the triennial inventory due date.'' The advantage of this provision is that States can balance state workload. With the annual reporting for all sources proposed in this action, the EPA is additionally proposing to remove the provisions of 40 CFR 51.35 in the current AERR.

H. Clarification About Confidential Treatment of Data

The existing requirements in the AERR include a statement about confidential data at 40 CFR 50.15(d), which states ''[w]e do not consider the data in Tables 2a and 2b in Appendix A of this subpart confidential, but some States limit release of these types of data. Any data that you submit to the EPA under this subpart will be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.'' This section of the current AERR was intended to clarify that the data required to be reported to the EPA under the AERR would not be treated as confidential by EPA.

The context of this discussion and clarification on confidential data and the NEI relates to EPA's intent to continue its current practice of releasing point source emissions data on a regular basis. Point source emissions data collected by the Agency will be available to States and EPA staff via the EIS within months of its receipt. The EPA expects to make such data publicly available via EPA's website within the year after receipt. While some data fields may not currently be published on EPA's website, the EPA provides that data upon request. The EPA may change the composition of the data published, timing, or method of any release of collected information without further notice.

Since the provision in § 50.15(d) of the current AERR was promulgated, it has led to some confusion that the EPA is now seeking to clarify with revisions.

[52] See ''Georgia Partners with the EPA to Pilot Combined Air Emissions Reporting System'' and ''From CHAOS to CAERS: Improving Inventory Reporting Workflows in the District of Columbia,'' which are both available in the docket for this proposal.

For example, the EPA has received claims by States that, under the current AERR, they do not need to report some data to the EPA because the State considers that data entitled to confidential treatment. One local air agency claimed that it could not report SCCs that describe the emissions process to the EPA under the requirements of the AERR because it claimed that information was confidential under State law. Other agencies do not report the throughput data from their sources, despite it being a required field currently in the AERR. The EPA's understanding of the reasons for withholding such required data is that States consider the throughput data to be confidential so the local agencies cannot report it. The EPA recognizes that the existing wording of § 50.15(d) could be confusing and could contribute to the lack of reporting for certain data elements. Nevertheless, the existing language of § 50.15(d) was not intended to allow States not to submit certain data or to claim required data as entitled to confidential treatment from EPA.

To address this confusion and to articulate more clearly EPA's position on confidentiality for all information States and owners/operators are required to report under the AERR, the EPA proposes to add language to clarify the classification of data collected under this action. In addition, the EPA is proposing changes to clarify that those parties required to report under this subpart cannot decline to report certain data elements based on a claim that the data is entitled to confidential treatment. Specifically, the EPA proposes to add the determination that all data that parties are required to report under the revised AERR, including the data from the additional categories associated with emissions testing, is ''emissions data'' as defined at 40 CFR 2.301(a)(2)(i). As emissions data, the reported information is not subject to confidential treatment in accordance with CAA section 114(c), which provides for the public disclosure of such information. This proposed revision is intended to clarify that the EPA will not treat any data reported to the EPA under this rule (including the HAP data) as confidential in accordance with CAA requirements for emissions data and that entities who are responsible for reporting cannot withhold information based on claims of confidentiality.

The EPA also proposes to amend 40 CFR 2.301 to clarify that information the EPA collects through the AERR is emission data that is not subject to confidential treatment. Within that subpart, § 2.301 includes regulations governing certain information obtained under the CAA. Section 2.301(a)(2)(i) defines the term emission data ''with reference to any source of emission of any substance to air'' to mean under paragraph (A) ''information necessary to determine the identity, amount, and frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing.'' In addition, the definition is further established by § 2.301(a)(2)(i)(B) to include ''[i]nformation necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source).'' Lastly, § 2.301(a)(2)(i)(C) further defines emission data to include ''[a] general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).''

Also codified in § 2.301(a)(2)(ii) are certain exceptions to the general rule of paragraph (i) described above. This paragraph elaborates that certain information ''shall be considered to be emission data only to the extent necessary to allow the EPA to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the EPA to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation.'' If these conditions do not apply, then § 2.301(a)(2)(ii)(A) excludes from the definition of ''emission data'' any ''information concerning research, or the results of research, on any project, method, device or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes.'' Similarly, § 2.301(a)(2)(ii)(B) excludes ''[i]nformation concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.''

With this action, the EPA is proposing to determine that all data that would be required to be reported or optionally reported under the proposed AERR revisions are emission data as defined by 40 CFR 2.301. To support this proposed determination, the EPA has created a list of the optional and required point source data elements for annual emissions data and has identified the part of 40 CFR 2.301 that applies to each element. The spreadsheet ''AERR point source data elements.xlsx'' provides this information and is available in the docket. Point source data elements are particularly relevant to considerations of confidentiality since individual point sources are owned by business interests and the data that the EPA collects is highly detailed. Point source data are also the type of information that has been claimed as confidential in the past.

In addition to the list of point source data elements described above, source test data collection included in section IV.C of this preamble describes collection of source test data. The EPA proposes that all required data elements for the ERT and such additional data that owners/operators would need to include when reporting source test data under this proposed action classify as emissions data. For example, this action proposes to require load, process operation, and parameter data, and all of these are necessary to develop emissions factors. The EPA identifies these data elements as meeting the definition of emissions data because they are, as per from 40 CFR 2.301(a)(2)(i)(B), ''other characteristics'' needed to provide ''a description of the manner or rate of operation of the source'' that the EPA needs ''to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions.''

For States, the emissions reporting requirement for annual total emissions extends to all the types of sources listed under § 51.15 of the proposed regulatory text. The data that would be required under the proposed § 51.15 includes totals of pollutants, activity creating the emissions, characteristics of the sources, and in some cases model input and documentation. States would be required to report for point sources, aircraft and GSE, rail yards, nonpoint sources, onroad mobile, nonroad mobile, and prescribed fires. States would be able to optionally report wildfire and agricultural fire data. The EPA is proposing to determine that all the required and optional data fields, including those listed above, to be reported by States for all these sources meet the definition of emissions data and, therefore, are not subject to confidential treatment under the CAA.

Moreover, States would optionally be able to report wildfires and agricultural fires.

For example, the type of pollutants, magnitude of those pollutants, and emission rates of a source all meet the definition of emission data under paragraph 40 CFR 2.301(a)(2)(i)(A) as ''information necessary to determine the . . . amount, . . . concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source.'' In addition, data elements that identify the source of any such emissions, such as the location, name, industry codes, units, processes, release points, controls, and all their characteristics all serve as ''information necessary to determine the identity'' of such emission data as per the § 2.301(a)(2)(i)(A) definition. Many required data elements meet the definition of § 2.301(a)(2)(i)(C) in that they ''identify the source and distinguish it from other sources (including, to the extent necessary for such purposes a description of the device, installation, or operation constituting the source).'' Examples of data elements that meet this definition in paragraph (C) include any data elements related to (1) installation dates of units, processes, and controls; (2) effective dates of use for units, processes, release points, and controls; and (3) the throughput of each emission process for both annual reporting and source test data reports. Many of the data elements about source characteristics that meet the definition under § 2.301(a)(2)(i)(A) also meet the definition provided under § 2.301(a)(2)(i)(C).

This action proposes various requirements that relate to what information is entitled to confidential treatment. First, this proposal includes requirements through listing of data elements. Data elements for annual reporting of point sources are listed in Tables 2a and 2b to Appendix A of Subpart A to Part 51. The source test reporting that the EPA proposes in section IV.C of this preamble requires use of the ERT; therefore, this proposal contains those elements required to use ERT, and additionally requires four data elements that would otherwise be optional if we had relied only on the mandatory reporting requirements of the ERT.

The proposed determination that all data required to be reported by the AERR are ''emissions data'' serves two purposes: (1) to re-state and clarify EPA's position on the data that the current AERR is collecting and would continue under any final action, and (2) to apply to the newly added data fields the EPA is proposing to require (as per section IV.I of this preamble). Therefore, this proposed confidentiality determination is intended to apply to both the current AERR and the proposed AERR revisions.

There are some required data elements included in the proposed requirement to use electronic reporting via the EIS, CAERS, and CEDRI that do not meet the definition of emission data. These are data elements that identify the individuals responsible for submitting such data and their contact information. While this submitter information does not meet the definition of emission data, the Agency is making a final determination through this rulemaking that this contact information does not meet the standard for confidential treatment under 5 U.S.C. 552(b)(4) and upon finalization of this rule, may be released to the public without further notice to the submitter. These data elements do not meet the definition of emission data, but also do not meet the definition of information needing confidential treatment.

Based on these considerations, the EPA proposes to determine that all data elements collected by the AERR are emissions data not entitled to confidential treatment, and thus that the EPA may release this information to the public without further notice to the submitter upon finalization of this rule. To implement this determination, the EPA proposes to add paragraph (k) to apply to data required to be submitted under 40 CFR 2.301.

I. Additional Point Source Reporting Revisions

The EPA has identified new requirements for point sources, new voluntary data elements, and various clarifications. New requirements include both the formalization of special cases that have previously been handled voluntarily and completely new required data elements. Clarifications include those for existing requirements that will newly be enforced by EPA data systems as well as clarifications for how to report certain data.

1. Formalizing the Approach for Aircraft and Ground Support Equipment

Over the past four or more triennial inventory years, the EPA has developed a comprehensive inventory of all airports to support analyses that may result in new regulations affecting emissions sources at airports, including aircraft and GSE. These sources can additionally be sources of HAP and impact communities, especially when the boundaries of airports are close to housing, schools, and workplaces. Most airports do not meet the emissions reporting thresholds for CAPs that are in effect through this subpart, and many will not meet the reporting thresholds for HAP proposed by this action. When stationary sources at airports meet point source reporting thresholds, States currently report emissions of stationary sources at airports (*e.g.,* boilers) as stationary point sources, and this approach is unchanged by this proposed action. However, other approaches are necessary for aircraft and GSE to ensure a complete airport inventory.

To date, the EPA has worked with States during previous triennial emission inventory years through voluntary review of LTO data for all airports. In past triennial inventory years, the EPA compiled and distributed the LTO data for voluntary State review and accepted comments and revisions to that data from States. The EPA estimated emissions using the final LTO data as input to the Federal Aviation Administration (FAA) Aviation Environmental Design Tool (AEDT).[53] This model includes emissions from aircraft up to 3,000 feet from the surface, and past guidance to States on airport emissions was to use that same elevation as part of the ''point source'' emissions. The resulting emissions data from aircraft and ground support equipment using these methods provide a fallback estimate of emissions from these sources at airports not reported by States.

In assessing States' compliance with the provisions of the current AERR, the EPA has previously accepted the States' provision of LTO data as being sufficient to meet the point source requirements for those airports that exceed the point source reporting thresholds. This approach both reduces burden for States as well as provides the EPA relevant information for use of the AEDT to estimate emissions. When the NEI includes EPA-created emissions, the EPA and the public have full transparency about how the data have been created including QA steps. The approach also creates a consistent dataset for all airports to use in QA of state-provided annual total emissions submitted, and it allows the EPA to use the latest available AEDT version. This last advantage allows the EPA to use AEDT updates that may be released by the FAA after the State point source reporting deadline.

Collection of LTO data provides the most advantage when used consistently across all airports. While airport

[53] Aviation Environmental Design Tool website, *https://aedt.faa.gov/.*

emissions data provided by States is also useful, when LTO data are not also provided, the EPA then lacks a consistent basis for comparing the AEDT results it creates with the state-reported emissions. Furthermore, without documentation provided about state-reported emissions, the EPA does currently require the method by which the State estimated emissions or performed QA, unless the EPA and the State incur the further burden of follow-up outside the existing electronic reporting process. The EPA has observed that implementing follow-up steps for clarification is less efficient than using a process by which the information is required from the outset.

Given these considerations, the EPA is proposing distinct requirements for reporting of aircraft and GSE data by States, which differ from the more general point source requirements. This action proposes in 40 CFR 51.15(b) to add two options for States to report data for airports in triennial years: either (1) submit LTO activity data for some or all airports within the geographic scope of the State's implementation planning authority using formats provided by the EPA and/or (2) review LTO data and annual emission totals provided by the EPA, send comments on that data, and notify the EPA that the State accepts that data. Under this proposed addition, States can choose one of these two options for each airport for which they would be required to report. The EPA additionally proposes that the deadline for reporting activity data would be by September 30 of the year after the inventory year, or 60 calendar days after the EPA provides airport data to a State, whichever is later (*i.e.,* for the 2023 inventory year, by September 30, 2024, or later). This deadline and others are summarized below in section IV.S of this preamble.

In addition, the EPA is considering that there is a distinction between emissions from stationary source units (*e.g.,* boilers) at typical point sources as compared to the emissions from aircraft and ground support equipment. To the extent that an airport has emissions sources other than aircraft and ground support equipment, and the emissions from the airport exceed the point source reporting thresholds included in this proposed action, those additional stationary sources should be reported consistent with non-airport point source requirements. For example, if a boiler is run at an airport for heating and the total airport emissions cause the airport to meet the point source reporting thresholds, then emissions from that boiler would need to be reported under this proposed action. To clarify this point, the EPA proposes that States must report stationary sources and qualifying mobile sources as per IV.I.16 of this preamble (other than aircraft and GSE) at airports.

States may voluntarily submit annual total emissions for aircraft and GSE for some or all airports. However, the EPA is proposing a requirement that if a State chooses to report annual total emissions, they would be required to: (1) use the latest airport emissions model specific in the NEI plan, (2) submit all pollutants estimated by the latest airport emission model, and (3) submit documentation that describes how States used the model to estimate emissions and performed QA steps.

2. Formalizing the Approach for Rail Yards

Like airports, rail yards may sometimes meet the existing definition of point sources under this subpart, and with this proposed action including HAP emissions reporting thresholds described in section IV.A.8 of this preamble, additional rail yards may be defined as point sources for the AERR in the future. Rail yard data include emissions from yard locomotive switchers and can include other emissions sources if present. As with airports, the Agency's goal of complete emissions is supported by a comprehensive inventory of emissions associated with locomotives to support analyses that may result in new regulations affecting these sources. Rail yards have also been identified as important sources of HAP in some communities.[54] For these reasons, the EPA has reviewed its approach for rail yard emissions, which has many similarities to the airport approach.

EPA works with rail companies who voluntarily provide activity data about rail yards for point sources and locomotive activity for nonpoint sources. Emissions from both rail yards and locomotives are interrelated, and a complete accounting of these sources and activities would create a comprehensive and consistent emission inventory across these activities. Accounting of rail yards cannot be only for those that meet the definition of point sources because data from all rail yards are needed to fully understand the locomotive emissions on rail lines and achieve a complete inventory.

In past triennial inventory years, the EPA provided the rail yard data for voluntary State review and accepted comments and revisions to that data from States. The EPA estimated emissions relying heavily on collaboration with the Eastern Research Technical Advisory Committee (ERTAC). The resulting emissions data for rail yards provided a fallback estimate of emissions at rail yards not reported by States.

In assessing States' compliance with the current AERR, the EPA has previously accepted the States' provision of rail activity data as being sufficient to meet the point source requirements for those rail yards that exceed the point source reporting thresholds. This approach both reduces burden for States as well as provides the EPA information to estimate emissions. When the NEI includes EPA-created emissions, the public has full transparency about how the data have been created including QA steps. The approach also creates a consistent dataset for all rail yards to use in QA of state-provided annual total emissions submitted, and it allows the EPA to use the latest available emissions estimation approaches.

As with airports, the existing voluntary approach with States provides the most advantage when used consistently across all rail yards. This is true for the same reasons as for airports and to meet EPA's interest in comprehensively understanding rail yard emissions to best meet Agency goals.

In the past, many States have not had an independent source of data other than that provided by EPA. One approach for States to obtain that data would be for States to require it from rail companies; however, since rail companies operate across State boundaries, it is preferable for these companies to work directly with a central coordinator like the EPA and ERTAC. Nevertheless, nothing in the existing requirements of this subpart or any proposed requirements of this action would prevent States from collecting such information from rail companies if such data were not otherwise available.

Unlike the publicly available LTO data for airports, the current rail yard approach for the NEI relies on voluntary reporting by a limited number of existing rail companies. While this approach has mutual benefit to both the EPA and those companies, it is nevertheless a voluntary measure. Thus, in formulating the requirements under

[54] Spencer-Hwang, R., Montgomery, S., Dougherty, M., Valladares, J., Rangel, S, Gleason, P, Soret, S, *Experiences of a Rail Yard Community: Life is Hard,* J Environ Health. 2014 Sep; 77(2): 8–17. Eiguren-Fernandez, A, *Exposure to Rail Yard Emissions and Possible Health Impacts on Adjacent Communities,* Center for Occupational and Environmental Health, Southern California Particle Center, October 4, 2010, *http://www.scientificintegrityinstitute.org/coehrail100410.pdf.*

this proposed action, the EPA is considering the possibility that rail companies may not provide data voluntarily for one or more triennial years. This exact situation has been experienced by the EPA for the 2020 triennial inventory. In this case, this proposed action must consider that the EPA cannot offer States an option to reduce State burden by compiling the rail yard activity when such data are not provided by rail companies.

Given these considerations, the EPA is proposing distinct requirements for reporting of rail yard data by States, which differ from the more general point source requirements. This action proposes in § 51.15(c) to add two options for States to report data for rail yards in triennial years. States may either (1) submit rail yard activity data and documentation for some or all rail yards within the geographic scope of the States' implementation planning authority using formats provided by the EPA or (2) review rail yard data and annual emission totals provided by EPA, submit comments on that data, and/or notify the EPA that the State accepts that data. This second option is available to States because rail companies voluntarily provide rail yard data to the EPA (included as part of the voluntary burden estimates for this proposed action). This voluntary data flow is likely more convenient for rail companies than if each State needed to collect data from them individually to meet the provisions of these proposed requirements.

The EPA is additionally proposing that States may voluntarily submit annual total emissions for some or all rail yards, and if a State chooses to report emissions would then be required to meet the following requirements for the EPA to consider using such data. The EPA is proposing to consider state-submitted emissions data for rail yards only when the State: (1) submits all pollutants estimated by EPA's rail yard emissions method to be used for the relevant inventory year (described by the NEI Plan) and (2) submits documentation that describes how States calculated annual total rail yard emissions and performed QA steps.

While the proposed approach above is EPA's preferred approach, the EPA is also considering a ''Rail Companies'' Option that would additionally regulate the rail companies directly to provide activity data to EPA. For the Rail Companies Option, the EPA proposes that owners/operators of rail companies would be required to report activity data from of those yards to EPA. The Rail Companies Option would have a disadvantage of imposing more requirements than continuing the ongoing voluntary approach with rail companies. The EPA requests comment on the Rail Companies Option and urges commenters to provide any additional information that would be helpful to the EPA in deciding between a voluntary and mandatory rail yard activity reporting approach.

3. New Requirements for Point Source Control Data

Since the EPA started collecting emissions data through the EIS, some States have made the EPA aware that allowing States to specify controls was insufficient to appropriately allow specification of the necessary details. In the current control device reporting requirements of this subpart, States have been unable to describe fully how controls are configured at a facility (*e.g.,* series or parallel), define the relationship among multiple control measures and the units, processes, and/or release points at a facility, or reuse the definition of a control measure in the dataset so that the same control measure can be associated with more than one unit, process, or release point. Such control configuration information is relevant to certain uses of the NEI, such as Technical Reviews and Regulatory Impact Analyses.

Based on this understanding, the EPA is proposing a requirement to specify controls to remove the limitations of the current requirements. This new proposed requirement would use a list of control measures for a facility that is analogous to those control measures that exist in the real world, wherein each control would define only a single piece of control equipment or control measure, and a control path can be defined that would allow control measures to be arranged in any configuration of series and parallel control measures.

This action proposes revisions to the data elements required for specifying controls. This proposed action adds new data elements in Table 2a to Appendix A of Subpart A to Part 51. These proposed data elements include *control paths,* which are defined as one or more controls at a facility that are linked. The path can consist of groups of control measures or other paths in parallel or in series. The proposed data elements also include *control apportionment,* which is defined as the percentage of the emissions that flows to the next control or path, and *control assignment,* which defines the sequence in which controls are configured within a path. Other proposed data elements to specify controls are similar to existing requirements, such as the pollutants affected, and percent reduction achieved. to Appendix A. More information on controls is available in Appendix A of the CAERS User Guide.[55]

4. New Requirements for Point Source Throughput in Specific Units of Measure

The EPA has observed during past triennial inventory cycles a potential for double counting of emissions from stationary sources of fuel combustion, because those sources exist both in the point source and nonpoint data categories. Stationary fuel combustion for point sources occurs at sources that meet the point source reporting thresholds while fuel combustion for nonpoint sources reflects emissions from smaller commercial and institution facilities such as shopping malls, office buildings, municipal buildings, and hospitals. These nonpoint emissions are captured in the NEI through the industrial, commercial and institutional (ICI) fuel combustion sectors, and these sources are a significant portion of the total emissions inventory for many areas. For example, according to the 2017 NEI, statewide NO_X from ICI combustion sources represented up to 27 percent of NO_X, with a median of 9.1 percent over all States, when calculated by excluding fires and biogenic sources from the total. Using the same calculation approach, statewide $PM_{2.5}$ from ICI combustion sources represented up to 28 percent of statewide $PM_{2.5}$ with a median of 3.2 percent. Nonpoint commercial and institutional fuel combustion includes emissions from boilers, engines, and other combustion sources that burn natural gas, biomass, distillate fuel oil, residual fuel oil, kerosene, liquefied petroleum gas (LPG), and coal.

The EPA's approach to capture nonpoint ICI fuel combustion uses statewide fuel consumption data from the U.S. Energy Information Administration for the various fuel types and allocates it to counties based on employment in the industrial or commercial sector from the Census Bureau's County Business Patterns data. The EPA makes numerous adjustments to the fuel consumption based on various data available to EPA, such as subtracting nonroad source fuel consumption and non-combustion uses from State total fuel use.

To avoid double counting with point source emissions, the EPA currently

[55] Combined Air Emissions Reporting System (CAERS) User's Guide, Version 2.0, U.S. EPA, 2/25/2021, *https://www.epa.gov/e-enterprise/combined-air-emissions-reporting-system-caers-users-guide.*

provides, as part of the nonpoint data collection, various options for States to supply point source fuel consumption. Some States, however, do not provide such data in part because they do not have that data from facilities. Over many triennial NEI years, the EPA has observed that some States claim that their State does not have any nonpoint fuel consumption; however, the EPA finds this claim implausible given that those States do not include every shopping mall, office building, municipal building, and hospital in their point source inventory. As a result, the EPA has had to make assumptions about point source fuel consumption to subtract it from the nonpoint fuel consumption totals. These assumptions reduce the accuracy of the inventory. Such inaction on the part of States directly contradicts the CAA section 172(c)(3) requirement for ''comprehensive, accurate'' inventories. Furthermore, this issue is not only significant for the NEI, but also is relevant for emissions inventories required under the Ozone and $PM_{2.5}$ SIP Implementation Rules.

To date, the EPA has attempted to resolve the issue through collection of total point source fuel use by each State as part of the nonpoint ICI data collection. The EPA has experienced that some States continue to avoid this requirement by making implausible claims that all such sources for all fuel types do not exist or stating that States lack the data. Given the importance of such information to States and EPA, the EPA is proposing action to ensure States are aware of this issue and to support creation of accurate ICI fuel combustion emissions for both point and nonpoint sources.

Further, the EPA recognizes the potential for directly receiving such information from owners/operators of point sources as part of the requirements proposed by this action. To address the connection with direct reporting to the EPA by owners/operators, the following paragraphs explain what owners/operators would potentially do to support the Agency's need for fuel consumption data.

The EPA has developed and implemented a point-nonpoint reconciliation approach to resolve any double counting of ICI fuel combustion sources, but challenges remain. The EPA has refined the nonpoint ICI fuel combustion approach for each NEI triennial year, resulting in the most recent approach as described in the 2020 NEI TSD.[56] The EPA's revisions to the approach have relied on States' comments and concerns as part of each triennial NEI process. Based on these activities, the EPA has concluded that to prevent double counting of emissions between point and nonpoint ICI sources, the point-nonpoint reconciliation must be based on subtracting point source fuel consumption from the total fuel consumption within a State. This is in contrast with past approaches that allowed subtraction of emissions, which has been found to be insufficient because point source emissions are often controlled such that subtracting emissions does not remove the correct proportion of ICI activity from the nonpoint emissions.

When States use the approach currently provided, the EPA is satisfied that the emissions estimates avoid double counting and provide the best available emissions inventory estimates. While the nonpoint approach may continue to evolve, the EPA expects that the point source fuel use will continue to be a critical part of that process. While the current approach is conceptually simple, the EPA has concluded that this proposed action should ensure that the EPA and States have access to the fuel consumption data from point sources.

To ensure that the EPA and States have data to support point-nonpoint reconciliation for ICI fuel combustion, this action proposes to require States to collect and report point source fuel consumption for certain emissions processes. These proposed changes are reflected in the proposed Table 2b to Appendix A of this subpart. It is necessary to collect fuel consumption from point sources, because under this proposed action, point source data would be reported every year for all sources. The annual reporting would allow the EPA and States to subtract point source fuel consumption from State total fuel consumption irrespective of whether States report nonpoint data on a triennial year. The EPA is proposing that fuel consumption totals by fuel to be required for all SCCs for a given inventory year that reflect any fuel consumed after it has been produced and sold for consumption. Thus, any in-process fuel combustion (such as combustion of captured process gases) would be exempt from this proposed requirement. For triennial years, States would have additional requirements for nonpoint sources, which are described in section IV.J of this preamble.

EPA additionally proposes that owners/operators of point sources, who are reporting directly to EPA, must include fuel consumption data. The EPA has already added this collection approach into the CAERS for use by owners/operators. To the extent that States wish to leverage this feature of CAERS rather than comply with their fuel use reporting requirement a different way, the EPA recommends that States evaluate the possibility of using fuel consumption data provided by facilities that report using CAERs.

Depending on States' choices about reporting HAP on behalf of owners/operators, the EPA recognizes that the fuel consumption data may come from owners/operators for some facilities and processes (*i.e.,* those with HAP emissions), but fuel consumption data for other facilities and processes may come from States reporting CAP emissions. As previously described, this proposed action would not require States to participate in CAERS. This flexibility for States could result in owners/operators needing to report the fuel consumption both to the EPA through CAERS and to the State. To avoid this additional burden on owners/operators, the EPA encourages States to participate with CAERS in one of the data flows that would avoid duplicative burden on owners/operators for fuel consumption.

5. New Requirement for Including Title V Permit Identifier

Title V of the CAA forbids major sources and certain non-major sources from operating without a permit. The vast majority of ''title V'' operating permits are issued by State or local authorities under State rules approved by the EPA to issue such. Title V operating permits are required to address all applicable pollution control obligations (*i.e.,* applicable requirements) under the SIP or Federal implementation plan (FIP), the acid rain program, the air toxics program, or other applicable provisions of the CAA (*e.g.,* NSPS including solid waste incineration rules). Sources must also submit periodic reports to the permitting authority concerning the extent of their compliance with permit obligations. The EPA has adopted regulations at 40 CFR part 70, which define the minimum elements required for State operating permit programs. In certain circumstances, the EPA also issues title V permits under 40 CFR part 71, the Federal operating permit program.

The EPA receives copies of permit applications, permits and facility annual

[56] U.S. EPA, 2020 National Emissions Inventory, Technical Support Document, March 2023, EPA Document number EPA–454/R–23–001, *https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-technical-support-document-tsd.*

compliance reports and is aware that a great deal of information is available from title V operating permits and from the reports that result from the monitoring and reporting requirements that the permits are required to contain. For the same reason, users of the NEI data often seek permitting information about facilities within the NEI. States and the EPA have developed repositories of title V permits, with much of that information available online. In most cases, perhaps all cases, the title V operating permits have a permit identifier that allow for distinguishing a permit from other title V operating permits. While there is no requirement under 40 CFR part 70 for assigning a unique identifier for title V operating permits, federally permitted title V sources do have permit identifiers and the EPA is aware that most, if not all, State permit programs also use permit identifiers. Based on EPA's current information, States often rely on a variety of numbers to uniquely identify various versions of a source's title V permit, including the title V permit number, an application number, project number, and the State's source identifier number. The EPA is seeking comment on which unique identifiers it should collect as a permit identifier.

Given the importance of easily associating point sources within the NEI with their Title V operating permits, this action proposes to require States to report Title V operating permit identifiers for all Title V sources that are also point sources as defined by the proposed revision to 40 CFR 51.50. Similarly, this action proposes to require owners/operators of facilities to report a Title V operating permit identifier when they would report annual emissions totals and associated data to the EPA under this action. The EPA additionally proposes that this requirement would take effect starting with the 2026 inventory year. Because the definition of point sources in this action does not necessarily include all Title V sources, it is possible that this action will not collect all Title V operating permit identifiers, but the EPA expects most of them to be collected under this proposed action based on the proposed point source definition.

6. New Requirement To Use the Best Available Emission Estimation Method

EPA guidance published in AP–42 has long established a hierarchy of information quality on which States and sources should rely to estimate emissions. The Introduction to AP–42, Volume I[57] provides general guidance about different ways to estimate emissions from sources. Regarding stationary sources, page 1 of the Introduction to AP–42 describes that ''[d]ata from source-specific emission tests or continuous emission monitors are usually preferred for estimating a source's emissions because those data provide the best representation of the tested source's emissions.'' The document goes on to acknowledge on page 1 that such tests may not be available, and that in such cases, emissions factors are ''the best or only method available for estimating emissions.'' It also describes on page 2, ''because emissions factors essentially represent an average of a range of emission rates, approximately half of the subject sources will have emission rates greater than the emissions factor and the other half will have emission rates less than the factor.''

Figure 1 of Introduction to AP–42 provides a hierarchy of emission calculation methods whereby the methods near the top of the hierarchy are methods with greater accuracy and methods near the bottom would generally have lower accuracy. In reference to this figure, the Introduction to AP–42 guides those who seek to estimate emissions by stating on page 3, ''[s]electing the method to be used to estimate source-specific emissions may warrant a case-by-case analysis considering the costs and risks in the specific situation.'' In this case, the ''cost'' consideration primarily applies to the decision about whether to add a CEMS or perform a source test, since the costs for simply looking up an emissions factor and applying it in a calculation are negligible in comparison to those other measurement options. Another cost could be incurred in cases where a new emissions estimation method needs to be developed because none are available.

As described previously, the EPA is interested in obtaining high quality emissions data. Regulatory and other decisions are made by the EPA based on the data collected by the AERR; however, the current AERR requirements are silent on the question of how emissions should be calculated. While this lack of specificity provides States and their regulated sources flexibility in how emissions estimates are created, the current AERR leaves open the possibility that the best available emissions estimation approach may not be used in estimating and reporting annual emission totals.

The EPA is considering the advisability of adding requirements for emissions testing at facilities for the purpose of improved emissions estimates. In addition to a large burden any such requirement would impose, the great variability of source types, source sizes, pollutants, source measurement methods, and other factors would make structuring such a requirement extremely difficult. Many requirements on facilities to perform source tests and performance tests for compliance purposes already exist. Given these considerations, an addition of source testing requirements would likely be too unwieldy to be successful.

Without a requirement for sources to perform additional measurements above and beyond what they are currently performing, the EPA can still rely on the available data that States and owners/operators of point sources have to estimate emissions. To ensure the highest possible quality data be provided, the EPA proposes to require in § 51.5(a) that States and owners/operators of facilities use the best available methods to report annual actual emissions. Further, the EPA proposes to refer to Figure 1 of the Introduction of AP–42 and include the expectation that States and owners/operators of facilities should preferentially use available emissions calculation methods at the top of the hierarchy over emissions calculation approaches lower in the hierarchy. The EPA also proposes that the best available emissions estimation method be used both to determine whether emissions exceed any proposed reporting threshold and for reporting emissions to the EPA when required or voluntarily reported. Finally, paragraph (a) of the proposed regulatory text explains that where current guidance materials are outdated or are not applicable to sources or source categories, owners/operators should develop and document new techniques for estimating emissions, which should rely on any available source measurements applicable to the emissions source(s). In proposing this approach, the EPA is seeking to strike the appropriate balance between EPA's need to obtain the best information and the burden that would be imposed by requiring additional source testing.

The CAA delegates responsibility for estimating emissions of CAPs to States and requires emission inventories reported by States to be ''comprehensive, accurate, and current'' in CAA section 172(c)(3). Thus, when source tests, performance tests, or

[57] The Introduction to AP–42, Volume I, Fifth Edition, U.S. EPA, January 1995, *https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors.*

continuous emissions monitor data are not available, States and owners/operators of facilities may use available emission rates from EPA compilations of emissions factors such as WebFIRE and AP–42 to estimate emissions. The EPA proposes a clarification in § 51.5(e) of the proposed regulatory text that emissions factors should represent the emissions process and controls at the facility.

The EPA has observed that many States use EPA's emissions factor compilations as the primary source of emission rates in their emissions data collection tools. For this reason, States sometimes do not report emissions from a process that does not have an EPA-provided emissions factor. While the EPA strives for a complete compilation of emissions factors, the CAA holds the States responsible for providing emission inventory data for CAPs. Therefore, States may not claim that emissions do not need to be reported simply because an EPA emissions factor is not available through EPA's emissions factor compilations.

Related to the possibility of missing emissions factors or calculation methods, the SBAR Panel Report completed for this proposed rule included a recommendation that the EPA avoid requiring small entities to develop a new emissions estimation method when none existed. Small entity representatives who participated in the panel process indicated that such efforts are beyond their resources and would impose an undue burden on small entities.

To clarify the expectation of emissions reporting while avoiding undue burden on small entities, the EPA proposes to include within § 51.5(a) a statement that ''where current guidance materials are outdated or are not applicable to sources or source categories, an owner/operator (other than a small entity) should develop and document new techniques for estimating emissions, which should rely on any available source measurements applicable to the emissions sources(s).'' States may estimate emissions with other approaches as described above.

The EPA is responsible for quality assurance of emissions data collected from owners/operators. While the requirements described in this section should help ensure high quality data is reported, the EPA may identify problems with the data as part of quality review. Based on this consideration, the EPA is proposing a statement at § 51.25(c) that as part of this review, the EPA may require an owner/operator of a point source to review and/or revise data that do not meet quality assurance criteria. The EPA proposes that it may additionally require an owner/operator of a point source to provide other data or documentation to support their submissions when information provided does not fully explain the source or quality of the data provided.

7. New Requirement To Use Source Test Reports for Emission Rates

In the case of source test or performance test data being used for emissions estimates, the tests that represent the typical operation of a source during the year should be used. Fortunately, many source tests are designed to measure emissions during typical operations of a source. Because of this, the EPA expects that most source tests should be relevant for estimation of emissions from the part of a facility that has been measured.

In addition to the use of the best available emission estimation method as described above, the EPA proposes requirements specifically regarding the use of source test data. The EPA proposes to require at § 51.5(c) that owners/operators of point sources that are submitting point source emissions data directly to the EPA under this subpart must use the most recent source test(s) or CEMS data applicable to the operating conditions of the facility during that year to provide annual actual emissions. When reporting directly to EPA, owners/operators should determine which data to include in any averaged emission rate used to estimate actual annual emissions. The EPA additionally proposes that when an owner/operator has source test or monitoring data for a unit, process, or release point that operated during the reporting year and the owner/operator does not use that data to estimate emissions, the owner/operator would be required to submit a justification for that choice for each unit and pollutant for which such data are not used to estimate emissions.

States would not be subject to the requirements for emissions data on owners/operators of point sources. To account for this, the EPA proposes a related requirement on states in § 51.5(d). The EPA proposes that states submitting point source emissions on behalf of owners/operators to the EPA under this subpart must ensure that owners/operators of facilities submitting data to the State take the same approaches as described in paragraphs § 51.5(a) through (c) of this subpart. If a State submits data for a facility that has not used available source test data or continuous monitor data to estimate emissions, then the State must submit a justification for that choice for each unit and pollutant for which such data are not used to estimate emissions. The EPA expects that the justification would be collected by the State from owners/operators.

8. New Requirement To Identify Regulations That Apply to a Facility

The EPA and States have numerous regulations that require owners/operators to meet various requirements and emissions limits for a wide variety of source categories. When the EPA or States issue a permit for a facility (*e.g.,* Title V operating permit), the permit includes the regulations to which a facility is subject. This existing permitting paradigm allows EPA, States, and the public to easily determine the regulations that affect a specific facility. However, since these permits are primarily on paper or an electronic format such as Portable Document Format (PDF), the current permitting approach makes it difficult for EPA, States, or the public to determine all the emissions units across the U.S. that are affected by a given regulation. With this action, the EPA is considering addressing this limitation by collecting certain additional data elements from owners/operators and States that would link key permit information with facilities and units in the emissions inventory.

An approach to provide such linking would be prudent because the EPA routinely needs to identify all the facilities and units that are regulated under Federal or State regulations that reduce emissions. For example, the EPA needs to identify those facilities and units subject to a particular NESHAP so that the EPA can evaluate the residual risk associated with the source category or to perform a technology review. Likewise, in making estimates of future-year emissions necessary for a RIA or proposing solutions to transported emissions, the EPA needs to understand which units are subject to state-imposed pollution reduction programs that may go beyond EPA requirements as opposed to a State implementing a particular EPA requirement. In addition, accurate information about how a regulation affects facilities nationwide would help the public know more about the ongoing benefits of EPA's regulations.

Using the current approach of paper of PDF permits, the EPA is able to identify affected units for selected regulations; however, the EPA has found such efforts to be labor intensive, time consuming, and subject to error. While some States do have electronic permitting systems that reduce these burdens for EPA, the systems are

typically not designed in a way that meets EPA's needs and even if such a design were available, it would cover only those States that provided it.

In addition to the challenges posed by paper/PDF formatting versus electronic datasets, the EPA has identified several reasons why the current permitting approach is not sufficient for these emissions inventory purposes. One reason is that unit identifiers included in permits are not always the same as those identifiers used in the emissions inventory. Thus, it is not necessarily possible to match the unit(s) as identified in a permit with those units and their emissions from an inventory. A second reason is that States do not have a uniform permitting approach that could allow for automating the scanning of paper/PDF documents. One way to eliminate these challenges would be a wholesale revamping of permitting that connects permits to emissions inventories (as some States have done) and to ensure facility IDs and units are synchronized across permitting and emissions inventories. However, this sort of endeavor would generate significant burden and would affect much more about the permitting process than simply getting the data that the EPA needs for inventory purposes.

To create the data flow needed to address this issue and to minimize burden, this action proposes to require certain additional data elements for point sources from States and owners/operators of point sources. For the major source designation, this action has already described a proposed requirement for States and owners/operators of facilities to provide a title V permit identifier, and that requirement would help provide the Major source designation information but does not address whether the source is a Major source for CAPs, HAP, or both. To allow for full categorization, this action proposes to include a reporting requirement in Table 2a to Appendix A of this subpart, a Facility Source Category Code. This code would allow a facility to be designated as one of the following: CAP major, HAP major, HAP and CAP major, HAP, and nonattainment area major, nonattainment area major, non-major, or synthetic non-major. The EPA additionally proposes that this requirement would not take effect until the 2026 inventory year (to be reported by May 31, 2027).

This action additionally proposes to require States and owners/operators of point sources with State or Federal operating permits to report the regulatory applicability for each unit or process for which a federally enforceable regulation applies and is included in EPA's list of regulatory codes. Currently the list includes regulations within 40 CFR parts 59, 60, 61, 63, and 65. The EPA provides the list through the EIS and has included the current list in the EPA docket for this action. As described in section IV.A.12 of this preamble, this proposed requirement would include an optional accommodation for small entities (that meet certain criteria) to require only reporting of these additional data elements by unit, even when the regulation applies only for a particular process of the unit. The EPA additionally proposes that these requirements would not take effect until the 2026 inventory year (to be reported by May 31, 2027).

Under this proposed action, States or owners/operators of permitted sources would be required to provide the regulatory codes for a unit when the entire unit is subject to a particular regulatory requirement in EPA's list and would be required (if not a small entity) to provide the regulatory codes for a process (*e.g.,* a particular fuel burned at that unit) if a single process within a unit is subject to a regulation but not the entire unit. This requirement would apply to all facilities for which a State/local/tribal CAA permitting authority (including the EPA as the permitting authority) has issued a permit for construction or for operation.

If a State or owner/operator provides a regulatory code for a unit (rather than a process at that unit), then the EPA would assume that regulation applies to all processes at that unit. In addition, the required data would include the start-year and any end-year of applicability of the regulation to the unit or process. Finally, States and owners/operators may optionally include any State regulations associated with units and processes. If such optional regulations are included, then the State or owner/operator would also need to include a description of the State regulation.

The EPA recognizes that this proposed requirement would impose some incremental burden on owners/operators and States. Most of this burden would occur in the first year of reporting under the new requirements as proposed, and subsequent years would see a decline in that burden because only changes to the information would be required to be reported, as the EIS and CAERS carries forward data about regulations from one year to the next.

9. Existing Regulatory Requirements To Be Required by EPA Data Systems

The EPA has identified several data fields that are relevant to perform its regulatory functions, for which States have not always provided complete data. The current AERR requires reporting of design capacity and associated data elements like unit of measure for any point source combustion units. The current AERR additionally requires the throughput that is used to calculate emissions when emissions are calculated using emissions factors. EIS does not currently reject States' data when it does not include these required data elements. The current approach is based on feedback from States offered as part of routine collaboration for the NEI in which States indicated that the information was not available in their data systems when the EPA started using the EIS for the 2008 inventory. After collecting 2008 inventory data, the EPA observed that some States used default values rather than obtain accurate data for these fields. For this reason, the EPA stopped requiring those fields so as not to clutter its repositories with inaccurate data based on State defaults.

Accurate information on design capacity and associated fields will help the EPA better understand the size of combustion units when evaluating alternative regulatory approaches to reducing emissions from these sources. Accurate and complete data about throughputs used to estimate emissions is critical to include so that the EPA can quality assure the resulting emissions data and have all information needed to transparently provide the origin of the emissions estimates in the NEI. To achieve this, the EPA plans to reject data submitted to EIS that does not include the unit design capacity and associated data elements required under the current AERR and in this proposed revision to the AERR for any combustion unit starting with the 2023 inventory cycle. Likewise, the EPA plans to reject data submitted to EIS for emissions estimation methods that require throughput to calculate emissions (*e.g.,* emissions factors) when the throughput data are not included in the submitted emissions reports. The EPA is not reopening these requirements included in the current AERR but rather is simply using this preamble to explain the Agency's intent to start collecting these data once again.

10. Option for Reporting Two-Dimensional Fugitive Release Points

The current version of this subpart already allows for States to report two-dimensional fugitive release points. These fugitive release points can take the form of a series of vents near the top of a manufacturing building, whereby any pollutants inside the building can be vented to the ambient air. These two-dimensional releases can be oriented in any position. The current version of this subpart provides that these two-dimensional fugitive release points can be specified using a latitude/longitude of the southwest corner of the release, width, length, and an orientation angle in degrees from north, measured positive in the clockwise direction from the western-most point. The definition of the appropriate angle to use has been challenging for States to understand and implement.

Fugitive release parameters are very important because they impact modeled risk. Often fugitive releases are lower to the surface and thus may pose an increased risk to nearby communities as compared to tall stacks that disperse the pollutants before they reach ground level. The EPA's review of data from past inventory cycles shows that either fugitive releases are not included in State submissions or when submitted, the two-dimensional release parameters are incorrect. The inaccuracy of these data is a significant reason for adjustments to the NEI for use in EPA technology reviews and risk reviews, after the NEI has been completed. This additional review takes time and delays regulatory actions and consequently delays protection of public health. These delays could be avoided if States (and/or owners/operators of facilities reporting to EPA) were to submit correct information. To address the challenges of the existing angle-based, two-dimensional fugitive release points, the EPA is proposing a simpler approach.

The EPA has devised a new approach that is easier to understand and has been previously implemented as part of the RTR program's information collections under CAA section 114 and in CAERS. This approach relies only on the width of the two-dimensional releases (*e.g.,* the building width) and coordinates of the midpoints each end of the length of the release. The latitude/longitude coordinates are readily obtained through GPS devices on common cell phones, and the building width can either be measured or obtained from building plans. The greater simplicity of this proposed additional approach suggests that it will assist States and owners/operators in complying with the provisions of this subpart that include reporting fugitive release points and their associated coordinates.

Based on these considerations, the EPA proposes to allow States and owners/operators to use either the existing angle-based approach for this current subpart or the new approach as just described. The current approach allows for States who have previously collected accurate two-dimensional release point data to continue to provide that. The new approach will help reduce burden, improve compliance with this subpart, and improve data quality. It allows reporting the orientation of two-dimensional fugitive releases by providing the latitudes and longitudes for center of the sides of each release. For the example of a rectangular building with vents (a common fugitive release), this approach would allow a GPS-provided location to be collected by someone while standing first at the midpoint of one side of the building, then at the midpoint of the opposite side.

While this action proposes to retain the angle-based approach, the EPA continues to consider a second option that would phase-out the angle-based approach in the future. This ''Single Fugitive Approach Option'' would provide less overall complexity for the data system and allow for easier quality control. It also would compel States that may incorrectly assume that their data are accurate to regenerate that data using the new approach, improving the accuracy of the emissions data. If the EPA were to eliminate the angle-based approach from the reporting structure, it would consider doing so as early as the 2023 inventory year (which would be due under this proposal by January 15, 2025) or as late as the 2032 inventory year (which would be due under this proposal by May 31, 2033). The EPA urges commenters to provide input on the advisability of retaining the angle-based approach indefinitely or phasing it out during the periods suggested.

11. Changes To Reporting the North American Industrial Classification System Code

The current AERR requires that point source reports include a single NAICS that applies to a facility. The EPA has observed that multiple NAICS may apply to a single facility. To support the interest that some States and owners/operators may have in reporting all applicable NAICS codes, the EPA has included in its latest reporting formats (as included in the docket for this proposal) a capability that allows States to report multiple NAICS for the same facility. When multiple NAICS are reported voluntarily, States need to provide an additional data element to indicate which NAICS is considered the primary NAICS and allows for labeling the other NAICS provided as secondary, tertiary, etc.

EPA is proposing to formalize this voluntary approach by including an additional NAICS Type data element, and that this data element is only required when multiple NAICS are reported. The EPA proposes that reporting multiple NAICS and including the NAICS Type data element would be voluntary for both States and owners/operators. However, when multiple NAICS are voluntarily reported, the NAICS Type data for at least one NAICS would be required to indicate the primary NAICS. The EPA would assume that any State and owner/operator reporting a single NAICS is reporting the primary NAICS.

With the addition of the concept of primary NAICS, the EPA has identified the need to define that term. The EPA considered definitions available from the small business administration (13 CFR 127.102), the GHGRP (40 CFR 98.3), and the TRI program (40 CFR 372.22). After reviewing these available definitions, the EPA is proposing to define primary NAICS as ''the NAICS code that most accurately describes the facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the facility or supplier.''

In addition, the EPA is proposing to specify the number of digits for the NAICS value that States and owners/operators must include when reporting. The NAICS system allows for NAICS codes from 2-digits to 6-digits, where more digits provide more specifics about the business activity. As previously described in section IV.A.8, the EPA is proposing a list of NAICS codes for which facilities with that primary NAICS code would report HAP for those emitted pollutants that exceed proposed reporting thresholds. This list of NAICS sometimes includes 5- and 6-digit NAICS, so it will sometimes be necessary for facilities to identify a NAICS at that degree of specificity.

In its work with States, the EPA has learned that some State systems continue to allow facilities to report emissions with only Standard Industry Codes (SICs), which OMB replaced for use by Federal agencies in 1997.[58] In 2008, the EPA required that NAICS be used in State reports under the AERR

[58] See U.S. Census, North American Industry Classification System, 2023. *https://www.census.gov/naics/?99967.*

(73 FR 76539); however, when States collect SIC, they must map it to a NAICS code for reporting for this subpart. This mapping can result in less specific NAICS. For this and other reasons, some States have been unable to report NAICS beyond a 4-digit degree of specificity.

As will be described in section IV.R, the AERR is referenced as providing a required data format for numerous SIP inventory requirements. Given nearly every State has at some point since 2008 needed to prepare SIP emissions inventories, the EPA does not know why some States do not collect NAICS from their facilities for meeting the AERR and SIP inventory reporting requirements. The EPA seeks comment from States on what obstacles exist for modernizing their collection. Considering that the EPA now provides the CAERS for use by States and CAERS includes collection of NAICS, the EPA expects all States should update their emissions collections from facilities to meet the AERR requirements for NAICS, originally issued in 2008.

Additionally, the EPA describes in section IV.A.6 its proposal to allow States to voluntarily report HAP on behalf of owners/operators, which would require States to adopt the same reporting requirements for HAP as the EPA has issued in a final AERR rulemaking. If finalized, this provision would make collection of NAICS by States essential to being able to report on behalf of owners/operators.

As part of its efforts through CAERS to better share facility data across emissions inventory programs, the EPA has evaluated the requirements of the TRI, CEDRI, and GHGRP collections and the requirement for NAICS. The TRI program requires a 6-digit NAICS code (40 CFR 372.85(b)(5)). The CEDRI program does not require NAICS, but when it is provided voluntarily, requires that it be provided with 6 digits. Finally, the GHGRP program requires at 40 CFR 98.3(c)(10) that the NAICS be provided ''that most accurately describes the facility or supplier's primary product/activity/service.'' The GHGRP has implemented this using a 6-digit NAICS requirement.

Given these considerations, the EPA is proposing to require 6-digit NAICS in reports from States and owners/operators under this subpart. In many cases, 5-digit NAICS are the same as 6-digit NAICS available by appending a zero. In cases where there are more specific 6-digit NAICS that correctly describe a facility, then States and owners/operators should use it. When a 5-digit NAICS is the best representation of a facility, such as when none of the more specific 6-digit NAICS correctly describe the primary economic activity at a facility, States and owners/operators may instead report a 5-digit NAICS. For those owners/operators of facilities also reporting to other programs with a 6-digit NAICS, the EPA would encourage reporting with the same NAICS when appropriate. In addition, a 6-digit NAICS would support determination by States and owners/operators whether they are subject to reporting requirements if the EPA finalizes the proposal to use NAICS as one basis for HAP reporting requirements for non-major sources. Further, if the EPA were to finalize the SBA Definition Alternative for defining small entities (see section IV.A.14), 6-digits would be necessary for implementing NAICS-specific criteria for small business definitions. This proposed requirement would also provide the EPA more specific information about activities at each facility and better standardize the available data to the agency, States, and the public.

12. Clarification About Definition of the Facility Latitude/Longitude

Since the inception of the NEI program, the EPA has observed problems with the accuracy of facility locations. In the current AERR, Table 2a to Appendix A of this subpart specifies that for point sources, States must report ''latitude and longitude at facility level.'' However, the AERR provides no definition of this location.

As described in sections IV.A.11, EPA is additionally proposing requirements to collect coordinates for release points, to allow for appropriately accurate estimation of cancer risk and other health impacts associated with HAP. This ''facility-level'' coordinate serves several purposes in implementing the NEI program. First, EPA uses the facility-level coordinate to quality assure release point coordinates as they are being submitted electronically, to make sure that the release point coordinates are within a reasonable distance to the facility-level coordinate (EPA has adjusted and may further customize these ''reasonable'' distances for each facility to further improve the quality assurance). In addition, the single facility-level coordinate is used to provide a mapping location of the facility for displaying facility-level emissions data for products such as AirToxScreen. Under the current AERR, the facility-level coordinates serve as a default location for all release points at a facility, and those release point locations are used in air quality modeling that supports EPA's NAAQS and air toxics programs. Under this proposal, those facility-level locations would continue to serve as a default for certain small businesses that choose to use the alternative reporting requirements available as part of this proposal.

Many ways exist for interpreting a facility-level coordinate. As a result, States provide various interpretations of the location, which includes geocoded addresses (which results in a coordinate at the roadside) as well as points taken manually from a map. This variability is understandable considering the lack of detail in the current rule. Without a more specific definition, it is difficult for the EPA to obtain quality data to best implement the NEI program.

The EPA also recognizes that a single facility may have many contexts in which a facility-wide coordinate could be used appropriately. Thus, the EPA is considering which terms would best describe the requirements of this subpart, while also allowing for other contexts. Any such term would ideally not conflict with terms that may be used to set geocoded addresses or locations in the context of regulations related to other environmental mediate (*e.g.,* water and solid waste).

Within the NEI program, the facility coordinates are important for two primary reasons: (1) to display the location of the facility on maps for end users and (2) to provide a centroid location that defines a facility-specific quality assurance perimeter. Using the facility coordinates and a facility-specific radius, the EIS can QA release point coordinates to ensure that all such coordinates fall within such a radius. To address these considerations, the EPA is proposing a specific definition of facility coordinates in 40 CFR 51.50 to ensure high quality data for mapping purpose and to allow for the effective implementation of release point coordinates.

The proposed definition reads as follows: ''*Facility air centroid coordinates* means a latitude/longitude using the WGS84 or NAD83 datum that maps to or near the centroid of the air emissions activities at a facility.'' This definition would allow for separation of this facility-wide coordinate from other coordinates that currently exist outside of the NEI program. In addition to the definition, Table 2a to Appendix A of this subpart would be modified to include the term ''facility air centroid coordinates'' rather than ''latitude and longitude at facility level.''

In addition to defining the term, this proposed change would add the specification of which datum should be used when determining coordinates to report. In past collections, the EPA has received other types of datum without

specification. The previous AERR did not require specific datum or require that a field identifying the datum be included in the report. The EPA identified this error in the data after the data had been reported, rather than before the data was accepted by the EPA from the State. To allow for checking the datum used for the coordinates reported, the EPA proposes to add a new required field for States and owners/operators to fill in when reporting any coordinates (facility air centroid coordinates and release point coordinates).

13. Clarification To Use the Latest Reporting Codes for Electronic Reporting

The EPA has observed that, in past emissions inventory reporting cycles, States may try to report their emissions inventory data using outdated emissions inventory reporting codes, such as SCCs, unit type codes, or control measure codes. When States use outdated codes and report to the EIS, the data records using such codes are rejected by EIS. If States do not review the EIS feedback report notifying them that certain data were rejected, correction of the error(s) is delayed, creating unnecessary additional work for both States and EPA.

To help avoid this problem for States and prevent this problem for owners/operators who may be required to report directly to the EPA under a final version of this proposed action, the EPA proposes to add new requirements about use of the latest EPA codes in submitting emissions inventories. The EPA is proposing to add a statement in 40 CFR 51.5(j) that would require States and owners/operators of point sources reporting directly to the EPA under this subpart to use the most current data reporting codes for electronic reporting that are available at the time of reporting. Reporting codes can change over time, and the EPA will strive to publish the reporting codes that can be used for each inventory year by June 30th of each inventory year. For example, the EPA would plan to publish codes that are to be used for reporting 2024 emissions will be published by June 30, 2024. Since the proposed regulations would require reporting in accordance with the most current codes, entities responsible for reporting should check to see if the EPA has published updated reporting codes before they report.

14. Clarification About Reporting Individual Pollutants or Pollutant Groups

Some HAP pollutants have different degrees of specificity in how they can be reported. For example, mercury could be reported as total mercury compounds (*i.e.,* compounds that include mercury but have other elements that comprise the compound mass), total mercury (*i.e.,* only mercury), or reported separately for elemental gaseous mercury, gaseous divalent mercury, and particulate divalent mercury. In proposing the addition of HAP reporting to the AERR, the EPA is clarifying in this proposed action whether individual pollutants or grouped pollutants should be reported.

EPA has developed experience in collecting HAP information based on the existing voluntary HAP reporting from States. As part of this voluntary program, the EPA has implemented choices for each case where a pollutant group or a specific pollutant could be reported. This choice depends on many factors that change over time, including source measurement methods, available emissions factors, data system capabilities, and QA approaches. To provide a degree of flexibility for the data collection approach, the pollutants that are permitted to be reported are listed via the EIS for State reporters and via CAERS for use by owners/operators. The EPA lists the pollutants that may be reported following the reporting codes schedule described in section IV.I.13 of this preamble.

The EPA is proposing that States or owners/operators would be required to report the most detailed pollutants possible based on the available data (*e.g.,* continuous monitors, source tests, emissions factors), so long as the system allows it to be reported. The pollutants to be reported may be more detailed than when the pollutant group is used to determine if a facility is a point source. For example, in section IV.A.4 of this preamble, the EPA proposes that a facility could be determined to be a point source when the sum of dioxins/furans exceeds a mass-based reporting threshold. The EPA is proposing to require the individual congeners of dioxins/furans to be reported, in a manner similar to how dioxins/furans are reported to TRI, because they have different degrees of toxicity. EPA would use the latest available toxicity information to compute the TEQ of the dioxin/furan group.

To implement this approach, the EPA proposes to add § 51.5(q) to require owners/operators or States reporting on their behalf to report the most detailed pollutants available (*e.g.,* the component pollutants from Table 1D to Appendix A of this subpart) preferentially over pollutant groups. The specific cases listed are polychlorinated biphenyls, and mercury. This action further proposes that, when the detailed pollutants do not comprise the total mass of the pollutant group, owners/operators report the remaining portion of mass for the pollutant group. In all cases, owners/operators must only report detailed compounds or pollutant groups that are supported by the EPA electronic reporting system.

15. Clarification About How To Report HAP That Are Part of Compounds

For pollutant groups such as ''Lead compounds'' or ''Nickel compounds,'' the existing voluntary HAP program has caused confusion about how to report such emissions. This confusion stems from the fact that the HAP portion of such compounds can be a different amount of mass than the total compound, which includes mass of other non-hazardous elements.

To avoid further confusion for States or owners/operators who may report HAP, this action proposes at § 51.5(p) to require that emissions must be reported for the metal portion of the metal group (Pb or Nickel in these examples). This proposed approach is consistent with the guidance that the EPA has provided to States informally when NEI reporting questions have arisen, but this proposed action attempts to formalize the approach. If finalized, this proposed action would further clarify that no adjustment is needed to estimate the metal portion when using emissions factors and source tests, because the source measurement methods used to create emissions factors and source tests already reflect the metal portion of the compounds. Other estimations methods such as material balance or engineering judgement may need to include calculations to adjust the mass to reflect just the toxic portion of the pollutant group. When no composition information is known, the EPA proposes that the entire mass of the material emitted be considered and reported as HAP.

16. Requirement To Include Certain Mobile Sources Within Point Source Reports

The EPA has received questions during past NEI years regarding whether emissions from mobile sources operating within a facility site should be included as emissions from that point source. These mobile sources can include mining equipment and other vehicles and have emissions both from combustion engines and from road dust

generated by the vehicles. To resolve any confusion that may exist, the EPA proposes to include a statement to clarify that such emissions should be included in point source reports.

The EPA further proposes to define which mobile sources should be included to distinguish the mobile sources that are part of the functioning of the facility (which would be included) from vehicles like cargo trains, employees' personal vehicles, or delivery trucks (which would not be included). To accomplish this, the EPA proposes to include a statement in 40 CFR 51.5(b) that would require States and owners/operators to include in their point source reports the emissions from those ''mobile sources (excluding aircraft and ground support equipment (GSE)) operating primarily within the facility site boundaries of a point source or multiple adjacent point sources''. The EPA additionally proposes that this requirement applies when assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and when submitting point source emissions data under this subpart.

EPA is proposing to exclude aircraft and GSE from 40 CFR 51.5(b) to ensure that the section does not conflict with the proposed approach for States to report data about aircraft and GSE described in section IV.I.1 of this preamble. As previously described, the EPA is proposing that for these sources, the EPA would provide LTO data for States to review, accept, or provide comments about. Based on the LTO data, the EPA would calculate emissions of aircraft and GSE. If those sources were to be also included in 40 CFR 51.5(b) to determine point source status of a facility, then States and owners/operators would need to calculate those emissions independently of EPA. Rather than impose this additional burden, the EPA is proposing to exclude those sources from point source determinations. Other sources at airports such as combustion units and other mobile sources as defined by 40 CFR 51.5(b) should be included in making any determination of point source status for airports.

The proposed inclusion of the ''multiple adjacent'' phrase exists account for co-located facilities that may share the use of such mobile equipment or vehicles. This part of the proposed requirement is intended to capture emissions from equipment used in the production and operation of a facility, for example, nonroad vehicles and trucks at mines, forklifts, and movable electricity generators. The proposed requirement is intended to exclude vehicles of employees, temporary or occasional on-site contractors (such as temporary construction, landscapers, or repair services), and other mobile sources operated in many other locations and/or for other purposes.

17. Cross-Program Identifiers Option

During the SBAR panel, small entities asked about whether the EPA would be able to use activity data about industrial throughput that the EPA already collects as part of the Toxic Substances Control Act (TSCA) section 8. They indicated that that activity data could be especially relevant for helping small entities use facility-wide throughputs that could be used to estimate emissions using EPA's emissions estimation tool (see section IV.A.13 of this preamble). During discussions with the panel, the EPA explained that to be able to use such information, the EPA would need to be able to match facilities across the NEI and TSCA programs. As a result of these discussions, the SBAR panel recommended that the EPA take comment on whether small entities would prefer to provide the EPA an additional data element with the TSCA section 8 facility identifier, so that the EPA could use those identifiers to support owners/operators use of the TSCA data, when appropriate, for estimating facility-wide emissions. The EPA expects that if TSCA identifiers were available, then connections between TSCA section 8 data and emissions estimates for AERR could likely be included in the emissions estimation tool and/or the CAERS collection approach.

Based on this recommendation and other information included in this section, the EPA urges small entities and other commenters to provide information about cross-program identifiers. In the case of the TSCA section 8 identifiers, the EPA seeks to clarify our current understanding that the throughput information from TSCA section 8 may not be the relevant throughput for a particular facility, depending on the emissions factors and other information available to EPA, to use to estimate facility-wide air emissions. In addition, the EPA believes that it would be impractical to require reporting of TSCA section 8 facility IDs only in certain circumstances. Thus, if the EPA implemented this approach in any final action, the EPA expects that the TSCA section 8 identifier would be an optional data field that could be used to help small entities estimate emissions only when provided and relevant.

In addition to TSCA section 8 identifiers, the EPA has many air emissions programs with different identifiers from the facility and other identifiers that have been collected under the AERR for many years and would continue to be collected. Through the CAERS program, the EPA has developed a conceptual model of facilities, by which emissions from each unit, process, and release point within a facility are linked to different air emissions programs. If the detailed data reported under the AERR also had cross-program identifiers, then EPA, States, and other air emissions data users could better understand the relationship among these programs. In some cases, facilities have the same definitions across programs and a facility-level cross-program identifier is sufficient to map across two programs. In other cases, units within a facility as defined by the AERR may be grouped and reported as two separate facilities based on the facility definition of another program. Similarly, emissions processes (*e.g.,* emissions from a primary fuel) might be relevant for reporting separately to one program from a different process at the same unit (*e.g.,* emissions from a secondary fuel, which happens to be biomass).

Based on experience with cross-program mapping for air emissions programs, the EPA has observed that its attempts to map across programs can be error prone. While it is extremely difficult for the EPA to do this mapping, the EPA believes that the owners/operators of facilities are aware of which units and processes within a facility contribute emissions for reporting to each program. Based on discussions with owners/operators and States, the EPA is aware that owners/operators often estimate emissions at a unit or process level before aggregating emissions to a facility level before reporting facility total emissions.

For source test collections involving CEDRI, the EPA is aware that owners/operators perform source tests on a specific unit and/or process with control devices installed. When reporting these source tests however, facilities are not required to use the identifiers that are used for reporting emissions under the AERR. If these identifiers were used, then EPA, States, and owners/operators could easily map the source test data reported to CEDRI to use in calculating emissions when it is appropriate to do so. If the EPA had this information from source test reports, then it could use it in CAERS to provide the source test data to owners/operators using CAERS for calculating their emissions. This would lessen burden on owners/operators (and States adopting CAERS) to meet the

proposed requirement to use source test data when it is available. Under this scenario, CAERS could link to CEDRI and provide the available source test data, and if not selected, require an explanation for why it is not suitable as is also proposed to be required by this action.

As mentioned above, the EPA urges commenters to provide information regarding the advisability of requiring or optionally allowing cross-program identifiers, called the ''Cross-Program Identifiers Option'' for TSCA section 8, CEDRI, TRI, and GHGRP. If the EPA decided to include such a provision in any final action, the EPA would include additional data elements in Table 1A to Appendix A of this subpart that would allow for owners/operators to report these identifiers. The EPA seeks information about the availability of information, the burden associated with providing such information, whether cross-program identifiers should be required, which programs should be included, and what the EPA can do to encourage such reporting, and other ideas for using cross-program mapping information to reduce burden on owners/operators and States.

18. New Requirements When Using Speciation Profiles To Calculate Emissions

One approach for estimation of emissions that may be used when other approaches are not available includes speciation profiles. A speciation profile is a set of pollutants with associated fractions of some other related or ''base'' pollutant. For example, a speciation profile could provide a ratio between a benzene and VOC to use to estimate emissions of the benzene when a VOC emission value is available. If the amount of VOC has been computed for a particular source, the fraction of benzene from the speciation profile could be multiplied by the mass of the base VOC emissions to calculate benzene. This calculation would only be appropriate when the speciation profile is relevant for the emissions source. A speciation profile is relevant when it has been compiled based on measurements of sources like the one for which the speciation profile is being applied.

Emissions reporting by States under the current AERR allows States to use speciation profiles to estimate emissions. Since this approach is generally a lower quality method of estimating emissions as compared to source tests, emissions factors, or mass balance approaches, speciation profiles are typically used only if other sources of data are not available.

To address these considerations, the EPA proposes that a State or owner/operator may use the SPECIATE database [59] or other credible, publicly available speciation profile data to calculate ratios of related pollutants if relevant speciation profiles are available. In addition, to allow the EPA to assess the quality of the information provided, the EPA proposes to collect additional information about the speciation profile. Specifically, the EPA proposes that starting with the 2026 inventory year, when using a speciation profile, a State or owner/operator must provide (1) the speciation factor used, (2) the SPECIATE profile code when a SPECIATE profile is used or in the case of other speciation profiles, the journal citation or reference to a publicly available report, and (3) the actual emissions value and all relevant required fields (*e.g.,* throughput, emissions factor) used for calculating the base pollutant emissions.

This proposed change would require the emissions value and associated required data fields for the base pollutant even if not otherwise required by the AERR. For example, some SPECIATE profiles are based on total organic gases (TOG), but the current AERR does not require TOG reporting. Under this proposed change, however, if a State or owner/operator used a TOG-based speciation profile to estimate and report emissions, then the State or owner/operator would also need to report TOG and the other required elements included in Table 2B to Appendix A of this subpart.

19. New Requirement for Small Entity Type

The EPA has a need to collect and retain information about which facilities are owned by small entities and to be able to distinguish which small entity definitions apply to a facility. As previously described, the EPA expects the proposed revisions to impact small entities, and the degree of that impact will depend on the definition of small entity that the EPA uses in a final action. Irrespective of that definition, the EPA expects States to continue to report emissions for whatever businesses State regulations require, including voluntary reporting of facilities smaller than the reporting thresholds included in this proposal. If these reports included information about which facilities are owned or operated by small entities, the EPA recognizes that such information would be beneficial for several reasons as follows.

First, generally knowing whether a facility is owned or operated by a small entity would allow the EPA to implement different reporting options for small entities. Without a facility self-identifying as a small entity, the EPA would not be able to provide such options or analyze its data to know which facilities that owners/operators have reported as a facility total versus which have been reported only a single facility, unit, and process. Second, knowing which owners/operators meet the CAA definition of small entities would support implementation of the various expectations of SBEAPs for outreach and support of these businesses. Third, knowing which owners/operators meet the SBA Definition of small entities would allow the EPA to have more information about such entities to more efficiently and effectively analyze whether regulations being developed or revised may have a significant impact on small entities, as is required by the RFA as amended by the SBREFA. Finally, the EPA anticipates interest in reviewing the AERR requirements as they apply to small entities in the future. For example, the EPA may be expected to assess the utility of collecting from small entities. By having this information in the data for any small entities reporting under this proposed action, the EPA would be able perform any such reviews and assessments.

Based on these considerations, the EPA proposes to require reporting of a Small Entity Type at the facility level starting with the 2026 inventory year. This data element would be defined as the small entity definitions that apply to an owner/operator responsible for reporting emissions for a given facility, and it would be reported as an attribute of a facility. We further propose that the available types would be ''None'', ''CAA,'' and ''SBA,'' where ''CAA'' refers to the definition of CAA section 507(c) and ''SBA'' refers to the definition previously described as the SBA Definition Alternative (see section IV.A.14 of this preamble).

J. Nonpoint Activity Data Reporting and Nonpoint Survey

The current AERR requires States to report nonpoint emissions of CAPs in triennial years. Nonpoint emissions can be estimated by multiplying throughput or activity data (*e.g.,* volume of fuel used) by an emissions factor (*e.g.,* quantity of nitrogen dioxide gas produced per unit of fuel) to arrive at an emission value (*e.g.,* amount of NO_X emitting in a year). Nonpoint emissions

[59] SPECIATE Database available at *https://www.epa.gov/air-emissions-modeling/speciate.*

estimates using emissions factors may also be adjusted by a control factor when the emissions factor does not already account for emissions reductions achieved by owners/operators due to their compliance with regulations. More rarely, nonpoint emissions are estimated by collecting point source data and summing it across counties to report as a county total. In review of the current AERR, the EPA has documented some significant reporting gaps that result from the current requirements. As described below, the EPA is proposing to retain the triennial reporting requirement for nonpoint sources and is proposing to make other changes to reduce burden and improve the reporting process.

One key gap is that some States do not submit any nonpoint emissions data. As part of the normal collaboration with States for the NEI program, some States have explained that they do not have sufficient resources to fulfil all AERR the requirements (*i.e.,* lack of staff or time). Another gap results when States submit incomplete datasets that may exclude whole sectors or parts of sectors. Also, a gap is caused when States do supply nonpoint emissions data but have calculated emissions using an outdated method, a method that State staff cannot explain, or a method without documentation. Another issue is not knowing whether the State is using a different SCC or data category to report emissions; in other words, some emissions may be reported under an SCC that aligns with how the State categorizes a sector, but this may not be the same categorization that the EPA uses based on documented methods.

The current AERR does not have a requirement to submit documentation of emissions estimation methods alongside the data. Thus, when States do submit their emissions estimates, they do not provide documentation unless the EPA requests additional information. The result can be a lengthy correspondence with State staff to try to understand how they estimated emissions. The current AERR includes in 40 CFR 51.15(c) a provision for the EPA to ask States to voluntarily provide supporting information, but the EPA has found this approach to be very inefficient. Data quality issues, completeness problems, or lack of documentation can be found months after the data have been submitted, which has caused the EPA and State to redo work and creates delays in completing the emissions inventory. For the 2020 triennial inventory year, the EPA has developed enhanced nonpoint QA approaches that could further improve quality control of NEI nonpoint sources with additional adjustments.

Since the last AERR revision in 2015, the EPA has observed the problems just described in recent NEI cycles. While the EPA provides emissions calculation methods with extensive documentation to ensure robust methods and reduce State burden, the current AERR process does not require use of those emissions methods. Further, when a State has emissions calculation methods the State believes represents emissions more accurately than EPA's methods, the EPA wants States to report emissions totals for nonpoint sources; however, emissions data without documentation explaining how it was calculated poses a problem. The EPA needs to obtain documentation about those methods to assess State data in comparison to the EPA methods and to consider it for possible improvements to the EPA methods for future NEI years. Documentation is also needed to support transparency of the data and for reproducibility for subsequent inventory cycles or release of updated activity to improve the estimates.

Further, both the EPA and States benefit from a process that considers the possibility of new information after a State submits and other factors. For example, if a State reports emissions and the EPA uses that data, the State's calculation method could be superseded by improvements in an EPA method. Further, because the EPA uses the NEI to estimate future emissions for use in regulatory development, documentation of State emissions supports the EPA projecting those emissions to the future with full understanding of the origin of those data. Without a clear understanding of State methods, it is difficult for the EPA to ensure emissions projections are consistent with the assumptions a State may make to create their nonpoint emissions submission. These considerations support EPA's interest in collecting documentation of State emissions calculation methods.

States continue to experience resource constraints, and any approach taken by the EPA should consider that such resource constraints could likely continue. At the same time, the nonpoint emissions in the NEI are growing in relative importance to other sources due to regulations that have significantly reduced point source and onroad mobile source emissions over the past 20 years. This is illustrated by research in Los Angeles County, CA, where VOC emissions (among other pollutants) are important precursors to ozone and $PM_{2.5}$ formation. In Los Angeles, mobile-source VOC emissions have decreased, but emissions from pesticides, coatings, printing inks, adhesives, cleaning agents, and personal care products have decreased less, or in some cases, have increased. In addition, recent studies have shown that the chemical components of the VOC emissions from these and other nonpoint categories can have an outsized influence on both ozone and secondary $PM_{2.5}$ formation. As a result, nonpoint VOC sources have been identified as an increasingly important area of study for contribution to public health harms.[60] Thus, any adjustment to the AERR for nonpoint sources should support States without sufficient resources as well as promote high-quality and well documented data collection.

Through EPA's work with States, the EPA has continued to refine and publish new nonpoint emissions methods and tools for use by the EPA and States. The EPA provides States with extensive opportunities to give input on the nonpoint emissions methods and incorporates state-provided emissions factors and ideas. As a result of this work and State input, the EPA has developed a nonpoint estimation tool called the Wagon Wheel (WW) as described most recently by the 2020 NEI TSD. The WW Tool provides a central hub of the activity data inputs for estimation of emissions for many nonpoint sectors. It also provides templates for States to submit input activity data and estimation tool assumption parameters, and it calculates emissions using county-specific data and the latest emissions calculation methods. Under the current AERR, States have been using the WW Tool (and its predecessors) voluntarily because it reduces the burden of devising their own calculation methods, tools, and submitting the emissions data to EIS.

The EPA and States have also worked together to create other tools and approaches (*e.g.,* spreadsheets). Primary among these is the oil and gas tool, which the EPA has revised each triennial inventory year since 2011. States and other stakeholders work closely with the EPA and provide comments and input data to improve calculation approaches.

When EPA's tools are used by States, this provides a consistent, documented approach. Also, the burden on States who do not have the resources to develop their own tools is greatly reduced with the WW Tool and other EPA tools. Using these tools reduces the reporting burden on States because the

[60] McDonald et al. (2018), *https://www.science.org/doi/10.1126/science.aaq0524.*

process collects activity data in simpler formats (*e.g.,* text, comma-separated value) than the XML formats required when States report emissions to EIS. In addition, when States provide activity data, the States can upload this directly to the WW Tool to obtain updated emission estimates and provide updated activity data to the EPA to ensure more expedient error corrections in emissions estimates when the EPA reruns these emissions calculation tools.

Sometimes States are ahead of the EPA regarding the latest emissions from certain nonpoint sectors, or the EPA tools do not yet meet a State's needs. For example, some States are not yet able to use the Oil and Gas Tool to estimate emissions from that sector while other States do not believe that the WW Tool represents their residential wood combustion emissions properly. The EPA has observed over the years while collecting data for past inventories that there are cases where States have better local input data and/or emissions calculation methods for sectors that the EPA does not yet have tools for, or others in which EPA's tools are not as appropriate for estimates in the State as the State's own tools. For example, in past inventory years, States have submitted emissions for such categories as cigarette smoke, human perspiration, and industrial composting. In these situations, it is appropriate for States to provide emissions totals. However, the EPA must still be able to access documentation about emissions submissions.

In addition to the WW Tool, input templates, and other calculation tools, the EPA has implemented and used for the 2017 and 2020 triennial years an online nonpoint survey as part of NEI collection, as most recently explain in the 2020 NEI Plan.[61] This ''Nonpoint Survey'' allows States to indicate their plans for nonpoint sources so that States can communicate their intentions for accepting EPA data or reporting their own data. This survey greatly assists States and the EPA in QA to compare what States submitted to what they intended and to allow States to accept EPA estimates.

As explained in the TSD, the EPA identified about 53,000 instances for which State emissions data submissions for the 2017 triennial inventory were inconsistent with EPA's expectations and were, therefore, removed from the inventory. In these cases, the EPA needed to use its own estimates from the WW Tool and other tools instead of relying on state-submitted data. The EPA also prefers to use EPA methods because of the consistency and transparency that approach provides but wants to make sure that those methods best represent State activity inputs. An improved process would both recognize the lack of State reporting in many cases as well as steer towards a consistent and transparent approach. Any such process might also allow for the case where States want the EPA to consider their emissions totals even when the calculation method is different from EPA methods and when the State is obligated to report emissions that are not estimated by the available EPA tools.

Based on these considerations, the EPA proposes to include a requirement at § 51.15(d)(2) for States to complete and submit an online survey (the ''nonpoint survey'') to indicate for which nonpoint sources States intend to: (1) report input data for tools, (2) accept EPA input data, (3) report emissions data, and (4) notify the EPA whether or not to supplement data because the emissions are covered by a different submitted SCC, the State does not have a particular source, or the source is included in a point inventory submission. The EPA further proposes at § 51.15(d)(3)(i) that for nonpoint sources, excluding commercial marine vessels and locomotives, States would be required to report input data for EPA nonpoint tools using the formats provided by EPA. In lieu of reporting tool inputs, the EPA proposes at § 51.15(d)(3)(ii) to allow States to comply with this requirement by reviewing and accepting EPA-provided nonpoint tool inputs.

For nonpoint sources with EPA tools excluding commercial marine vessels and locomotives, the EPA additionally proposes to add an option at § 51.15(d)(3)(iii) that would allow States to optionally report emissions of any pollutants allowed by the EPA electronic reporting system and would require States to provide documentation that describes how the emissions estimates were made and QA steps performed. The EPA intends to evaluate the documentation provided to determine the best approach for ensuring complete data from nonpoint sources that uses sufficiently robust and transparent approaches. If documentation were to be insufficient or approaches of lower quality than the EPA provided approach, then some state-submitted nonpoint data may not be used.

The EPA additionally proposes provisions for commercial marine and locomotive sources. These requirements differ from those of other nonpoint sources because of processes available to the Agency. In the case of commercial marine vessels, the EPA processes satellite-based data available from the Automatic Identification System (AIS), which is an automatic tracking system that uses transceivers on ships. In the case of locomotives, section IV.I.2 of this preamble describes that the EPA works with rail companies to collect the data about locomotive activity that is also connected to rail yard emissions. To accommodate these special cases, the EPA proposes to add a requirement in § 51.15(d)(4) that States must either (1) report annual actual emissions of required pollutants, (2) provide comment on EPA-provided annual actual emissions data, or (3) accept EPA-provided emissions data.

In addition to those sectors for which the EPA provides tools, the AERR must reflect all nonpoint sources for CAPs to support the need for comprehensive emissions estimates. To address this need, the EPA additionally proposes to add a requirement in § 51.15(d)(5) that, for nonpoint sources without EPA tools, States must report emissions and documentation that describes how the emissions estimates were made and QA steps performed. This proposed requirement would apply for any additional sources not reported under § 51.15(d)(3) or (4) of the proposed regulatory text, not episodic windblown dust as described under § 51.15(d)(7) of the proposed regulatory text, and not such a small source that it meets a *de minimus* standard described under § 51.15(d)(8) of the proposed regulatory text. Paragraphs (7) and (8) would be moved from the current AERR § 51.20(d) to these new paragraphs. The EPA intends to evaluate the documentation provided to determine the best approach for ensuring complete data from nonpoint sources that uses sufficiently robust and transparent approaches. If documentation were to be insufficient, then some state-submitted nonpoint data may not be used.

The EPA has revised the windblown dust exemption from the current AERR at 40 CFR 51.20(d) which states, ''[e]pisodic wind-generated particulate matter (PM) emissions from sources that are not major sources may be excluded, for example dust lifted by high winds from natural or tilled soil.'' The EPA proposes at § 51.15(d)(7) to retain this exemption but remove the limitation of ''PM emissions'' from the exemption. The EPA proposes this change because the EPA does not need to receive any emissions information about windblown dust, which would also exclude HAP. While the EPA is not proposing to

[61] 2020 NEI Plan, August 2020, U.S. EPA, *https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-plan.*

require HAP from nonpoint sources for other categories, the EPA also prefers States not to voluntarily report HAP from windblown dust currently.

In general, the goal of the documentation will be to replicate the key information provided in the Nonpoint Emissions Method and Operation (NEMO) documents. In some cases that type of documentation would not be relevant because a State nonpoint estimate could be summed from data collected from individual facilities. To define documentation to be reported by States, the EPA would require different information in each of these cases. For the general case of nonpoint emissions computed as a county total, the EPA proposes that for each SCC and pollutant, the State would need to provide any equations used to compute emissions, all input values used for those equations, and all references for those input values (*e.g.,* government agency websites or publications). These input values would need to include activity data, emissions factors, and any other parameters of the equations.

In the case of documentation needed when States provide nonpoint emissions as a summed value from facilities, the EPA proposes to require States to provide a spreadsheet that contains for each facility: the State's facility identifier, a facility name, a facility address, a primary NAICS code, the nonpoint SCC to which the emissions were mapped, the facility emissions for each pollutant, the emissions factor used to compute those emissions (when applicable), any control measure applied to the emissions factor, and the type of control (using EIS control measure codes). The EPA would provide a template for that information for States to use, but States would be free to provide such information in other formats.

In cases where a State is both required to report input data for EPA tools and voluntarily submits emissions data, the State burden would be higher than under the current AERR. The EPA is considering requiring documentation even though the trigger for that requirement is a voluntary reporting of emissions by a State. The EPA is proposing that such additional burden is warranted for the following reasons. First, a State may believe its emissions estimates to be preferable to EPA-methods, but the EPA must decide that issue on the merits of the method documentation provided by the State. Second, the EPA would use the required state-provided tool input data to be able to make a fair comparison of EPA's method emissions totals compared to the state-provided emissions totals. Third, the completion of the Nonpoint Survey would remove confusion from differing SCCs, meaning potential differences in State and EPA categorization of specific sectors could be noted and resolved. Fourth, through discussions with States in past NEI efforts, the EPA realizes that States may not be familiar with the latest approaches and choose to report emissions even if they are unable to find the underlying data that would be needed for complete transparency. Finally, if the State later realizes that its provided emissions totals are in error, or if the EPA revises its calculation method to further improve the emissions estimations in a way the State prefers, then the EPA would already have in hand the necessary EPA tool input data to calculate emissions for the State.

The EPA will QA all state-submitted input data and emissions with associated documentation. Quality assurance will focus on the resulting state-submitted emission estimates compared to EPA input data/methods, if available, and previous state-submitted data, checking for data completeness for pollutants and geographic coverage, and magnitude. The EPA may not use state-submitted input data and/or emissions if it does not pass QA checks, so the EPA can comply with the OAQPS Quality Management Plan.[62] Therefore, the EPA proposes to add paragraph § 51.15(l) stating that the EPA may elect not to use the state-provided data if it does not pass QA or if a State's documentation does not adequately explain the origin and quality of the submitted data.

K. Nonpoint Year-Specific Data and Timing of Reporting

One key goal for the NEI program is to ensure emissions are accurately reported for the year of the inventory, and an important question for how to achieve that goal is when the submissions should be due. This section discusses the considerations and EPA's proposal for the timing of AERR submissions.

Part of ensuring accurate nonpoint emissions is point-nonpoint reconciliation as previously explained in section IV.I.4, which prevents double counting and can be done with appropriate accuracy only when nonpoint activity data are specific to the inventory year. Furthermore, because the NEI is used as a starting point for SIPs that require the use of ''accurate'' data (see CAA section 172(c)(3)), the NEI program goal is consistent with that requirement and the expectation of data users that the emissions reflect the listed year of the inventory. Finally, when the EPA uses the NEI for regulatory actions, it is appropriate for the EPA to follow the Agency's guidance on inventories that emissions reflect the year in which they occurred as best as possible. For these reasons, this action considers how best to achieve year-specific nonpoint emissions inventories.

On the issue of triennial versus annual reporting, the EPA intends to retain the current triennial nonpoint reporting approach for nonpoint sources. The EPA is not yet ready to support annual reporting for nonpoint sources but may be able to do so in the future (in which case we may conduct further rulemaking to require more frequent reporting for nonpoint sources). Additionally, the EPA has successfully used the data from States during triennial years, EPA tools, and data collected from other Federal agencies to estimate emissions on years other than triennial years. By retaining triennial nonpoint reporting, the EPA additionally would not increase burden on States.

The current AERR requires that, for each triennial inventory year, States must report nonpoint emissions by December 31 of the following year. As described in section IV.J of this preamble, this action proposes to change the nonpoint requirement such that a State would: (1) complete a nonpoint survey, (2) provide inputs for sources where EPA tools are available, and (3) report emissions for other nonpoint sources without EPA tools. As also described above, States may (4) voluntarily report emissions for sources with EPA tools and (5) when emissions data are provided, the State must also include documentation. This section proposes when each of these required and optional submissions would be due.

In addition to collection of data, the EPA collaborates on a continuous basis with States to improve nonpoint emissions calculation tools. Based on input from States, peer reviewed literature, and EPA research, the EPA develops NEMO documents for comment by States.[63] States can voluntarily comment on these documents over some review period provided by EPA. This work can be done independently of any annual

[62] U.S. EPA, Office of Air Quality Planning and Standards Quality Management Plan, May 20, 2020, *https://www.epa.gov/sites/default/files/2021-05/documents/final_oapqs_qmp_2020-05-20.pdf.*

[63] The EPA has provided the most recent NEMO documents with the release of its 2017 NEI. These documents are available on the EPA website at *https://gaftp.epa.gov/air/nei/2017/doc/supporting_data/nonpoint/.*

reporting NEI cycle, but in many cases, new methods are developed in time for their inclusion in a particular inventory reporting year. The EPA has monthly webinars with States to provide many updates including the review and discussion of NEMO documents and new methods.

Nonpoint emissions calculation methods rely on activity data from other Federal agencies and other sources, and these data are released after the current AERR deadline for nonpoint sources. For example, the U.S. Census County Business Patterns dataset is important for nonpoint calculations, but it is released approximately in April, about 16 months after the end of the inventory year. In the current AERR, States must report emissions data 12 months after the end of the inventory year and, thus, would need to use county business pattern data from the prior year to estimate emissions.

While using input data for a different year may be acceptable for some sectors where the input data does not change much, other nonpoint sectors can have significant local and national changes in emissions from year to year (*e.g.,* oil & gas exploration and extraction, residential wood combustion). These sectors vary greatly depending on unpredictable economic, weather, and other unexpected events. To address this year-specific importance for some nonpoint categories and the challenges caused by the current deadlines, the EPA is proposing changes to the timing of nonpoint requirements.

Another factor to consider is a current AERR provision that undermines the argument for using year-specific data. Within the current AERR, § 51.35 provides States directions regarding how to equalize the emission inventory effort from year to year, since a triennial inventory means more effort on every third year. This section explains that States may ease the workload spike by collecting one third of their point sources that are not reported every year (*i.e.,* the sources that are Type B but not Type A) and collect data for one-third of the nonpoint, nonroad mobile, and onroad mobile sources. This section further explains that States must use a consistent approach between the 3 years for whatever source category is collected over 3 years. This section of the current AERR provides a burden equalization approach for States but does not reflect the points made above about the importance of year-specific inventories.

In section IV.G of this preamble, the EPA proposes to require States and owners/operators to use the same criteria each year to determine which point sources should report. This provision would make the current § 51.35 ''burden equalization'' approach irrelevant for point sources. In addition, this section has described the importance of having year-specific data for nonpoint sources in some cases. At the time that § 51.35 was originally published, the EPA had a much less robust support system to help States estimate emissions from nonpoint sources. Now, many tools are available for States to estimate nonpoint emissions, and it is important that States all use current methods to do so. With the ongoing development of emissions methods by EPA, allowing a State to make estimates based on an old methodology 2 years before the data are due does not promote the data quality needed for the NEI.

Additionally, the EPA has realized that, even with this burden reduction approach available to States, many States have not met their nonpoint source reporting requirements in recent past NEI years. As a result, the EPA has described in section IV.J of this preamble how States would be able to comply with this proposed action simply by reviewing and accepting EPA-provided activity data. Further, under this proposed action, States would be required to use the emissions calculation methods provided by the WW Tool. None of these provisions would be workable under the current provisions of § 51.35. As a result of these considerations and in addition to the reasons described in section IV.G of this preamble, the EPA proposes to remove the equalization provisions of § 51.35 and add a new set of timing requirements that would allow the EPA to obtain appropriate, year-specific data as needed while still including provisions that spreads out the work for States.

As previously described, nonpoint tool inputs can become available after the current AERR reporting deadline. Depending on the data, they are available to the EPA and States starting approximately 6 months after the end of an inventory year (*e.g.,* June of 2024 for the 2023 inventory year) through October of the second year (*e.g.,* October of 2025 for the 2023 inventory year). As a result, the EPA targets March of the third year after the inventory year for the final NEI nonpoint data (*e.g.,* March 2026 for the 2023 inventory year). Since the EPA does not control the timing of release of that data, the EPA also recognizes the importance of building flexibility into the process.

Based on these considerations, the EPA proposes several changes to the timing of the nonpoint collection. First, this action proposes that States would complete the nonpoint survey in EIS by 15 months after each triennial inventory year (*e.g.,* March 31, 2025, for the 2023 inventory year). In addition, for any emissions sources without an EPA tool, but not meeting the *de minimis* criteria included in this proposed action, the State would report emissions and documentation by March 31, 15 months after a triennial inventory year. These deadlines and others are summarized below in section IV.S of this preamble.

Second, the EPA proposes to spread out requirements for submission of input data for EPA tools, including the option to review and accept EPA tool inputs. The EPA expects to release draft tool inputs and emissions results on an incremental basis between July after the inventory year (*e.g.,* starting July of 2024 for the 2023 inventory year) and December of the second year after the inventory year (*e.g.,* through December 2025 for the 2023 inventory year). The EPA proposes to add regulatory text stating that the States would have no fewer than 30 days to review, comment, and/or provide revised tool inputs based on the information released by EPA, and that the EPA may allow a longer period for review source categories with more complicated input data or calculation approaches and would notify the States of this when the data are released. To communicate a longer period, the EPA proposes to indicate the period for review to States at the time the data are provided for review. The EPA intends to include this information in its periodic NEI newsletters included on the NEI Sharepoint site.

After receiving the emissions based on EPA methods, States may determine that the EPA tool calculation is insufficient. In this case, the EPA proposes to add regulatory text stating that the States would submit *nonpoint tool inputs* within 30 days of the EPA providing tool inputs to the State, or within the period defined by the EPA at the time the tool inputs are provided to States, whichever is longer. For example, if the EPA released tool input data and draft emissions on August 1 for State review with a 30-day review period (until August 31), States would have until September 30 to review/submit revised tool inputs. Additionally, the EPA proposes to add regulatory text that would set a timeline for States optionally *submitting emissions and the associated documentation* within 60 days of the EPA providing inputs to the State, or within the period defined by the EPA at the time the tool inputs are provided, whichever is longer.

In addition to collection of tool inputs, a key aspect of nonpoint

emissions work with States is the emissions calculation approach, captured in the NEMO documents. While the EPA does not plan to require States to contribute to these documents at this time, it anticipates that many States will continue to do so voluntarily. To accommodate this voluntary State collaboration, each NEI Plan gives States timeframes during which they may provide these voluntary comments so that the emission methods would be ready for use in a triennial inventory. In cases where a State misses these deadlines, the Agency is under no obligation to consider late-filed State comments but rather intends to defer consideration of such late comments into the method improvements that would be done for the next triennial inventory cycle.

Under this proposal, the bulk of State's burden for nonpoint submitting data would occur in the starting 6 months after the triennial inventory year and continuing through the second year after the triennial inventory year. Given this timing, the EPA plans to coordinate the timing of the voluntary State review of emissions methods so that States' work would be done primarily during periods the EPA has proposed to require triennial nonpoint emissions data. For example, for 2023 (the next triennial inventory year), the EPA would plan to support voluntary comments from States on methods between January 2023 and June 2024.

L. Nonpoint Reporting for Tribes and States With Counties Overlapping Indian Country

With this action, the EPA is proposing new requirements that would resolve existing challenges associated with use of nonpoint emissions submitted by tribes and prevent double counting with state-submitted county total emissions. The EPA and States estimate nonpoint emissions data with techniques that use county total activity data from other agencies such as the U.S. Census Bureau. There are two cases that can cause the potential for double counting without the approach that the EPA proposes in this action.

In the simplest case, EPA's nonpoint emissions tools multiply county total activity data with emissions factors to estimate emissions. When counties overlap with Indian country, the tools do not automatically account for the portion of the county that is within Indian country. When States report emissions for areas overlapping an area reported by a tribe, the NEI could potentially double count emissions unless those reporters take additional steps to adjust the activity data prior to calculating emissions.

The second case can occur when States accept emissions from EPA's tools. In these cases, because EPA's tools include activity for the entire county, double counting would occur when a tribe reports nonpoint emissions data for Indian country overlapping those counties using EPA's estimates. Further, the current AERR does not require activity data for nonpoint categories from tribes that could be used to subtract from the counties' data to avoid double counting. As a result of this complexity, to date the EPA has chosen to use only the State provided nonpoint data when using the NEI as an input for air quality modeling. The EPA prefers and considers it more equitable for tribes to be able to have tribal data used in the same ways as State data.

The current AERR at 40 CFR 51.1 says that ''[s]tates must inventory emission sources located on nontribal lands and report this information to EPA.'' This is the only reference under the current AERR to the concept of excluding Indian country from emissions estimates. Further, this statement is confusing because, as explained in the preamble to the original AERR (71 FR 69), the term ''states'' is defined in the AERR as referring to States, locals, or tribes with a TAS agreement. The EPA is proposing at § 51.1(b) language that describes the specific situation in which an Indian Tribe would be required to report under Subpart A of 40 CFR part 51.

In addition to the potential confusion created by the current text of § 51.1, other parts of the current AERR could be read to be inconsistent with § 51.1. First in § 51.25, entitled ''What geographic area must my state's inventory cover?'', the current AERR makes no mention of Indian country but rather says ''because of the regional nature of these pollutants, your State's inventory must be statewide, regardless of any area's attainment status.'' ''Statewide'' could potentially be read as inclusive of Indian country. In addition, the current version of § 51.15(b)(2) explains that for nonpoint submissions, ''states may choose to meet the requirements for some of their nonpoint sources by accepting EPA's estimates for the sources for which the EPA makes calculations.'' Given that EPA calculations have not excluded (and are not planned to exclude) Indian country emissions from the emissions that States report, this statement neglects to clarify that a State would need to make an adjustment based on the requirement to exclude Indian country as specified in the current AERR at § 51.1. As a result of these potentially confusing requirements, the approach taken by States has been inconsistent in submitting emissions data. Under the current AERR, some States exclude Indian country emissions from their emissions while others do not.

With this action, the EPA proposes an updated reporting approach for nonpoint sources with EPA tools such that all agencies (including tribes with TAS status) would report tool inputs, including activity data. For those tribes that would report nonpoint activity data, the EPA would need to have sufficient information from tribes to be able to reconcile the county-total activity with the tribal activity to avoid double counting.

Based on these considerations, the EPA is proposing several revisions intended to ensure clarity for States and tribes. First, the EPA proposes to add paragraph (b) to § 51.1 to clarify that tribes that have obtained TAS status are subject to the AERR to the extent allowed in their TIP, and that, to the extent a tribal government has applied for and received TAS status for air quality control purposes and is subject to the AERR under its TIP, the use of the term ''state'' in the AERR should be read to include that tribal government.

Additionally, the EPA proposes additional nonpoint requirements to address the issues described in this section. Taken together, these requirements will allow both State/local and tribal nonpoint tool inputs and emissions to avoid double counting and to be used as inputs to air quality modeling. First, the EPA proposes at § 51.15(d)(9) of the proposed regulatory text that a State with counties that overlap Indian country would avoid double counting by excluding the activity and/or emissions associated with Indian country when the Tribe is expected to report emissions. A State would need to become familiar with which of the tribes with Indian country that overlaps a State's counties would be required to report under this proposed action and which tribes intend to voluntarily report. Similarly, tribes can assist in preventing double counting by notifying States of their plans to submit emissions (though the EPA is not proposing that tribes would be required to do so).

Second, the EPA proposes at § 51.15(d)(10) of the proposed regulatory text that tribes meeting the TAS and TIP criteria of the new § 51.1(b) of the proposed regulatory text would be required to report nonpoint tool inputs or emissions from Indian country by reporting those data separately for each portion of a county across which Indian

country boundaries overlap. To assist tribes in making such calculations, the EPA could provide tribes with ratios that they may use for performing these calculations. A tribe meeting the criteria of the proposed § 51.1(b) would be subject to the nonpoint reporting requirements associated with the new § 51.15(d)(3) through (8) of the proposed regulatory text when the tribe has sources that meet the criteria for reporting a nonpoint source (*i.e.,* sources that have the EPA nonpoint tools or are not small enough to meet a *de minimus* percentage of the tribe total emissions). The EPA believes that tribes could use the EPA tools by adjusting the county values included in the default templates to provide tribe-specific activity levels. Similarly, tribes submitting emissions would report those data in association with county boundaries by apportioning the total tribal emissions to each of the county areas overlapping Indian country.

M. Requirements for Prescribed Burning

Recent increases in the frequency of damaging wildfire events underscore the need for improved management schemes that anticipate and consider climate change factors like drought and temperature extremes. Prescribed burning (of forestland, shrubland, grassland, wetlands, wildland urban interfaces (WUIs), and timberland) [64] is a way to prepare for and mitigate wildfire events and manage grasslands, and many States [65] have implemented burning programs to improve ecosystem health and reduce chances of catastrophic wildfires. The U.S. Department of Agriculture Forest Service (USFS) Wildfire Crisis Strategy,[66] published in January 2022, indicates an interest in increasing prescribed burning to treat up to an additional 20 million acres on National Forest System lands and up to an additional 30 million acres of other Federal, State, Tribal, and private lands.[67] While these prescribed burns are controlled and limit emissions as compared to wildfires, they still produce significant emissions of CAPs such as PM, VOC, HAP, and carbon dioxide, all of which are important contributors to environmental health risks and climate change. The EPA proposes additional requirements for States to report prescribed burning data and consequently allow the EPA to have access to improved data sources as compared to the data it has been collecting voluntarily under the current AERR.

The EPA currently uses satellite data to identify the locations of fires and uses various techniques and data from other agencies to label fires as wildfires, prescribed fires, or agricultural fires. The EPA has a goal of improving emissions estimates for all types of fires, and this proposal strikes a balance between the information proposed to be required and the burden that will be incurred by the many States that will need to implement new data collection programs. The EPA's experience over the past decade has determined that without more data, it is not possible to accurately differentiate prescribed burning from other types of fires in most States. The satellite data provide estimates of the extent of burning each day but, in many cases, the EPA must assume information about the type of fire, the biomass fuel type, the amount of biomass consumed and other critical parameters. National-level and other data sources are available to identify wildfires, and these allow the EPA to reasonably conclude that other fires are prescribed or agricultural fires. Using these sources of wildfire data has also revealed that the additional fuel and burning data greatly affect and improve the emissions estimates. For prescribed burning, however, there is no central collection of national data, and few States collect the information that the EPA would need to properly label each fire.

Available evidence indicates that wildfire acres burned have increased over time,[68] which, in turn, has drawn attention to prescribed burns as a mitigating measure.[69] Thus, the EPA expects that prescribed burning activity will increase, making it important to properly estimate the emission impacts from these sources. Additionally, new satellites have become available in the last few years that detect many more (and smaller) fire events. As a result, we now have information about more fires and have an opportunity to improve the current approach for estimating emissions from fire events.

While some States currently submit data on prescribed burns voluntarily, there is currently no national minimum approach to ensure collection of information about prescribed burning. While some States have permitting programs for prescribed burning to ensure that the burns do not cause undue impact on communities, most of those programs have not led to collection of data. Many permits may be issued that do not result in a burn and its only possible to determine some aspects of a burn (such as the acres burned) after it occurs. A minimum set of prescribed burning data collected from all States would allow both for higher quality emissions data and more equitable characterization of the emissions that impact downwind communities.

The 2015 AERR eliminated the requirement that States report emissions from wildfires and prescribed fires, which had been required via the 2008 AERR as county totals. At that time, the EPA had believed that the satellite-based approach and other available datasets would be sufficient to properly characterize emissions from these fires. While EPA's expectation has come to pass for wildfire emissions, based on the reasons described above, the satellite-based approach is too uncertain to properly characterize prescribed burning. Further refinement of the wildfire estimation technique will be sought, and EPA encourages voluntary submission of wildfire data such as fuel type and consumption information that provides refinement of these emissions estimates.

The National Interagency Coordination Center (NICC) estimates that between 2009 and 2018, in the United States, on average about 86,300 prescribed fires burned about 3 million acres annually; however, these data are known to be incomplete. The National Prescribed Fire Use Survey Report [70] is a more complete source for estimating prescribed acres burned nationally, and the 2020 survey puts the national estimate at about 9–10 million acres burned annually. About 75–80 percent of these acres burned are in the eastern

[64] In this section, the use of the term ''prescribed fire'' and ''prescribed burning'' refers to burns that could occur on all of these land types, unless otherwise specified.

[65] In Section III of this preamble, the EPA has previously defined ''States'' to mean delegated local agencies and certain tribes.

[66] U.S. Department of Agriculture, Forest Service, Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America's Forests, January 2022. See also *https://www.fs.usda.gov/sites/default/files/Confronting-Wildfire-Crisis.pdf.*

[67] U.S. Department of the Interior, ''Infrastructure Investment and Jobs Act, Wildfire Risk Five-Year Monitoring, Maintenance and Treatment Plan,'' April 2022. See also *https://www.doi.gov/sites/doi.gov/files/bil-5-year-wildfire-risk-mmt-plan.04.2022.owf_.final_.pdf.*

[68] U.S. EPA, *Climate change indicators: Wildfires,* Figure 5: Change in Annual Burned Acreage by State Between 1984–2001 and 2002–2018. *https://www.epa.gov/climate-indicators/climate-change-indicators-wildfires.*

[69] Hunter, M. E. and Robles, M. D, *Tamm review: The effects of prescribed fire on wildfire regimes and impacts: A framework for comparison.* Forest Ecology and Management, 475, 118435. *https://www.sciencedirect.com/science/article/pii/S0378112720312044.*

[70] National Association of State Foresters and the Coalition of Prescribed Fire Councils, 2020 National Prescribed Fire Use Survey Report, December 2020, *https://www.stateforesters.org/newsroom/2020-national-prescribed-fire-use-report/.*

U.S.; the amount of prescribed burning in the western States is small in comparison. The 2018 National Prescribed Fire Use Survey Report provided an estimate of 11.3 million acres treated with prescribed fire in 2017.[71]

Other information suggests that even the National Prescribed Fire Use Survey report is incomplete. The 2017 NEI estimate that includes satellite-based observations and excludes wildfires as best as possible put the national prescribed acreage burned for that year at about 14–15 million. While this may be an over-estimate because many of those fire sizes were not documented, the difference in the satellite-based estimate as compared documented fires suggests that the National Prescribed Fire Use Survey may be incomplete. Another challenge in determining whether a fire detection is a wildfire or prescribed fire is that both activities sometimes occur at the same time especially in areas with high use of prescribed fire such as the southeast.

The importance of accurate wildfire and prescribed burning data is highlighted by the many uses of that data by the EPA and States for air quality management: exceptional event determinations, non-attainment area inventories for PM and ozone, ozone and PM transport analysis, and EPA's air quality modeling to support risk analysis, NAAQS review/risk assessments, and regional haze. In addition, the EPA includes the fire emissions data in emissions trends to provide environmental information for the public and to meet international reporting agreements.

For the 2017 NEI, prescribed fire emissions data (either activity information or emissions) were estimated with voluntary help from 19 State air quality agencies.[72] A mandatory prescribed burning reporting program would be to the benefit of the many data uses listed above. To assess how a mandatory program might be designed, the EPA is considering what attributes would need to be part of any mandatory prescribed burning reporting program. These attributes are (1) the frequency of reporting, (2) the timing of reporting, (3) the size of burn events to be reported, (4) the type of burn events to be reported, and (5) the minimum data fields needed to address the current limitations of the voluntary program. Each of these considerations is described here.

The EPA has been estimating daily emissions of prescribed fires for CAPs and HAP every year since 2005. These data inform annual fire trends and the EPA uses the daily event data as input to annual air quality modeling that supports both regulatory and non-regulatory agency priorities. As previously described in section IV.G, regulatory modeling needs may arise for the EPA and for State SIPs for any year and not only triennial inventory years. Thus, the EPA must assume in any policy the same potential need for data for every year. Additionally, existing data shows that prescribed burning acres can vary widely from year to year. As shown in Figure 1a (which is Figure 7–6 of the 2020 NEI TSD), from between 2006 and 2020, prescribed burning acreage ranged from about 7 million acres per year to more than 15 million acres. Similarly, as shown in Figure 1b (which is Figure 7–5 of the 2020 NEI TSD), the $PM_{2.5}$ emissions from prescribed burning ranged from about 600,000 tpy to about 1,000,000 tpy. These ranges suggest sufficient variability from year to year to support annual collection of data.

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[71] National Association of State Foresters and the Coalition of Prescribed Fire Councils, 2018 National Prescribed Fire Use Survey Report, December 2018, *https://www.stateforesters.org/wp-content/uploads/2018/12/2018-Prescribed-Fire-Use-Survey-Report-1.pdf.*

[72] While EPA received the 2017 NEI data from state air quality agencies, EPA is aware that many of those states have coordinated with their state forestry agencies to provide EPA the data.

Figure 1a: Annual comparison of wildland area burned for the lower 48 States

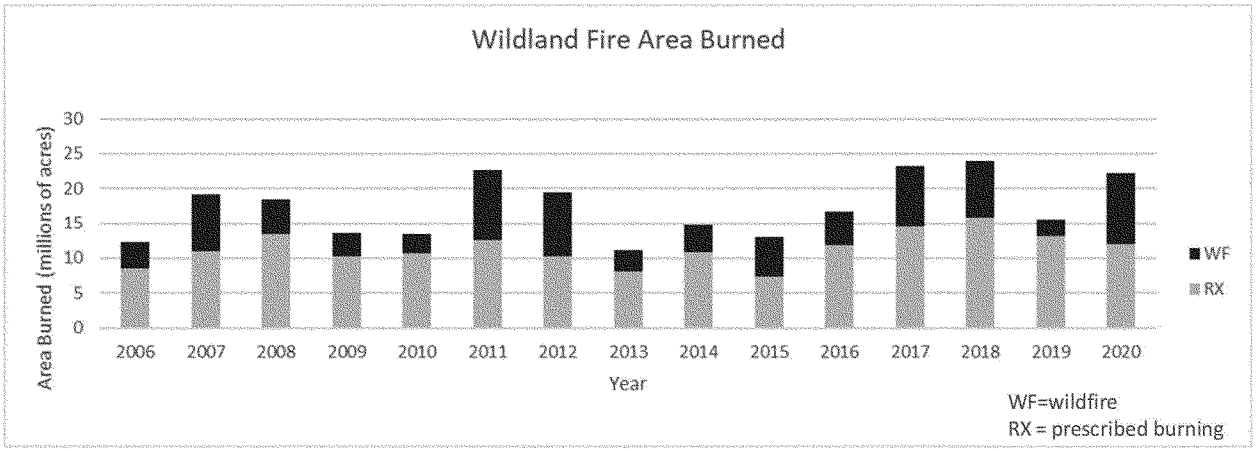
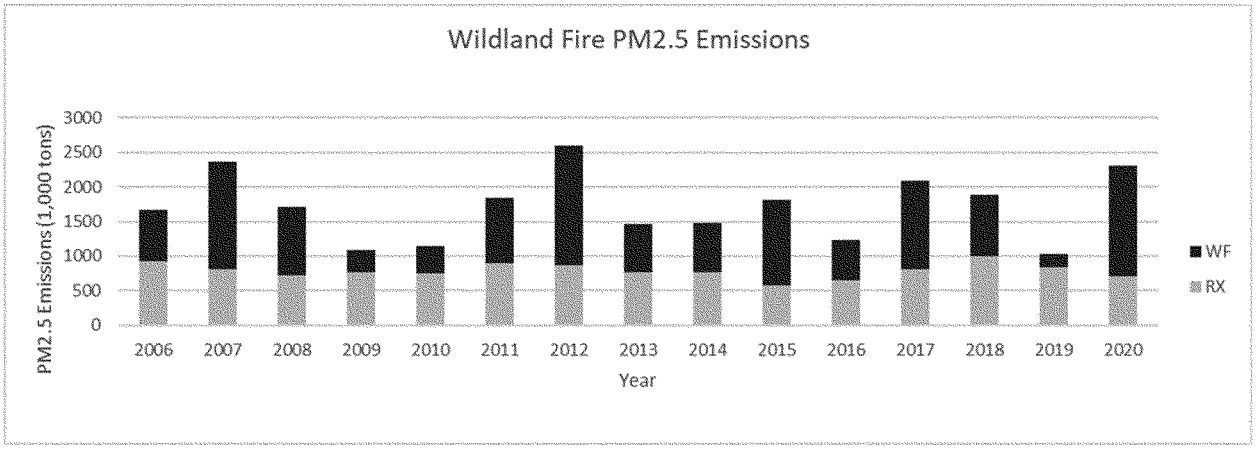


Figure 1b: Annual comparison of wildland fire emissions for the lower 48 States



In addition to an annual need for prescribed burning data, the spatial and temporal differences across years should impact a decision on reporting frequency. While grassland prescribed burning tends to occur every year in the same locations, forest prescribed burning usually occurs in different locations because the undergrowth burned in one year is not in need of clearing again the following year. Further, for both grasslands and forest prescribed burning, while the general time periods are similar from year to year in each State, the specific burn timing necessarily varies based on meteorological and air quality considerations each year. Consequently, the variability of the data suggests that collecting it each year is consistent with the nature of the activity which the EPA is seeking to collect data on.

The EPA is considering both the date that States would report data and which inventory year would be the first for any proposed requirements. For the reporting date, the EPA is aware that State air quality and forestry agencies are in a cycle of managing the current fire season and preparing for the next fire season. In recent years, in some areas, the fire season has become longer and less predictable, which complicates finding an optimal time for any data reporting requirement. In general, however, wildfires tend to occur in the summer and fall as temperatures are high, vegetation dries out from lack of rain, and lightning is more prevalent. Time periods allowed for prescribed burning usually occur outside of the wildfire season, depending on the area. These facts suggest that, while the summer is a busy time because of wildfires, the spring and fall can be a busy time for prescribed burning and that the added workload for any prescribed burn data reporting might, therefore, benefit from a flexible time window during which to report data.

This workload consideration would also need to be balanced with when States could practically complete data collection, QA, and data submission, including any coordination necessary between State air quality and forestry departments. Not only must State coordination internally be considered, but also any coordination needed with the representatives of military bases who are responsible for prescribed burning on those Federal lands. A final relevant factor for a proposed due date is when the EPA would need the data to meet timing objectives for the NEI, allowing enough time for review by data partners at State air quality and forestry departments.

To determine the first year for any requirements to report prescribed fire data, the EPA is considering the extent to which agencies are providing detailed data voluntarily. It is expected that any agency not currently providing voluntary input may not have a program

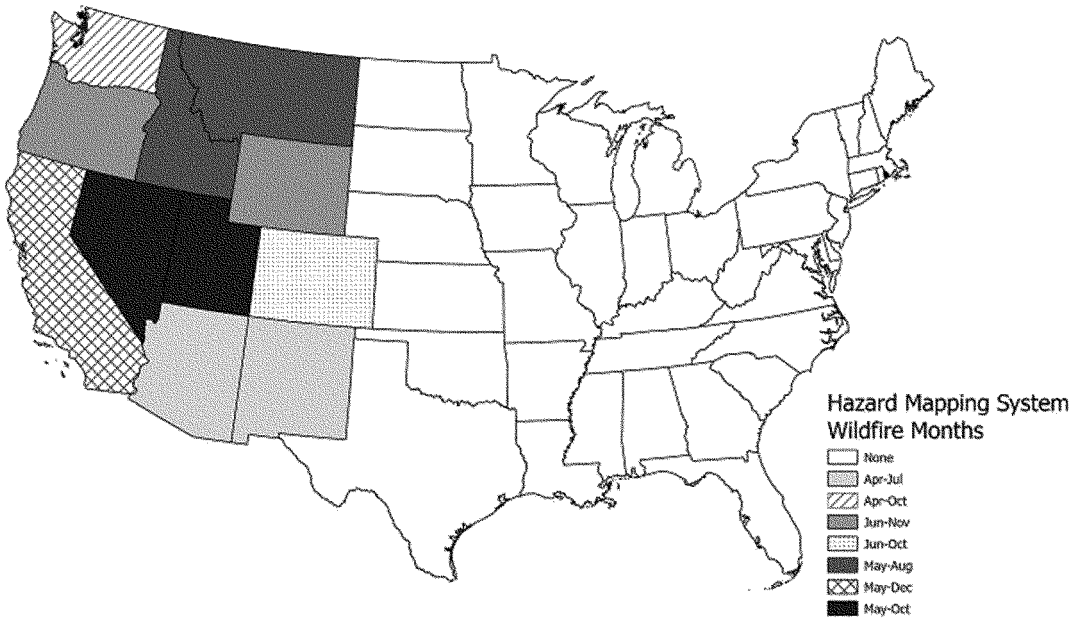
to collect prescribed burning data after the burn has occurred. In the 2017 and 2020 NEIs, 19 agencies voluntarily participated in providing input to the prescribed burning activity data, which is one of the best participation rates of any triennial NEI years. To aid in deciding on a proposed action and to assess burden, we assumed that 63 State, local, or tribal agencies would need to develop some aspect of a prescribed burning data collection program. We recognize that there are some areas in which prescribed burning does not occur. It is expected that most air agencies (States, locals, or tribes) encompassing areas in which prescribed burning activity occurs may have a permitting program in place from which they could build a data collection program. The EPA urges commenters to provide any additional information about how many State, local, or tribal agencies may be required to report prescribed fire data if the EPA were to finalize the proposed requirements of this action.

EPA is considering the locations from which fires should be reported and the size of fires to be included. Regarding the locations of fires, the EPA is already able to obtain data needed for some Federal lands from national databases,[73] but military prescribed burning is not usually included. Based on analysis of available data sources, prescribed burns on private lands within States and on military lands appear to be the bulk of the data not currently available.

The EPA has analyzed voluntarily reported data from States for the 2017 NEI to consider an acreage reporting threshold above which data would be required to be reported. The higher the acreage reporting threshold, the fewer burns would need to be reported and the lesser the burden on States. In that data, almost 90 percent of the acres from prescribed burns were from events of 50 acres or more, and 95 percent of the acres burned were from burns of 25 acres or more. This finding suggests that setting the reporting threshold at either 50 or 25 acres should capture the bulk of prescribed burning events occurring on State, military and private lands that would be required under this proposal. These data generally do not include prescribed burns on military lands, and thus no information about those is currently available to the EPA for analysis.

The burden consideration should be balanced with the need to characterize satellite-detected burns as being prescribed burns, since otherwise they could be characterized as wildfires and assigned higher emission rates in creating the NEI. Without other information, the NEI approach assigns fires as prescribed burns or wildfires based on the satellite data, the State, and the month; a chart of these assumptions is available in Figure 2 (based on Figure 7–3 of the 2020 NEI TSD). Additional information from States would improve this approach.

Figure 2: 2020 Hazard Mapping System Default Wildfire Months



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The satellite data can also cause uncertainty in the acres burned per fire, without ground-based observation data. The pixel size of the satellite images determines the default size of these burns, which is from 12 to 62 acres per pixel, depending on where in the U.S. the fire occurs. Emissions from burns smaller than the assumed acres based on pixel size would be overestimated, and emissions from burns larger than the assumed size would be underestimated.

Additionally, the EPA is aware of various types of prescribe burns: broadcast burns, understory burning/underburning, and pile burns. These

[73] Hazard Mapping System (National Oceanic and Atmospheric Administration); Incident Command System Form 209: Incident Status Summary; Forest Service Activity Tracking System (U.S. Forest Service); U.S. Fish and Wildland Service fire database.

burn types are defined by the Bureau of Land Management (BLM) on their Prescribed Fire Terminology website.[74] Broadcast burns are defined as ''a prescribed fire ignited in areas with little or no forest canopy present.'' Understory burning is defined as ''A prescribed fire ignited under the forest canopy that focuses on the consumption of surface fuels but not the overstory vegetation,'' and pile burns are defined as ''a prescribed fire used to ignite hand or machine piles of cut vegetation resulting from vegetation or fuel management activities.'' These burns can have different emission rates and other characteristics, so the EPA would ideally have data from all these fire types and would know the type of each fire reported. Additionally, evidence suggests that in general, broadcast and understory burns impact larger acres per event, because collecting material for pile burns tends to happen over smaller, more manageable areas. Broadcast and understory burning can include cuttings from fuels reduction treatments and logging slash.

Different information is needed about prescribed burns depending on the type of burning. The EPA recognizes that certain data fields needed for pile burns are not available in the current reporting formats. After consideration, the EPA proposes that for broadcast burns and understory burns, the minimum data fields needed are: (1) a unique identifier for the State, (2) the date of the burn, (3) State and county code or tribal code, (4) the centroid of the latitude/longitude coordinates of the burn for that date, (5) SCC (which provides the type of burn), and (6) either the acres burned or the total planned acres and percent burned. Additional data fields would be available for optional reporting, including fuel type, fuel loading per acre, fuel moisture (any or all of 1-hr, 10-hr, 100-hr, and 1000-hr values), emission reduction technique, and burn perimeter geographic information system (GIS) shape data. Emission reduction techniques are smoke management practices that are used by fire managers to reduce air quality impacts from prescribed fire and include burning fewer acres, burning when large woody fuels have a higher fuel moisture content, removing fuels before ignition among other techniques.[75]

For pile burns for each event, the EPA is considering that the minimum data fields are essentially the same as for broadcast or understory burns, but rather than acres burned (or total planned acres and percent burned) a State would be required to report the number of hand piles per acre and the number of machine piles per acres. In addition, optional data fields for pile burns would include average height and diameter of the piles.

Given these considerations, this action proposes to require that States report data for prescribed burns for certain burns within State boundaries, including burns conducted on state-owned/managed, private, and military lands. This proposed requirement would exclude reporting of burns for which such data are already documented by certain agencies or Federal Land Managers via freely provided Federal databases. This proposed requirement considers that the EPA already has access to prescribed burning data provided by USFS and the Department of the Interior and thus avoids duplication of effort by States by excluding such data from the proposed requirements (however, States are free to report data from Federal lands if they choose to do so). This proposal includes new data formats for reporting prescribing burning activity data.

The EPA additionally proposes that agricultural and land clearance burns be excluded from the prescribed burns required to be reported. To facilitate this exclusion, the EPA proposes to use the definition of prescribed burns defined by 40 CFR 51.301 and proposes a definition of agricultural burns to mean ''the use of a prescribed fire to burn crop residue.''

EPA is additionally proposing a requirement that State reports on prescribed burns would be due within 6 months of the end of the inventory year (*i.e.,* the calendar year in which the emissions occurred) starting with the 2026 inventory year; thus, if finalized, prescribed burning data would be due by July 1, 2027, and then every July 1 thereafter. This deadline and others are summarized below in section IV.S. The EPA also proposes a requirement for States to report data for broadcast and understory burns when such burns impact 50 acres or more and to report data for pile burns when biomass is collected from 25 acres or more. Further, the EPA proposes to require States to report for burns with aspects of both broadcast/understory and pile burning that are 25 acres or more and to report each aspect of a burn separately. For all burns, the EPA proposes to require the minimum data elements previously listed. States would still be able to voluntarily report data about fires smaller than those proposed to be required above.

The EPA also is considering the size of the prescribed burns and believes that it would be possible to calculate the acreage of a prescribed burn in such a way as to avoid additional reporting requirements. Therefore, the EPA is proposing a requirement that, in determining whether a burn must be reported, States would add acres of adjoining parcels of land together when those parcels would be burned on the same day (*e.g.,* if two pile burns were conducted on adjoining parcels in increments of 15 acres on the same day, those burns would be considered as 30 acres and would, under these proposed requirements, be reported together because they would exceed the proposed 25-acre reporting threshold for pile burns). Finally, irrespective of any acreage threshold for mandatory reporting, the EPA intends to retain voluntary reporting for fires of any size or type for both wildfire and prescribed burning, which includes allowing States to report prescribed burns that occurred on Federal lands when they are included in State databases.

One approach to ensure that the EPA has all needed data for prescribed burning would be an effort to consolidate existing data collection from other Federal agencies with State data collection; however, this approach would require additional time, coordination, and agreement with other Federal agencies. Proposing an approach that requires such coordination would likely delay implementation; therefore, in this proposed action, the EPA relies on other Federal agencies continuing to provide such data voluntarily. This proposed approach would allow the EPA to obtain the information currently unavailable (*i.e.,* prescribed burns on state-owned/managed land, private land, and military land) without delaying its collection as would occur if a coordinated state-Federal approach needed to be devised. A similar voluntary approach has been used for point sources, in which the Bureau of Ocean Energy Management voluntarily provides point source emissions data for offshore oil platforms.

The EPA is also considering several alternatives in addition to the preferred alternative requirements described above. In the preferred alternative, the EPA is proposing the 2026 inventory year as the first inventory year to allow States more time to develop a prescribed burning data collection program. These data would be required by July 1, 2027,

[74] Bureau of Land Management, ''Prescribed Burn Terminology,'' *https://www.blm.gov/or/resources/fire/prescribedburns/burn_terminology.php.*

[75] National Wildfire Coordinating Group, ''NWCG Smoke Management Guide for Prescribed Fire,'' November 2020, PMS 420–3/NFES 001279, Chapter 4, Section 2, pp. 146–164.

and every year thereafter. The EPA requests comment on Alternative M1, which would include all aspects of the preferred alternative but would start the reporting for the 2025 inventory year and data would be due by July 1, 2026, and every year thereafter. The EPA requests comment on Alternative M1 because we recognize the importance of creating this new data flow about prescribed fires as soon as possible. In support of Alternative M1 are several considerations: (1) many States already permit prescribed fires and, therefore, the data collection may be more easily developed building from a permitting program, (2) the regulatory approach for prescribed burning is not on industrial facilities, and thus States may have more flexibility in implementation, and (3) States may want to push forward quickly with collection of this information to better reflect the fire emissions in their State. The EPA urges commenters to provide any additional information for the EPA to consider that would address the challenges and benefits of an earlier start to a prescribed fires requirement.

The EPA is also soliciting comment on Alternative M2, which would provide States more time to implement a prescribed burning reporting requirement. Alternative M2 would include all aspects of the proposed approach but would delay the reporting to start for the 2027 inventory year, with the first collection on July 1, 2028. The primary reason to consider this option is that it provides more time for States to implement the necessary collection. The disadvantage of this approach is that the data are not available sooner when compared to the preferred alternative.

Finally, the EPA is soliciting comment on Alternative M3, which would be significantly different from the proposed requirements above. Rather than collect data on a per-burn basis, Alternative M3 would require States to report the counties, dates, and/or months in which prescribed burns occurred. With Alternative M3, the EPA would use the satellite detection information along with the additional information from States such as comprehensive ground-based wildfire activity to improve EPA's assumptions about which fires are prescribed burns. Fires identified by satellite would be mapped to the counties, dates, and/or months provided by States to better determine whether a fire is a prescribed burn or a wildfire and to allow the EPA to use the most appropriate emissions factors to estimate emissions. The primary advantage of Alternative M3 over the preferred alternative is that it lowers the burden on States and could presumably be implemented more quickly. If the EPA were to select Alternative M3 (either alone or in combination with one of the other alternative above), the EPA could implement such a requirement as early as the 2024 inventory year, with the same July 1 deadline as described above for the preferred alternative. The disadvantage of Alternative M3 is that it does not include information about the actual size or type of each burn, which would allow for improved emissions estimates. For example, the number of acres burned would continue to be estimated based on the pixel size, which as previously described can overestimate or underestimate the area burned and the emissions.

N. Revisions to Requirements for Agricultural Fires and Optional Reporting for Wildfires

Agricultural burning is an important source of emissions at the regional scale and poses a unique challenge on the days in which burns occur. The current AERR collects data on emissions of agricultural burning from States as a nonpoint source (*i.e.,* annual total emissions by county and SCC). However, the day-specific nature of agricultural burning can be critical because it can impact local air quality on specific days and could contribute to regional haze or other episodic pollutant problems in urban and rural environments. As a result of this difference between the data collected from States and the timescale on which the emissions occur, the EPA has concluded that the current AERR requirements are insufficient to fully understand the impact of those emissions. In considering improvements to the AERR, the EPA has explored how to best gather information on agricultural burning emissions.

The EPA has developed a method to devise day-specific agricultural burning emissions. This approach does not rely on state-submitted data but can benefit from State input. The EPA is considering that the availability of this method to calculate day-specific fires could provide useful data without burdening States.

The idea of day-specific agricultural burning was received as part of comments during the public review of the 2013 AERR proposed rule.[76] The EPA's response to those comments stated, ''[t]he the EPA disagrees with this comment because the lower emissions associated with agricultural fires do not necessitate having the fires as daily events.''[77] However, since the AERR was finalized in 2015, the EPA continued to explore the possible impacts of agricultural burning events and has determined that such events could, under the right conditions, have a significant enough impact on downwind air quality that a day-specific approach could be warranted.

Under the current AERR and for the 2017 NEI, six States and four tribes submitted nonpoint, annual total emissions of agricultural fires. To use these emissions for air quality modeling, the EPA uses its own day-specific estimates to apportion the state-submitted nonpoint data to days. This process can lead to errors when compared with using day-specific ''event'' data, as is done for wildfires and prescribed burning. The remaining State, local, and tribal agencies either notified the EPA that they excepted EPA agricultural fire emissions, or they were silent on this topic. This information suggests that most States support EPA's agricultural fires method and would not be impacted by any changes made to reporting requirements.

Based on these considerations, the EPA proposes to add a new subparagraph § 51.15(h) in the proposed regulatory text that would specify that when States report agricultural burning emissions, the data would need to be reported in the same event-based data format as is used for prescribed burning. Furthermore, this action allows for the EPA to continue to provide the agricultural fires as day-specific data for States to review, comment, or revise event-based submissions. This proposed revision would take effect starting with the 2023 inventory year.

The current AERR allows for voluntary reporting by States of wildfire emissions. Rather than reporting emissions, most States have reviewed and commented on EPA's activity data compiled from national databases in conjunction with satellite data. To formalize that approach, the EPA proposes that States could voluntarily review and comment on EPA-provided wildfire activity and emissions data. In addition, the EPA proposes that a State may report wildfire timing and activity data using the same event-based data format as is used for prescribed burning.

O. Revisions for Onroad and Nonroad Emissions Reporting for California

The EPA approves onroad mobile models for California for transportation

[76] Comments submitted by Washington Department of Ecology, see docket entry EPA–HQ–OAR–2004–0489–0066.

[77] See ''AERR Response to Comment document'' see docket entry EPA–HQ–OAR–2004–0489–0077.

conformity purposes and for use in SIPs. For the current AERR, California is already required to report emissions from onroad mobile sources rather than report MOVES inputs. While there is no EPA-approved nonroad model, California has its own state-specific model. The current AERR requirements, however, have limitations on two points that the EPA has reconsidered in developing this proposed action.

First, the current AERR does not specify what version of the California onroad mobile model should be used when reporting to EPA, nor what pollutants should be reported for onroad and nonroad mobile sources. In reevaluating the existing requirements, the EPA is proposing new language that would specify using an approved version of the California onroad mobile model. This would ensure data quality and that the latest methods are used, which would be consistent with EPA's use of the latest version of MOVES for other States. In addition, the EPA proposes that this subpart requires the same CAPs from California as States.

Second, the existing requirements cause a limitation in EPA's understanding of how California has applied its model to estimate emissions. Since there is no requirement to provide documentation, there is no way for the EPA to provide transparency for NEI users about the emissions data or QA measures that have been taken.

Based on these considerations, the EPA proposes to add a new § 51.15(e)(3) in the proposed regulatory text to specify that the EPA would retain the existing approach of requiring California to report CAP emissions from onroad and nonroad sources. The EPA additionally proposes to include three new requirements to this subpart to address the issues identified during EPA's review.

First, to resolve the question of the latest version of the onroad mobile model, the EPA proposes to add a new § 51.5(m) in the proposed regulatory text that would require California to use the latest model version approved by the EPA as of January 1 of the emissions inventory year and may optionally use a newer approved model. For example, the onroad model approved as of January 1, 2023, should be used to estimate and report emissions to meet the proposed requirements in the new subparagraph § 51.15(e)(3) of the proposed regulatory text for the 2023 reporting year, or the State could optionally choose to use a model approved by the EPA after that date.

Second, to resolve the question of which pollutants should be reported, the EPA proposes to add a new subparagraph § 51.15(e)(3)(i) in the proposed regulatory text that would require California to report emissions values for the same pollutants estimated by the EPA model for criteria pollutants and precursors. Additionally, this action proposes to add a new subparagraph § 51.15(e)(3)(iii) that would specify that California may voluntarily submit emissions of HAP, greenhouse gases, or other pollutants, consistent with those pollutants that are estimated by the MOVES model. If California does not report these data, the EPA intends to use CAP/HAP ratios consistent with the MOVES model and if California does report such emissions, the EPA will evaluate the data and documentation to decide which approach would be to the best advantage for the purposes of the NEI.

Third, to resolve the lack of documentation about California's onroad and nonroad mobile emissions, the EPA proposes to add a new subparagraph § 51.15(e)(3)(ii) in the proposed regulatory text that would require California to submit documentation that describes the model inputs, use of the model and any options selected, post-processing steps, and the QA performed to estimate the emissions for each county and SCC. This proposed requirement would allow commensurate documentation, quality review, and transparency for California's onroad and nonroad emissions as exists for mobile sources in the NEI for other States. The EPA intends to evaluate the documentation provided by California, particularly for HAP, and determine the best approach for ensuring complete HAP data from mobile sources that uses sufficiently robust and transparent approaches.

P. Clarifications for Reporting Emission Model Inputs for Onroad and Nonroad Sources

The current version of the AERR requires States, except for California, to report MOVES model inputs for onroad and nonroad sources or to accept EPA-provided emissions data. The EPA has reviewed the current process and is aware that States may have access to better data than the EPA can obtain on its own, for example, to vehicle registration data and inspection and maintained program data maintained by States that are not available in any national databases (except as collected under this subpart). The EPA recognizes that the current AERR is not specific about which parts of the MOVES model inputs are most critical or whether there are some parts of those inputs that the EPA would not use. Additional clarification about which MOVES inputs are the most important could encourage States to submit at least that minimum amount of data and could also help to avoid misunderstandings regarding which data elements the EPA does not intend to use.

In addition, the current AERR does not specify a mechanism by which States may express their review and acceptance of EPA-provided MOVES inputs and emissions. Like nonpoint sources as described above, such a mechanism would be useful to allow the EPA to develop a formal record of States' choices about submitting model inputs or accepting EPA inputs and emissions.

Furthermore, some States do not notify the EPA of their acceptance of MOVES inputs or emissions. While the EPA might simply assume that no notification means that States do accept it, such an approach does not create a clear record for the EPA if disputes in emissions data arise later. Resolving this limitation of the current process would avoid possible conflicts in the future.

While many States submit MOVES inputs, some States still do not. Section 5.5 (Table 5–4) of the 2020 NEI TSD describes that 28 States, including the District of Columbia, and 5 local agencies provided MOVES inputs, out of 82 total States and local agencies reporting. Furthermore, different agencies provided different degrees of input, suggesting that an approach to clarify the most important data formally with this action could be useful to agencies seeking to prioritize their efforts. While there are many separate inputs listed in the 2020 NEI TSD, just a handful of these are most important to receive from States.

To ensure more data provision by States and avoid confusion, the EPA proposes to list the minimal MOVES input requirements. Specifically, the new § 51.15(e)(1) included in the proposed regulatory text would require that the minimum requirements for States to provide are: (1) a county database checklist, (2) vehicle miles travelled by county and road type, and (3) vehicle population by county, vehicle type, fuel type, and age.

Further, this action proposes to clarify with the new § 51.15(e)(2) in the proposed regulatory text that if a State has relevant data for the inventory year, States may optionally provide inputs to the latest EPA-developed mobile emissions model for the following data: (1) hourly average speed distribution by vehicle type, ideally different for weekday and weekend (distance traveled in miles divided by the time in hours), (2) vehicle age distribution, (3) inspection and maintenance program

information, and (4) documentation that describes how model inputs were created and the QA steps performed. The intent of listing out these optional MOVES inputs is to explicitly exclude those MOVES inputs that the EPA does not intend to use, which are fuel data and meteorological data. Any fuel data that States would like the EPA to consider should be incorporated into the default MOVES database. If available, States may optionally send fuel data to the EPA at *mobile@epa.gov.*

As noted above, some States do not notify the EPA of their acceptance of EPA-provided MOVES inputs and emissions. To address this issue, the EPA is proposing a more formal approach in future inventory years. If a State were to not respond using the standard approach provided, the EPA could follow up with the State to notify them of the compliance concerns and allow the State the opportunity to comply with the AERR.

To address this issue, the EPA proposes to add a new subparagraph § 51.15(e)(4) in the proposed regulatory text to clarify that States other than California may, in lieu of submitting any data, review and accept existing the EPA model inputs and emission estimates. The EPA further proposes in the paragraph that States would be required to use an electronic data collection approach provided by the EPA to review, comment on, and accept EPA model inputs and emission estimates. The approach that the EPA would implement to support that proposed requirement would be in EIS like the Nonpoint Survey described in section IV.J of this preamble or an approach to upload data files and enter data on a shared folder such as Sharepoint. This goal with these proposed provisions is to achieve the consistency needed for the Agency to avoid the potential problems created under the current less specific approach.

Q. Definition of Actual Emissions

The term ''actual emissions'' is used in CAA sections 112, 172, and 182 among others, but no definition is provided of that term by the Act. In CAA section 112(a), the term is used to define the terms ''modification,'' ''offsets,'' and ''early reduction.'' In CAA section 172(c)(3) and section 182(a)(1), the term is used to describe the emissions that must be reported by States as part of SIPs. Because this subpart implements aspects of the Act for emissions reporting to EPA, a definition of this term that is appropriate for reporting of emissions would be useful to ensure clarity about which emissions are required to be reported. The EPA recognizes that the phrase ''actual emissions'' is used in other contexts within 40 CFR part 51 that are distinct from the emissions data reporting context. The proposed definition would only apply to the provisions of the AERR; therefore, it would affect both annual emissions data reporting as well as emissions included in SIP inventories.

The current AERR regulations in Subpart A of Part 51 have not previously provided a definition of ''actual emissions'' for use in implementing this subpart. A lack of a definition has caused confusion because emissions generating activities can be divided into categories, including emissions occurring during (1) steady State operating conditions, (2) periods of process startup or shutdown, and (3) periods of process malfunction. This confusion has prompted the need for the EPA to clarify.

To attempt to clarify what should be reported for SIP purposes, the EPA has previously included a definition of ''actual emissions'' through the guidance document ''*Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations.*'' [78] The guidance definition States, ''actual emissions means the emissions of a pollutant from an affected source determined by taking into account actual emission rates associated with normal source operation and actual or representative production rates (*i.e.,* capacity utilization and hours of operation) (40 CFR 51.491). This is in contrast with potential emissions or allowable emissions. These actual emissions should include emissions of a pollutant that occur during periods of startup, shutdown, and malfunction.''

The EPA is also considering the connection between the term actual emissions and duration of the emissions for the NEI (annual) versus for SIPs that can include other durations (*e.g.,* ozone-season-weekday for the ozone NAAQS or average season day for the 24-hour $PM_{2.5}$ NAAQS). To support all EPA functions that use data collected by the AERR, the term actual emissions in the context of the AERR must reflect the types of activities relevant to include in an emission value rather than whether that emissions value is annual or some other temporal resolution like average day. Thus, an ideal definition for the AERR would allow for the annual NEI reporting to refer to ''annual actual emissions'' while an ozone SIP requirement ozone-summer-weekday emissions could also be ''actual emissions'' associated with summer weekdays.

Based on these considerations, the EPA proposes to add a definition of ''actual emissions'' within § 51.50 of this subpart. The proposes definition states, ''*Actual emissions*'' means, for the purposes of this subpart, the emissions of a pollutant from a source that is required to be reported under this rule, determined by accounting for actual emission rates associated with normal source operation and actual or representative production rates (*i.e.,* capacity utilization and hours of operation). Actual emissions include emissions of a pollutant that occur during periods of startup, shutdown, and may include malfunctions. Since malfunctions are, by nature, unpredictable and given the myriad different types of malfunctions that can occur, malfunction emissions are difficult to estimate. However, to the extent that malfunctions become a regular and predictable event, then such emissions should be quantified with regular and predictable emissions and included in actual emissions.''

To the extent that malfunction emissions can be included in the emissions reported under the AERR, the EPA is additionally considering that emissions from malfunctions may need to have special treatment for use in both the NEI and SIP contexts. For example, when the emissions are used for air quality modeling for model performance evaluation, it would be critical to have the time span during which malfunction-related emissions occurred. If malfunction emissions were included as a single value summed with other emissions, then the emissions would not exhibit the hourly or daily peaks in emissions associated with the malfunction. This would not only miss those peak impacts during the times of the malfunction, but also could increase emissions across the entire year to a level not useful for model performance evaluation. Another example is that for projected inventories required for the nonattainment area for the $PM_{2.5}$ SIP or for ozone and $PM_{2.5}$ modeled attainment demonstrations, including malfunctions from the base year in future year modeling may not result in the best policy outcomes. This is because malfunctions, if they occurred in the future year, would undoubtedly be different in both timing and magnitude. Since malfunctions by definition are not

[78] Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, U.S. EPA, EPA–454/B–17–002, May 2017.

predictable, including them in future year modeling could be problematic.

The EPA is soliciting comment on a possible additional requirement that may be included in any final action on this proposal. This additional ''Malfunction Option'' requirement would be for States and owners/operators to report their malfunction emissions as a separate value from the other emissions. This would allow for consistency across NEI, SIPs, and all States to ensure that both malfunction emissions are included (based on the proposed definition), but also the malfunction emissions do not adversely impact the use of the emissions data for some purposes such as modeling and projected inventories. If the EPA were to require the Malfunction Option in the final rule, States and owners/operators would need to report the approximate date of occurrence, the approximate number of days of the occurrence (if more than one day), and the estimated emissions associated with each malfunction. These additional fields would be reported as associated with the affected units and processes (when applicable) and release points. The EPA proposes that reporters would assign each emissions value with an emissions operating type code that denotes the emissions as being associated with a malfunction. In addition, the EPA intends to adjust the available codes in the EIS (and CAERS) by retiring the existing codes and creating codes for routine (steady-state and startup/shutdown), malfunction, and startup/shutdown. Under this proposed requirement, the routine value would always be required (and as described above, would be expected to include startup/shutdown). The malfunction value would be required in the event of a malfunction. The startup/shutdown value would be an optional value that a State or owner/operator could provide to give additional information about the startup/shutdown portion of the routine emissions.

EPA is additionally considering an alternative implementation of the Malfunction Option. In this alternative implementation, rather than requiring approximate date, approximate duration, and associated emissions, owners/operators would only need to report the annual total emissions and the emissions operating type code for all malfunctions that occurred each year.

R. Provisions for State Implementation Plans

To promote a consistent approach to emissions inventory data collection from States, portions of 40 CFR part 51 that address SIP requirements reference the current AERR when addressing SIP inventory requirements. Within Part 51, Subparts G, P, X, Z, AA, and CC all reference the AERR. The EPA has reviewed these references to the AERR to ensure that the changes proposed to the AERR do not require changes to those other subparts. The EPA determined that no such changes to these other subparts were necessary. However, the EPA did identify certain aspects of the current AERR and proposed AERR revisions that could cause confusion for SIP inventory requirements. As a result, the EPA is proposing additional revisions within the AERR to prevent such confusion, and these changes relate to three considerations: (1) the definition of point sources, (2) the level of detail required for emission inventories, and (3) the timing of the triennial NEI. Each of these considerations is handled separately in the paragraphs below.

1. Point Source Thresholds

Subpart G refers to the AERR point source definition directly or indirectly at § 51.122(g); Subpart X at § 51.915; Subpart Z at § 51.1008(a)(1), (a)(2) and (b)(1); Subpart AA at § 51.1115(d) and (e), and Subpart CC at § 51.1315(d) and (e). Subpart G directs States to submit a statewide NOx emissions inventory and, in doing so, to use the AERR point source definition. The ozone implementation rules (Subparts X, AA, and CC) require States to report point sources for the base year inventory for the nonattainment area using the AERR point source definition. Finally, the PM implementation rule of Subpart Z directs States to use the AERR point source definition to determine point sources, which applies for both the base year inventory and for the attainment projected inventory for the nonattainment area.

In referencing the AERR, the SIP inventory requirements do not mention specific pollutants for which the AERR point source definition (which uses reporting thresholds for all CAPs) should be used. For example, the ozone implementation rules' inventory requirements rely on CAA section 172(c)(3), which requires emissions of ''the relevant pollutant or pollutants'' when preparing nonattainment SIP inventories for ozone. In the case of ozone, these relevant pollutants are NO_X and VOC, but the references from the ozone SIP requirement rules to the AERR are not specific to these pollutants. Thus, under the current approach, one could incorrectly assume that all AERR point sources defined with all CAP PTE reporting thresholds would need to be treated as point sources for an ozone SIP, irrespective of the level of NO_X and VOC at those sources. This proposal clarifies that only those sources with NO_X or VOC emissions exceeding the AERR point source PTE reporting thresholds would be required to be reported as point sources in an ozone SIP. Similarly, this proposal would include similar clarifications for $PM_{2.5}$ and its precursors when preparing nonattainment SIP inventories for $PM_{2.5}$. In addition, the EPA intends for the addition to the point source definition included in this proposal based on HAP should not impact the point source definition for SIPs.

To ensure no change to the other subparts that refer to the AERR's point source requirements, the EPA proposes to revise § 51.10 of this subpart by adding paragraph (b) to list Part 51 Subparts G, X, Z, AA, and CC and specify the parts of the point source definition that are applicable to each. Specifically, for Subpart G, the EPA proposes that only the NO_X reporting threshold of the proposed Table 1A to Appendix A of this subpart would be relevant. For ozone implementation under Subparts X, AA, and CC, the EPA proposes that the NO_X and VOC reporting thresholds of the proposed Table 1A to Appendix A of this subpart would be relevant. For PM implementation under Subpart Z, the EPA proposes that the NO_X, VOC, SO_2, NH_3, $PM_{2.5}$, and PM_{10} reporting thresholds of the proposed Table 1A to Appendix A of this subpart would be relevant.

2. Detail Required by Emission Inventory Provisions of SIP Implementation Rules

In addition to the point source definition referenced throughout Part 51, the SIP requirements within Part 51 refer to the AERR by requiring that the detail of the emissions inventory under those subparts ''shall be consistent with the data elements required by 40 CFR part 51, subpart A'' (see 40 CFR 51.122(g), § 51.915, § 51.1008 (a)(1)(vi), § 51.1115(e), and § 51.1315(e)). Several revisions are being proposed by this action that would impact the ''detail of the emissions inventory,'' so additional information has been included in this proposed action to clarify which changes do not apply to the SIP inventory requirements.

The proposed revisions to this subpart for State requirements regarding the ''detail of the emissions inventory'' have been described above and are summarized here to provide clarity about which changes would need to be considered when interpreting the Part

51 references to the AERR. Table 4 below lists the proposed changes to relevant requirements of action in the left column and how the EPA proposes that they would or would not impact the ''detail of the emission inventory'' requirement included in the SIP inventory requirements.

TABLE 4—IMPACTS OF PROPOSED STATE REPORTING REQUIREMENTS ON 40 CFR SUBPARTS G, X, Z, AA, AND CC

	Proposed new or revised State reporting requirement for the AERR	Impact of proposed requirement on 40 CFR subparts G, X, Z, AA, and CC? (Yes/No)
1	Requirement to report intermittent electricity generation fuel use (section IV.D of this preamble).	No: Does not change emissions required to be reported under these subparts. Emissions (but not daily activity data) from intermittent electricity generation sources would continue to be required to be included in SIP inventories. The proposed AERR revisions improve States' ability to gather the data they need to estimate and consider these emissions in SIPs.
2	Requirements to use source test data when available, indicate why it is not used, and otherwise use best available emissions estimation method (sections IV.I.6 and IV.I.7 of this preamble).	Yes: Point source emissions would need to be estimated as proposed in new § 51.5(a) through (d) of the proposed regulatory text.
3	Additional required point source data fields (sections IV.E, IV.I.3, IV.I.4, IV.I.5, IV.I.8, IV.I.10, IV.I.11, IV.I.12, and IV.I.16 of this preamble).	Yes: Point source inventories developed and submitted under these subparts would need to include additional data fields. See new § 51.15(j)(1) and § 51.40(b) of the proposed regulatory text.
4	More specific airport and rail yard requirements and implementation options (sections IV.I.1 and IV.I.2 of this preamble).	No: Airport and rail yard emissions are still required as point sources if those facilities exceed the point source reporting thresholds in Table 1A to Appendix A of this subpart. See new § 51.15(j)(1) of the proposed regulatory text.
5	Requirement to complete an online nonpoint survey (section IV.J of this preamble).	No: Only relevant for NEI process and not for SIPs. See New § 51.15 and § 51.15(j)(2) of the proposed regulatory text.
6	Requirement to report nonpoint activity data and optionally report emissions data for some emissions sectors, including an option to review and accept EPA-provided data to comply (section IV.J of this preamble).	No: Nonpoint emissions are still required. See new § 51.15 and § 51.15(j)(2) of the proposed regulatory text.
7	Requirement for documentation when nonpoint emissions are reported (section IV.J of this preamble).	No: Nonpoint emissions are still required and no additional documentation requirement. See new § 51.15 and § 51.15(j)(2) of the proposed regulatory text.
8	Requirement for documentation when onroad and nonroad emissions are reported by California or by other States when they optionally provide emissions in addition to MOVES inputs (section IV.O of this preamble).	No: Onroad and nonroad emissions are still required and no additional documentation requirement. See new § 51.15 and § 51.15(j)(3) of the proposed regulatory text.
9	Specific approach for reporting nonpoint activity data and emissions when Indian country boundaries overlap with county boundaries (section IV.L of this preamble).	Yes (for States overlapping tribes that have emissions inventory reporting obligations): Clarifies how States and tribes should report nonpoint, onroad, and nonroad emissions when both the State and the tribe have implementation planning authority within a nonattainment area. See new § 51.15 and § 51.15(j) paragraphs (2)(iv) and (3)(ii) of the proposed regulatory text.
10	Requirement to report prescribed burning activity data (section IV.M of this preamble).	No: Prescribed fire emissions are still required. See new § 51.15 and § 51.15(j)(2)(ii) of the proposed regulatory text.
11	Change to make agricultural burning optional and submitted as an event source (section IV.N of this preamble).	No: Agricultural burning emissions are still required as a nonpoint source. See new § 51.15 and § 51.15(j)(2)(ii) of the proposed regulatory text.

As shown in the table above, only three of the proposed changes for State annual or triennial reporting under this action impact the requirements of Part 51 Subparts G, X, Z, AA, and CC. The three that do impact the requirements help with resolving ongoing nonattainment emissions data challenges, so it is appropriate for these subparts to continue to refer to the AERR as revised.

For the proposed requirement 1 in Table 4, more completely described in section IV.D of this preamble, the proposed change to the AERR has a positive impact on emissions data that would be available to the State after implementing the provisions of this action. This proposed action facilitates activity data collection from small generating units as an annual requirement, which would allow States with small generating units operating to offset or meet peak electricity demand to have the data that they need to better reflect emissions from such sources in their planning inventories for SIPs.

The proposed set of requirements listed as item 2 in Table 5 specifies data quality requirements for calculating and reporting emissions for point sources. These are described more completely in sections IV.I.6 and IV.I.7 of this preamble. If these proposed requirements were finalized, point sources reporting CAP emissions to States for both annual emissions reporting to the EPA and SIP purposes would need to meet new data quality requirements.

The proposed requirement 3 in Table 4 is a collection of specific new data fields that are more completely described in section IV.I of this preamble and the proposed Table 2A to Appendix A of this subpart. Any new data elements finalized from this proposed action would be collected by States to meet requirements of the AERR and, therefore, would be available for States to submit as part of their planning inventories for SIPs. Thus, while the SIP inventory requirements are indirectly modified by this proposed action, this

action does not impose additional burden for nonattainment area inventories because this subpart uses the same requirements for both annual reporting of point sources and for States' planning inventories for SIPs.

Finally, the proposed requirement 9 of proposed Table 4 is fully described in section IV.L of this preamble addresses an existing challenge for both the NEI and SIP planning inventories. As previously described, a clear approach for States and tribes to share reporting of county total emissions data has not been available. When both a State and an Indian Tribe share implementation planning authority for a nonattainment area, this action proposes a new requirement for how States and tribes (or the EPA on their behalf) should develop and report nonpoint, onroad, and nonroad emissions. As proposed in new paragraph § 51.15(j), subparagraphs (2)(iv) and (3)(ii) of the proposed regulatory text, the approach would apply the same technique described for nonpoint activity and emissions for triennial reporting to the emissions reporting for the nonattainment area needed for SIPs. To be clear, this situation would arise if the nonattainment area included some lands that fell within the geographic scope of the State's implementation planning authority as well as some lands within the geographic scope of the tribe's implementation planning authority in accordance with TAS for that tribe.

In evaluating the connection between the elements required to be reported under the AERR and the elements required to be provided in SIP submissions pursuant to other Part 51 subparts that generally reference the AERR, the EPA noticed several differences. The current AERR includes some requirements that were intended to apply only to the triennial NEI emissions data collection and not to impact requirements for SIPs. The primary discrepancy is that as per CAA Section 172(c)(3), SIPs ''shall include a comprehensive . . . inventory of actual emissions from all sources of the relevant pollutant or pollutants.'' The ''comprehensive'' and ''all sources'' part of this requirement are not technically satisfied for certain provisions of the AERR. For example, the AERR allows for reporting model inputs (rather than ''emissions'') for mobile sources. Similarly, the AERR makes optional certain important emissions sources such as windblown dust, biogenic emissions from soils and vegetation, prescribed fires, and wildfires, but these sources must generally be included in inventories pursuant to 172(c)(3). The EPA provides guidance documents and training for SIP inventory preparation that help ensure that these differences do not result in inadequate SIP inventories. This action proposes to provide additional clarity on these issues regarding what States need to report.

Part of this additional clarity has previously been described in section IV.R.1 of this preamble regarding which pollutants should be included in SIP planning inventories associated with the Part 51 subparts that reference the AERR. In addition, this proposed action includes a new paragraph § 51.15(j) in the proposed regulatory text that lists out inventory requirements for SIPs required under Part 51 Subparts G, X, Z, AA, and CC that are different from requirements for annual or triennial reporting for the NEI. First, this proposed action, when referring to SIP planning inventories, would define point sources only by the relevant CAP point source reporting thresholds under a new paragraph § 51.10(b) in the proposed regulatory text and not by the other criteria such as the new criteria for HAP for major and non-major sources. This proposed revision would retain the existing definition of point sources in this subpart for references from other Part 51 subparts to the AERR. Second, this proposed action would clarify that for SIP planning inventories, airports and railyards would need to be reported as point sources only when they meet the point source reporting threshold and otherwise could be included as a nonpoint (county-total) source. This contrasts with the triennial requirement for which the EPA provides data for review and comment by States for all airports and railyard data, including ones much smaller than the point source reporting thresholds. Third, this proposed action would further clarify in new paragraph § 51.15(j)(2)(iii) that SIP planning inventories should include emissions from all sources, irrespective of any other approaches required or made optionally available by the AERR for the triennial submission of nonpoint, onroad, and nonroad sources.

3. Emission Inventory Years

The third and final type of reference to the AERR from other subparts within Part 51 is about the year of the triennial NEI. Such references appear in Subpart P at § 51.308(f)(2)(iii) and § 51.308(g)(4); Subpart X at § 51.910(d); Subpart AA at § 51.1110(b), and Subpart CC at § 51.1310(b).

Subpart P provides requirements for State implementation of the regional haze program, and § 51.308(f)(2) provides the requirements for the long-term strategy to be included in periodic revisions of regional haze SIPs. For emissions inventories, paragraph (f)(20)(ii) states that ''[t]he emissions information must include, but need not be limited to, information on emissions in a year at least as recent as the most recent year for which the State has submitted emission inventory information to the Administrator in compliance with the triennial reporting requirements of Subpart A of this part.'' Additionally, paragraph (g)(4) of the same section provides requirements for periodic reports describing progress towards the reasonable progress goals; and this paragraph has a similar reference to the year of triennial submissions to indicate the period over which the State must perform an analysis tracking the change in emissions. No provision of this proposed action would impact the inventory year required for regional haze SIPs, because this action proposes to retain triennial inventory requirements. Thus, under this action, the subpart P requirement that references triennial reporting is still relevant since emissions inventories would continue under this proposed action to be collected on triennial inventory years.

Within Part 51 Subpart X, § 51.910(d) addresses what year should be used for the baseline emissions inventory for Reasonable Further Progress (RFP) plans. This paragraph requires that the appropriate year is at least as recent as the most recent year for which a complete inventory is required to be submitted to the EPA under the provisions of the AERR. The phrase ''complete inventory'' means the triennial inventory, which are the only inventories for which all source categories could be reported by a State under the AERR. No provision of this proposed action would impact the inventory year required for SIPs under Subpart X, because this action proposes to retain triennial inventory requirements.

Part 51 Subpart AA includes the same statement to specify the baseline emission inventory year needed to meet requirements for RFP, which appears at § 51.1110(b). In addition, § 51.1115(a) refers to the year used for the baseline emission inventory for RFP to explain which years can be used for the base year inventory for the nonattainment area. Likewise, Part 51 Subpart CC includes the same reference to the triennial inventory year at § 51.1310(b). In all cases, no provision of this proposed action would impact the inventory year required for SIPs under Subparts X, AA, or CC because this

action proposes to retain triennial inventory requirements.

S. Summary of Expected Timing for Proposed Revisions

Unless otherwise noted, the proposed revisions in this action would apply for the first inventory reporting year after promulgation of the final rule. At the time of this proposal, the EPA expects that the final rule will be in place for the 2023 triennial reporting year, though some provisions would not take effect until later years. These proposed deadlines depend on an assumed final rule promulgation date prior to December 2024. If a final version of this subpart were delayed beyond December 2024, the EPA may delay the phase-in of earlier deadlines. Table 5 below summarizes the intent of this proposed action with respect to deadlines.

TABLE 5—PROPOSED FIRST POSSIBLE DATE FOR DEADLINES ASSOCIATED WITH PROPOSED REVISIONS TO 40 CFR 51 SUBPART A

First possible date	Requirement
Dates for States—point sources	
11/1/2025	Proposed first deadline to notify the EPA if intend to use CAERS (for 2026 inventory year).
9/30/2024	Proposed first deadline for States/locals to submit landing and takeoff data for the 2023 inventory year (could be later than this, since States have minimum of 60 dates to review).
1/15/2025	Proposed deadline for air agencies 2023 NEI point source reporting (for CAP and voluntary HAP including airports and rail yards).
1/15/2026	Proposed deadline for air agencies 2024 NEI point source reporting (for CAP and voluntary HAP).
3/31/2026	Proposed first deadline for States to submit their HAP reporting application (for the 2026 inventory year).
1/15/2027	Proposed deadline for 2025 NEI point source reporting (for CAP and voluntary HAP).
1/15/2028	Proposed deadline for 2026 NEI point source reporting, for CAP and mandatory HAP when the State has an approved HAP reporting application. Includes the first year for mandatory reporting for intermittent EGUs and required new data fields including release point coordinates, title V permit ID, regulatory codes, and changes to portable sources reporting.
9/30/2028	Proposed first deadline for earlier State point source reporting (for 2027 inventory year). This is also the first deadline for which the same point sources must be reported each year (no higher reporting thresholds for non-triennial inventories).
5/31/2031	Proposed first deadline for even earlier State point source reporting (for 2030 inventory year and later).
Dates for States—other sources besides point	
1/15/2025	Proposed deadline for 2023 NEI for rail yards, mobile source inputs, California mobile source emissions and documentation, and nonpoint source emissions and documentation for sources without EPA tools.
3/31/2025	Proposed deadline for 2023 NEI nonpoint survey.
7/1/2027	Proposed first deadline for required annual prescribed burning activity data.
Within 30 days, or longer as provided by EPA.	Proposed timing for States to report nonpoint tool inputs during the year of the inventory and the year after (*e.g.,* during 2023 and 2024 for the 2023 triennial inventory year).
Within 60 days, or longer as provided by EPA.	Proposed timing for States to report nonpoint emissions data for nonpoint sources with EPA tools (*e.g.,* during 2023 and 2024 for the 2023 triennial inventory year).
Dates for owners/operators	
10/31/2024	Proposed deadline for the ''One-time Collection Option'' for HEDD-related small generating units (if this option were selected for the final rule).
5/31/2025	Proposed deadline for voluntary reporting by owners/operators (for the 2024 inventory year).
5/31/2026	Proposed deadline for owners/operators with point sources within Indian country not reported by tribes to report CAP and HAP (for the 2025 inventory year). Also, the deadline for voluntary reporting by other owners/operators.
5/31/2027	Proposed first deadline for all owners/operators to report HAP for 2026 reporting year.
3/31/2028	First earlier proposed deadline for owners/operators to report for the 2030 reporting year.
To meet Federal or State testing requirement or otherwise within 60 days after completing testing.	Source test/performance test collection.

T. Summary of Regulatory Impact Analysis

In this preamble section, we briefly summarize the costs and benefits of this proposal. The RIA for this proposed rule provides additional detail on these costs and benefits.[79] The EPA encourages commenters to provide any additional information not considered in the RIA for this proposed rule or to provide comments on EPA's cost estimation approaches.

While methodological limitations prevented the EPA from monetizing the potential human health and environmental benefits, given that no changes in emissions or other environmental effects can currently be estimated that may be directly attributed to the greater availability and quality of emissions data, and in particular HAP emissions, we present a qualitative discussion of benefits. These benefits include those to communities that may be particularly impacted by pollutant emissions, whether they be HAP or CAP.

The benefits of the proposed revisions to the AERR of collecting additional HAP, CAPs, controls, and sub-facility data include improved understanding, awareness, and decision making related to the provision and distribution of information. The information shared with EPA, and incorporated into the NEI, could enable the public to make

[79] The RIA is available through the docket for this action.

more informed decisions on where to live and work, strengthen the public's ability to adequately protect themselves from potential harm from criteria air pollutants and air toxics, and provide a greater capacity for meaningful involvement in the development and implementation of local pollution management policies.

This proposed action would ensure that communities have the data needed to understand significant sources of air pollution that may be impacting them and address existing environmental justice issues that are discussed previously in this preamble. Additional benefits to these communities include building public confidence through clear and transparent emission measures and reports and the ability of the public to better make facilities accountable for their emissions. Availability of increased information on HAP emissions can also be used to advance the Agency's environmental justice goals by increasing the understanding of the potential impacts of air toxics emissions from regulated facilities on minority and disadvantaged communities who have been historically burdened by often difficult to detect and undisclosed pollution that is experienced on a regular basis. The required reporting of HAP emissions data will increase EPA's ability to accurately conduct technology reviews pursuant to CAA section 112(d)(6), and risk reviews under CAA section 112(f)(2), which should lead to future regulation of HAP that will be more effective in reducing the burden of exposure of such emissions from what has occurred in the past. These provisions are additionally informed by Federal policy on environmental justice, including Executive Order 12898, which overlays environmental justice considerations for the EPA to assess as part of such work. Even for owners/operators who also must report emissions to the TRI program, this proposed action would require_additional sub-facility details necessary for air quality modeling that, in turn, would allow the EPA and other authorities to assess local-scale community impacts and devise solutions for high-risk areas.

The proposed amendments would ensure HAP emissions data are collected_consistently for all communities across the country. Currently, the availability and detail of HAP emissions data varies across States, which creates a situation where some communities have incomplete or less accurate information than others, while still facing the same or greater_potential risks. Transparent, public data on emissions allows for accountability of polluters to the public stakeholders, including communities, that bear the social cost of the pollution.

Finally, the proposed provision of additional information could also lead to behavioral changes that could result in additional benefits. In particular, voluntary initiatives by facilities to review emissions control management practices and facility processes, set goals for reductions in emissions, and institute ''good neighbor'' policies may result from provision of additional emissions data. Potential changes in facility operations, such as reductions in pollutant releases, could yield health and environmental benefits. There may be instances where pollutant emissions are themselves valuable product from a market standpoint (*e.g.,* natural gas, that includes HAP and methane, leaking from a pipeline), and their control or capture may not only be beneficial to the environmental but also beneficial to the firms that own the natural gas. While behavioral changes from the provision of information may result from the rule and are, in fact, one goal of these types of policies, they are not mandated by the proposed action. The reporting of such emission data, and its public disclosure, may provide social benefits in itself since this data disclosure may incentivize emission reductions.

Regarding the costs of this proposal, the proposed rule's cost to State, local, Tribal government authorities is estimated at $28.5 million on average annually from 2024 to 2026, and then is estimated at $27.7 million in 2027. For owners and operators of affected sources, the proposed rule's cost is estimated at $89.0 million on average annually from 2024 to 2026, and then is estimated at $450.1 million in 2027. Thus, the proposed rule's total cost impact is estimated at $117.4 million on average annually from 2024 to 2026, and then is estimated at $477.9 million in 2027. All of these costs are in 2021 dollars. The increase in costs for owners and operators of affected sources in 2027 reflects full implementation of the proposed rule if finalized for the entire population of affected sources.

Regarding the population of affected sources for the 2024–2026 time period, the EPA estimates the proposed rule would impact 85 State/local/Tribal respondents and 820 owners/operators of facilities outside of States' implementation planning authority. Owners/operators for an estimated 40,315 facilities per year would also need to prepare for new reporting requirements starting in 2027. Also, during this period, the EPA estimates that owners/operators of 13,420 facilities would report source test and performance evaluation data each year. Based on these proposed requirements, States would continue to collect emissions data from owners/operators of an estimated 13,420 facilities (based on State regulations requiring owners/operators to do so). Starting in 2027, the EPA estimates that, under the proposed AERR, owners/operators from about 129,490 facilities would be required to report HAP as would about 235 owners/operators for reporting small generating unit data. More information on the costs and estimates of affected facilities can be found in the ICR supporting statement and the RIA for this proposal, located in the docket for this action.

In addition, as part of fulfilling analytical guidance with respect to E.O. 12866, EPA presents estimates of the present value (PV) of the social costs of the proposal over the period 2024 to 2033, an analytical timeline that is approximately the first 10 years after this rule is finalized as proposed. To calculate the present value of the social costs of the proposed rule, annual costs are discounted to 2023 at 3 percent and 7 discount rates as directed by OMB's Circular A–4. The EPA also presents the equivalent annualized value (EAV), which represents a flow of constant annual values that, had they occurred in each year from 2024 to 2033, would yield a sum equivalent to the PV. The EAV represents the value of a typical cost or benefit for each year of the analysis, consistent with the estimate of the PV, in contrast to the year-specific estimates mentioned earlier in the RIA. The PV of the compliance costs, in 2021 dollars and discounted to 2023, is $2.41 billion when using a 7 percent discount rate and $3.06 billion when using a 3 percent discount rate. The EAV, an estimate of the annualized value of the costs consistent with the present values, is $343 million when using a 7 percent discount rate and $358 million when using a 3 percent discount rate. Table 6 summarizes the costs and benefits of this proposal.

TABLE 6—SUMMARY OF BENEFITS, COSTS AND NET BENEFITS FOR THE PROPOSAL FROM 2024 TO 2033, DISCOUNTED TO 2023

[Million 2021$ [a]]

	Proposal impacts			
	3 Percent		7 Percent	
	PV	EAV	PV	EAV
Total Monetized Benefits [a]	N/A		N/A	
Total Costs	$3,057	$358	$2,410	$343
Net Benefits	N/A		N/A	
Non-Monetized Benefits	Improved emissions data access for State, local, and tribal government agencies. Increased emissions data for addressing local (environmental justice) issues. Better data to inform regulatory decision making Increased emissions data to incentivize voluntary emission reduction efforts by industry and others.			

[a] We have determined that quantification of benefits cannot be accomplished for this proposed rule. This is not to imply that there are no benefits of the proposal; rather, it is a reflection of the difficulties in monetizing the benefits for the listed categories with the data currently available. N/A = not available.

These cost estimates include those for impacts to State, local, and Tribal organizations that are engaging in voluntary activities that would become codified as a result of this proposal if finalized. The EPA has broken out those costs separately and provides discussion of them in the RIA for this proposal. Similarly, we acknowledge that the cost estimates for this proposal include those for revisions to SIP planning activities, and we also break out these costs separately and provide discussion of them in the RIA for this proposal.

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 Regulations and Regulatory Review

This action is a ''significant regulatory action,'' as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA, submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, ''Regulatory Impact Analysis for the Proposed Revisions to the Air Emissions Reporting Requirements,'' is also available in the docket and is briefly summarized in section IV.T of this preamble.

B. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The draft Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2170.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

In past years, the information collection under the existing AERR has coordinated the various State emission inventory reporting requirements and has streamlined the activities involved in submitting certain emissions data to the EPA. The proposed revisions to the collection would (1) continue this coordination to enable the EPA to achieve uniformity and completeness in a national inventory to support national, regional, and local air quality planning and attainment of NAAQS and planning needed for meeting regional haze requirements, (2) greatly improve HAP data collections that are voluntary under the existing AERR, but are proposed herein to become mandatory (3) fill other identified gaps in emissions inventories for sources within Indian country, for certain small generation units, and for prescribed fires nationally, and (4) greatly improve the availability of data necessary for creating emissions factors.

The draft ICR for this proposed action includes collection of both mandatory and voluntary data from States (as defined in section III to include certain local and tribal governments) for annual and more extensive triennial collections of emissions data. The draft ICR also covers the proposed collection of mandatory and voluntary data from owners/operators that emit emissions at or above proposed reporting thresholds and that perform source tests. While the focus of the draft ICR is the 2024–2026 period, additional costs from 2027 and beyond are included in Appendix A of the draft ICR to reflect additional costs associated with full implementation of the proposed revisions.

Respondents/affected entities: For the 2024–2026 period covered by the draft ICR, the EPA estimates the proposed rule would impact 85 State/local/Tribal respondents and 813 owners/operators of facilities outside States' implementation planning authority. Also, during this period, the EPA estimates that owners/operators of 13,420 facilities would report source test and performance evaluation data each year and 120,945 facilities (40,315 per year) would collect release point latitude/longitude data for reporting in 2027. Based on these proposed requirements, States would continue to collect emissions data from owners/operators of an estimated 13,420 facilities (based on State regulations requiring owners/operators to do so). Starting in 2027, Appendix A of the draft ICR identifies owners/operators of an estimated 129,500 facilities from which this proposed rule would require HAP reporting and for about 235 owners/operators, reporting of small generation unit data.

Respondent's obligation to respond: Under this proposed action, the EPA estimates that 85 governmental entities would be required to report to EPA. Authority for such collection is provided by CAA sections 110, 114, 172, 182, 187, 189, and 301(a). In addition, owners/operators would be required to report data to EPA, and authority for these collections is provided by the same CAA sections. Additionally, 7 railroad companies are expected to voluntarily provide data to the EPA once every three years but would be under no obligation to do so.

Estimated number of respondents: During the 2024–2026 period, the EPA expects 85 governmental entities, owners/operators from an estimated 14,233 facilities (13,420 to States and 819 to EPA), and owners/operators of 7 railroads to respond. The description above provides additional detail on the numbers and types of respondents for the draft ICR period and for subsequent periods.

Frequency of response: States would submit emissions data annually, with more data required every third year. Owners/operators of facilities within Indian country would report each year, starting in 2026 (for the 2025 emissions inventory year). The frequency of source test data reports depends on the testing requirements set by the EPA and States. Frequency can range from several times per year to once every several years. However, for the purpose of the draft ICR, the EPA estimates that owners/operators reporting source test data would report an average of 3 source tests per year. Starting in 2027, the States and owners/operators of facilities affected by this proposed rule would report the same amount of point source data every year. Also starting in 2027, States would report prescribed burning data each year. No change is being proposed to triennial reporting frequency for nonpoint and mobile sources.

Total estimated burden: All burden estimates include additional burden associated with proposed options included in the preamble (or the most costly option when multiple options are described). Table 6 includes total estimated burden split by respondent, activity, and mandatory or voluntary activities. Total estimated burden for all entities combined is 1,142,927 hours for mandatory activities and 99,115 for voluntary hours during the 3-year period of this ICR. Of this, the estimated burden for States is 317,454 hours for mandatory activities and 99,087 for voluntary activities. Estimated burden for owners/operators is 825,473 hours for mandatory activities and 28 hours for voluntary activities. Burden is defined at 5 CFR 1320.3(b).

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Table 6: Total Estimated Burden for proposed requirements for 2024-2026

Entity	Activity	Mandatory Hours	Voluntary Hours	Total Hours
States	Update emissions regulations and build prescribed burning collection system	156,784		156,784
	Convert to CAERS and apply to report HAP		88,554	88,554
	Emissions reporting to EPA	45,456	10,533	55,990
	Maintaining emissions collection system (Operations/Maintenance)	115,214		115,214
	State AERR SubTotal	**317,454**	**99,087**	**416,542**
Owners/ Operators	Source test reporting	161,040		161,040
	Emissions data reporting to the EPA (Indian country and rail companies)	11,382	28	11,410
	Reporting required data (for AERR) to SLTs	144,993		144,993
	Preparing to report release point locations	507,973		507,973
	Owners/Operators SubTotal	**825,473**	**28**	**825,501**
	Total	**1,142,927**	**99,115**	**1,242,043**

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The draft ICR additionally provides, via Appendix C, State and owner/operator hours and costs associated with emissions data activities for SIP preparation, in compliance with OMB expectations that the EPA include those costs. Since those costs are not burden associated with the proposed revisions to the AERR, they are not included in Table 6, but are noted here as EPA

requests comment on the burden estimates.

Total estimated cost: Annual capital or operation & maintenance costs include costs for the EPA and States. The EPA's expected annual capital costs for its data systems needed from 2024 through 2026 are $600,000. EPA's additional annual system development, operations, and maintenance costs are expected to be $3,625,000. States' total annualized capital costs are estimated to be $127,500, and their operation and maintenance costs about $10,156,000.

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 EPA's regulations in 40 CFR part 51 are listed in 40 CFR part 9.

Submit your comments on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than September 8, 2023. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act

Pursuant to Section 603 of the RFA, the EPA prepared an initial regulatory flexibility analysis (IRFA) that examined the impact of the proposed rule on small entities along with regulatory alternatives that could minimize that impact. The complete IRFA is available for review in the docket (see Chapter 4 of the RIA in the docket for this proposal) and is summarized here. The EPA is soliciting comment on the presentation of its analysis of the impacts on small entities. As required by Section 604 of the RFA, the EPA will prepare a final regulatory flexibility analysis (FRFA) for this action as part of the final rule. The FRFA will address the issues raised by public comments on the IRFA.

EPA is considering this proposal to fill gaps in the existing available emissions inventory data, most notably for HAPs, prescribed burning, and small generation units related to HEDD events. The HAP data collection supports improved understanding of pollutants surrounding at-risk communities. Additionally, the proposed revisions to the AERR would further streamline air emissions reporting, allow for improved consistency of emissions calculation methods, quality, and transparency of state-provided data.

Through this proposal, the EPA will have improved emissions data on which to make decisions affecting implementation of the Clean Air Act for both the air toxics program and the NAAQS. As described in section III of this proposal, the EPA is proposing these amendments pursuant to its authority under CAA sections 110, 111, 112, 113, 114, 129, 172, 182, 187, 189, and 301 (see also section III of this proposal). Further, EPA's proposed action supports better understanding of pollution to inform the EPA as it works to include environmental justice considerations as described by E.O. 12898 (see also section IV.A.1 of this preamble).

EPA estimates that small entities will be affected by this proposal when they are major sources, and for non-major sources, have primary NAICS as listed in section II of this proposal. The EPA estimates that approximately 34,800 small entities could be impacted by this rule based on the CAA definition that the EPA proposes to use for this rule. That number would increase to approximately 44,600 if the EPA were to use the SBA definition.

Based on this proposal, affected small entities would need to report unit-level information about their facilities and report facility-wide emissions in most circumstances. The small business accommodation that this proposal offers to small businesses to report with less detail could be eliminated for certain facilities if data submitted in past inventory years shows, through EPA modeling, an unacceptable level of risk. Small entities will need to be able to record basic information about their facility such as fuel consumed by certain activities, electricity used, amount of solvents consumed, amount of product produced, or number of employees. Small entities will additionally need to be able to enter this information in electronic forms.

The EPA has reviewed other EPA emissions reporting requirements for duplication and is aware of the potential for duplication of limited data elements for certain other EPA collections, though it is not aware of any collection that is wholly or significantly duplicative. Further, the EPA is actively working to avoid this duplication with its CAERS development efforts. These potentially duplicative requirements include 40 CFR parts 75, 98, and 372. The EPA requests comment on whether this list is comprehensive.

EPA is considering a number of alternatives in this proposed rule to minimize any significant economic impact of the proposed rule on small entities. These proposed approaches are described in sections IV.A.12 through IV.A.14 of this preamble. The EPA has included various accommodations for small entities in the proposed rule based on recommendations from the SBAR Panel Report, and these are additionally reflected in the IRFA and proposed ICR.

As required by Section 609(b) of the RFA, the EPA also convened a Small Business Advocacy Review (SBAR) Panel to obtain advice and recommendations from small entity representatives that potentially would be subject to the rule's requirements. The SBAR Panel evaluated the assembled materials and small-entity comments on issues related to elements of an IRFA. A copy of the full SBAR Panel Report is available in the rulemaking docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more 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 does contain unfunded Federal mandates under UMRA that may result in annual expenditures of $100 million or more for the private sector. Accordingly, the costs and benefits associated with this action are discussed in section IV.T of this preamble and in the RIA, which is in the docket for this rule.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law, and does not have substantial direct effects 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, as specified in E.O. 13175. 65 FR 67249

(November 9, 2000). Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA will provide Tribal officials the opportunity to provide meaningful and timely input through government-to-government consultation during the development of this action. The majority of the facilities within Indian country expected to be affected by this proposed action are owned by private entities. For point sources, there would only be Tribal implications associated with this rulemaking in the case where a unit is owned by a Tribal government. The EPA notes that the reporting requirements for emissions data proposed are unlikely to impose substantial costs. For nonpoint sources, there would be Tribal implications for the proposed requirements for how Tribes should report nonpoint emissions when overlapping more than a single county within a State. Further, Tribal implications may exist for the proposed provision that directs States to include complete nonpoint source activity, inclusive of activity within Indian country, when tribes overlapping State boundaries are not required to report or optionally report nonpoint data to EPA.

G. Executive Order 13045: Protection of Children From Environmental Health 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 concern an environmental health risk or safety risk.

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. Further, we have concluded that this action is not likely to have any adverse energy effects because the requirements to report emission data under this proposed action are either already being met as part of the current AERR or would be a small incremental impact on regulatory requirements for any facility required to report emission data under this action. The EPA does not anticipate that the provision described in section IV.D to collect daily fuel usage data from States for sources with intermittent electric generation would have any significant impact on the deployment of such sources.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

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 communities with environmental justice concerns.

The EPA believes that this type of action does not concern human health or environmental conditions and, therefore, cannot be evaluated with respect to potentially disproportionate and adverse effects on communities with environmental justice concerns. This action would update reporting requirements for State, local, and tribal entities and add new reporting requirement for facilities for the collection of air emissions data that are used to inform EPA's technical analysis of impacts on human health and the environment.

K. 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 only in the United States Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of '' any other nationally applicable regulations promulgated, or final action 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.'' The CAA reserves to the EPA complete discretion to decide whether to invoke the exception in (ii) described in the preceding sentence.[80]

This proposed action, if finalized, would be ''nationally applicable'' within the meaning of CAA Section 307(b)(1). In the alternative, to the extent a court finds the action to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA Section 307(b)(1).[81]

This proposed action, if finalized, would implement a national emissions data collection program in all 50 States, the District of Columbia, U.S. territories, and Indian country, a geographic area that spans all 10 EPA regions and 12 Federal judicial circuits. The proposed action applies a uniform, nationwide approach to data collection and interpretation of the various CAA provision discussed in this preamble across all of these areas, and the proposed rule is based on a common core of legal, technical, and policy determinations (as explained in further detail in the following paragraph). For these reasons, this proposed action, if finalized, would be nationally applicable.

Alternatively, to the extent a court finds this proposal, if finalized, to be locally or regionally applicable, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on one or more determinations of nationwide scope or effect for purposes of CAA Section 307(b)(1).[82] Specifically, the proposed rule is based on a common core of statutory analysis, factual findings, and policy determinations concerning the collection of emissions data from State, local, and tribal agencies nationwide and from owners/operators of emission sources located in those States, territories, and Indian country. In addition, the technical, scientific, and engineering information in support of the proposed emissions data collection requirements relies on a

[80] *Sierra Club* v. *EPA,* 47 F.4th 738, 745 (D.C. Cir. 2022) (''EPA's decision whether to make and publish a finding of nationwide scope or effect is committed to the Agency's discretion and thus is unreviewable''); *Texas* v. *EPA,* 983 F.3d 826, 834–35 (5th Cir. 2020).

[81] In deciding whether to invoke the exception by making and publishing a finding that this action, if finalized, is based on a determination of nationwide scope or effect, the Administrator intends to take into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[82] In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

nationally consistent modeling methodology to set emissions reporting thresholds, as set forth elsewhere in this proposed rule and in the relevant supporting documents in the docket for this proposed rule.

Therefore, pursuant to CAA section 307(b), any petitions for review of this action, if and when it is finalized, must be filed in the D.C. Circuit within 60 days from the date such final action is published in the **Federal Register**.

In addition, pursuant to CAA section 307(d)(1)(V), the EPA hereby determines that this rulemaking action is subject to the requirements of section 307(d).

List of Subjects

40 CFR Part 2

Environmental protection, Emission data, Administrative practice and procedure, Confidential business information, Courts, Freedom of information, Government employees.

40 CFR Part 51

Environmental Protection, Administrative practice and procedure, Air pollution control, Emission data, Intergovernmental relations, Criteria pollutants, Hazardous Air Pollutants, Ozone, Particulate matter, Oxides of Nitrogen, Sulfur dioxide, Lead, Regional haze, Reporting and record keeping requirements, Stationary sources, Mobile sources, Prescribed fires.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, Part 2 of the Code of Federal Regulations is proposed to be amended and Part 51 is proposed to be revised as follows:

PART 2—[AMENDED]

■ 1. The authority for part 2 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

■ 2. Amend § 2.301 by adding paragraph (k) to read as follows.

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(k) Data submitted under 40 CFR part 51, subpart A.

(1) Sections 2.201 through 2.215 do not apply to data submitted under 40 CFR part 51, subpart A that the EPA has determined, pursuant to 42 U.S.C. 7414 in a rulemaking subject to 42 U.S.C. 7607(d), to be emission data as defined in paragraph (a)(2)(i) of this section.

(2) The provisions of 40 CFR 2.201 through 2.215 continue to apply for categories of reported information identified in 40 CFR part 51, subpart A for which there is no emission data determination in 40 CFR part 51, subpart A.

PART 51—[AMENDED]

■ 3. The Authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 4. Subpart A of part 51 is revised to read as follows:

Subpart A—Air Emissions Reporting Requirements

General Information for Inventory Preparers

§ 51.1 Who is responsible for what actions described in this subpart?

Both States [1] and certain owners/operators of facilities emitting ''air pollutants'' (as defined by § 51.50 of this subpart) are subject to requirements included in this section.

(a) *Owners and operators of facilities.*

(1) An owner/operator of a point source within a State's implementation planning authority must report emissions data as described by § 51.25 of this subpart.

(2) An owner/operator of a point source that is outside the geographic scope of a State's implementation planning authority must report emissions data as described by § 51.27 of this subpart. This could include owners/operators of facilities located within certain portions of Indian country, owners/operators of (1) deepwater ports subject to CAA requirements under the Deepwater Port Act, and (2) owners/operators of OCS sources as defined in CAA section 328(a) with the exception of owners/operators of facilities that are regulated under 43 U.S.C. 1331 *et seq.* (the Outer Continental Shelf Lands Act) and that are located (a) offshore of the North Slope Borough of the State of Alaska, or (b) offshore of the United States Gulf Coast westward of longitude 87 degrees and 30 minutes.

(3) An owner/operator of a point source that collects source test data or performance evaluations may need to report that data as described by §§ 51.25 and 51.27 of this subpart.

(4) If the owner and operator of a facility are different parties, only one party needs to report under this subpart.

(b) *Indian tribes with Treatment as a State status.* An Indian tribe (as defined by CAA section 302(r)) may elect to seek Treatment as State (TAS) status as prescribed by the Tribal Authority Rule 40 CFR part 49, subpart A. An Indian tribe may obtain approval to implement reporting for this subpart through a Tribal Implementation Plan (TIP), but Indian tribes are under no obligation to do so. Those Indian Tribes that have obtained TAS status are subject to this subpart to the extent allowed in their TIP. Accordingly, for an Indian Tribe that has applied for and received TAS status for air quality control purposes and is subject to the AERR under its TIP, the use of the term state in this subpart should be read to include that tribal government.

(c) *State mandatory reporting.*

(1) A State must collect and report to the EPA criteria pollutant and precursor emissions data from point sources (as defined by § 51.50 of this subpart) as described by § 51.15(a) of this subpart. A State must collect and report data for all such sources within the State's implementation planning authority, including any offshore areas within State waters or within any Federal waters for which a State agency has delegated authority. A lack of State permitting for point sources or pollutants associated with them does not exempt a facility or pollutant from being reported.

(2) A State must report to the EPA data from airports as described by § 51.15(b) of this subpart.

(3) A State must report to the EPA rail yard data as described by § 51.15(c) of this subpart.

(4) A State must report to the EPA nonpoint source data as described by § 51.15(d) of this subpart.

(5) A State must report to the EPA mobile source data as described by § 51.15(e) of this subpart.

(6) A State must report data about certain prescribed burning (as defined by 40 CFR 51.301) to the EPA (as described by § 51.15(f) of this subpart) for those prescribed burns that meet the following criteria:

(i) The prescribed burn is not an agricultural burn or a land clearance burn (as defined by § 51.50 of this subpart); and

(ii) The prescribed burn occurs on State lands or military lands, excluding prescribed burns on such lands conducted by Federal Land Managers (as defined by CAA 302(i)); and

[1] The term ''State'' is defined to include delegated local agencies and tribes that have elected to seek treatment in the same manner as a state (TAS) status and have obtained approval to implement rules such as the AERR through a Tribal Implementation Plan (TIP).

(iii) The prescribed burn is one of the following:

(A) A broadcast burn or understory burn that impacts at least 50 acres; and/or

(B) A pile burn that includes biomass from at least 25 acres; and/or

(C) A prescribed burn that includes pile burning as well as other prescribed burn types that in total collects biomass from or burns at least 25 acres.

(7) EPA urges State environmental agencies to coordinate with State forestry agencies to collect, obtain, and report the data described by § 51.1(c)(6). A lack of State permitting requirements or other planning processes does not exempt a prescribed burn from being reported.

(d) *State optional reporting.*

(1) For inventory years 2026 and later, a State that intends to collect and report hazardous air pollutants (HAP) on behalf of owners/operators for a given emissions inventory year must:

(i) Promulgate a State regulation to collect facility inventory and actual annual emissions data for HAP to meet the requirements for owners/operators by:

(A) Replicating requirements on owners/operators from § 51.5 of this subpart, excluding paragraphs § 51.5(h) and (i);

(B) Ensuring the definition of point sources is consistent with § 51.50 of this subpart;

(C) Ensuring reporting of all HAP as described by § 51.12(b) of this subpart and requirements for specific situations described by § 51.12(d) and (e) of this subpart;

(D) Ensuring reporting of incidental criteria pollutants and precursors as described by § 51.12(c) of this subpart;

(E) Including the timing for point source reporting from owners/operators to the State as described by § 51.30 of this subpart; and

(F) Ensuring reporting of all required data elements as described by § 51.40(a) and (b) of this subpart.

(ii) Apply to the EPA in writing by March 31 of the first inventory year for which the State intends to report emissions data for HAP (*e.g.,* for the 2026 emissions inventory year, a State must apply by March 31, 2026) by providing citations to the State regulation for each of the elements listed in § 51.1(d)(1)(i).

(2) The EPA will notify a State as expeditiously as possible regarding its application, any needed adjustments, and post final approval decisions on the EPA Air Emissions Inventories website (*https://epa.gov/air-emissions-inventories*) for use by the State and owners/operators.

(3) A State must reapply for HAP reporting approval when one or more of the following events occurs:

(i) The State changes its emissions inventory reporting requirements related to any aspect of the application requirements described by § 51.1(d)(1)(i) of this subpart.

(ii) EPA revises requirements of this subpart for pollutants described by § 51.12 (b) through (e) of this subpart, HAP reporting thresholds (for which the initial reporting thresholds are presented in Table 1B to Appendix A of this subpart) or the associated required data elements as described by § 51.40.

(iii) The EPA notifies a State in writing that a new application is required for any reason, including that the State failed to meet any requirement of this subpart.

(4) If a State intends to use or integrate with the Combined Air Emissions Reporting System (CAERS) for a particular inventory year, the State should notify the EPA of this intent by two months prior to start of the inventory year (*e.g.,* for the 2024 inventory year, a State should notify the EPA by November 1, 2023).

(5) If a State intends to stop collecting and reporting HAP for point sources, the State must notify the EPA in writing by November 1 of the year prior to the inventory year (*e.g.,* for the 2024 inventory year, a State must notify the EPA by November 1, 2023).

(6) The EPA approval for a State to report HAP remains effective for subsequent inventory years until the EPA revokes that approval and transfers responsibility back to owners/operators.

(e) The State (as defined by CAA section 302(d)) may authorize a municipality (as defined by CAA section 302(f)) to fulfill the data collection and reporting requirements of this subpart on behalf of the State and to submit data to the EPA for emissions within that municipality's authority. Such authorization does not relieve the State of responsibility for carrying out the applicable requirements of this subpart. Accordingly, for municipalities that have obtained authority to collect and report under this subpart, the use of the term ''State'' in this subpart should be read to include that municipality.

§ 51.5 What data, tools and other considerations apply for emissions reporting?

The requirements in this section are effective starting with different inventory years, as follows: Paragraphs (b) through (f) of this section are effective starting with the 2026 inventory year. All other paragraphs are effective starting with the 2023 inventory year.

(a) A State or owner/operator must estimate annual actual emissions as defined in § 51.50 of this subpart using the best available estimation methods for assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and for submitting point source emissions data under this subpart. The ''Introduction to the EPA Compilation of Air Pollutant Emissions Factors (AP–42)'' [2] describes many techniques for calculating emissions and provides on page 4 a hierarchy of emissions estimation methods. For the purposes of this subpart, a State or owner/operator should preferentially use available emissions calculation methods at the top of the hierarchy over emissions calculation approaches lower in the hierarchy. Where current the EPA guidance materials are outdated or are not applicable to sources or source categories, an owner/operator (other than a small entity, as defined by § 51.50 of this subpart) should develop and document new techniques for estimating emissions, which should rely on any available source measurements applicable to the emissions source(s).

(b) A State or owner/operator must include emissions from mobile sources (excluding aircraft and ground support equipment) operating primarily within the facility site boundaries of a point source or multiple adjacent point sources when assessing whether its facility emissions exceed the emissions reporting thresholds in Tables 1A and 1B to Appendix A of this subpart and when submitting point source emissions data under this subpart.

(c) An owner/operator submitting emissions data directly to the EPA under this subpart must use continuous monitor data applicable to the units and processes that operated during the reporting year to calculate annual actual emissions. In the absence of monitored data, an owner/operator must use the most recent source test(s) applicable to the operating conditions of the units and processes during that year to estimate annual actual emissions. An owner/operator should determine which source test data should be included to best estimate annual actual emissions. If a facility has source tests, performance evaluations, or continuous emissions monitoring data for a unit or process that operated during the reporting year and the owner/operator does not use

[2] *https://epa.gov/air-emissions-factors-and-quantification/ap-42-compilation-air-emissions-factors.*

that data to estimate annual emissions, then the owner/operator must submit a justification for that choice for each unit and pollutant for which such data are not used to estimate emissions.

(d) A State submitting point source emissions on behalf of owners/operators under this subpart must ensure that owners/operators of facilities submitting data to the State take the same approaches as described in paragraph § 51.5(a) through (c) of this subpart. If a State submits data for an owner/operator who has not used available source test data or continuous monitor data to estimate emissions, then the State must submit a justification for each unit and pollutant for which such data are not used to estimate emissions.

(e) When source tests, performance tests, or continuous emissions monitor data are not available, a State and owner/operator may use emission rates from the EPA compilations of emission factors such as WebFIRE and AP–42 to estimate emissions. An owner/operator may also use emission factors provided by States. To estimate emissions from point sources, a State or owner/operator should use emission factors that represent the emissions process and controls at the facility. If existing emission factors are insufficient for developing representative annual actual emissions, a State or owner/operator (other than a small entity, as defined by § 51.50 of this subpart) should develop new emission factors through emission testing of point sources when existing EPA source test methods are available.

(f) When data described in paragraphs (c), (d), and (e) of this section are not available, a State or owner/operator may use the SPECIATE database [3] or other credible, publicly available speciation profile data to calculate ratios of related pollutants if relevant speciation profiles are available. Starting with the 2026 inventory year, when using a speciation profile, a State or owner/operator must provide the speciation profile code with their data. When estimating emissions using speciation data, the emissions data must include:

(1) The most applicable emissions calculation method indicating the type of speciation profile used;

(2) The speciation factor used in the calculation, reported as the emission factor;

(3) The pollutant code that identifies the pollutant used to calculate another pollutant, reported as the denominator of the emission factor;

(4) The pollutant code that identifies the pollutant calculated from the speciation profile, reported as the numerator of the emission factor;

(5) The emissions value and associated required data elements for the pollutant identified in § 51.5(f)(3), reported as an annual emissions value even if that pollutant is not otherwise required (*e.g.,* Total organic gases); and

(6) In the case of a SPECIATE profile, the profile code reported as the emission factor comment, or in the case of other speciation profiles, the journal citation or reference to a publicly available report reported as the emission factor comment.

(g) A State must report data using the Emissions Inventory System (EIS) or analogous electronic reporting approach provided by the EPA to report data required by this subpart. Submission to the EIS can be done using EPA's Central Data Exchange (CDX).[4] Unless otherwise noted in this section, the EPA provides states information about reporting data, required and optional data fields, and explains how to access all data needed for reporting to EIS as part of a NEI plan available at *https://epa.gov/air-emissions-inventories/national-emissions-inventory-nei.*

(h) An owner/operator reporting directly to the EPA under this subpart must use the Combined Air Emissions Reporting System (CAERS) or analogous electric reporting approach provided by the EPA to report emissions data. The EPA provides owners/operators information about reporting data, required and optional data fields, and explains how to access to all data needed for reporting with CAE*RS at https://epa.gov/air-emissions-inventories.*

(i) An owner/operator reporting directly to the EPA under this subpart must use the Compliance and Emissions Data Reporting Interface (CEDRI) to report source test data and performance reports as required by §§ 51.25 and 51.27 or use an analogous electronic reporting approach provided by the EPA. CEDRI can be accessed through the CDX.[4] CEDRI works with the EPA's Electronic Reporting Tool (ERT) available from EPA's ERT website (*https://epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*). A list of test methods, performance evaluations, and pollutants compatible with the Electronic Reporting Tool (ERT), as well as the date on which those methods or performance evaluations were available on the ERT, is available from the EPA via the ERT website *https://epa.gov/system/files/documents/2021-09/ert-compatible-methods-and-pollutants.pdf*).

(j) A State or owner/operator of point sources reporting under this subpart must use the most current data reporting codes for electronic reporting that are available at the time of reporting. Reporting codes can change over time, and the EPA will strive to publish the EIS reporting codes that can be used for each inventory year by June 30 of inventory year. For example, the EPA would plan to publish by June 30, 2024, codes that are to be used for reporting 2024 emissions. Codes are published by the EPA as follows:

(1) Source classification codes (SCCs) can be obtained from the EPA SCC website (*https://epa.gov/scc*). Materials provided on this website explain what to do if a SCC is not available for an emissions process; and

(2) Other reporting codes are available through EPA's electronic reporting data systems (*e.g.,* EIS and CAERS), and the EPA may make them available through references within the NEI plan for each inventory year.

(k) The EPA provides States for their use nonpoint emissions calculation methods, associated tools/spreadsheets, and draft activity and emissions data for nonpoint sources, point source aircraft, and point source rail yards. The nonpoint information includes approaches and data based on county totals for commercial marine vessels that are treated in this subpart as nonpoint sources for reporting purposes. The EPA provides on its Air Emissions Inventories website (*https://epa.gov/air-emissions-inventories*) an NEI Plan that includes directions for which methods, tools, and models should be used and instructions for accessing data described in this paragraph.

(l) The EPA provides the Motor Vehicle Emissions Simulator (MOVES) model including quality assurance tools for input data at the MOVES website (*https://epa.gov/moves*). The EPA also provides draft and final onroad and nonroad emissions data based on the MOVES model. States, except for California, must use MOVES model input formats and the quality assurance tools or the same for the latest available on-road and nonroad EPA models to meet the requirements of § 51.15(e). The model version to be used for a given inventory reporting year will be defined in an emissions inventory plan as per paragraph (k).

(m) For onroad mobile sources, the EPA approves onroad mobile models for California for transportation conformity purposes and for use in State Implementation Plans (SIPs). For this

[3] SPECIATE Database available at *https://epa.gov/air-emissions-modeling/speciate.*

[4] Central Data Exchange is available at *https://cdx.epa.gov/.*

subpart, California must report emissions from onroad mobile sources using the latest model version approved by the EPA as of January 1 of the emissions inventory year and may optionally use a newer approved model. For example, the onroad model approved as of January 1, 2023, should be used to estimate and report emissions to meet the requirements in § 51.15(e)(3) for the 2023 reporting year, or the State could optionally choose to use a model approved by the EPA after that date.

(n) *Confidential data/Confidential Business Information (CBI).* Emissions data are defined by 40 CFR 2.301(a)(2)(i) and are not confidential pursuant to 42 U.S.C. 7414(c). The specific data elements submitted under this subpart all fall within the definition of emissions data and are therefore not entitled to confidential treatment. Further, pursuant to 42 U.S.C. 7414(c), the EPA is required to make emissions data available to the public. Thus, all data elements submitted under this subpart will not be protected as CBI and will be made publicly available without further notice to States or the owner/operator of facilities.

(o) An owner operator or State reporting on their behalf must consider the recommendations and requirements of paragraphs (a) through (f), (n), (p), and (q) of this section when:

(1) Estimating emissions to determine whether a facility's annual actual emissions of HAP exceed point source reporting thresholds in Table 1B to Appendix A of this subpart; and

(2) When estimating emissions to report to EPA.

(p) To estimate emissions for pollutant groups (*e.g.,* ''Lead and compounds'' or ''Nickel and compounds''), an owner/operator or a State reporting on their behalf should ensure emissions values accurately reflect the mass of the metal/toxic portion of the group (Lead or Nickel in these examples) by:

(1) Using emission factors or source test emission rates without any adjustments; or

(2) Accounting for chemical compounds to reflect only the toxic portion of the pollutant group when estimating emissions based on material balance or engineering judgement; or

(3) When no other information is available, assuming the entire mass of the HAP reported is the toxic portion.

(q) Some HAP may be measured or have emission factors for a pollutant group as well as for individual compounds within the group. An owner/operator or a State reporting on their behalf must report the most detailed pollutants available preferentially over pollutant groups. When the detailed pollutants do not comprise the total mass of the pollutant group, the remaining portion of mass for the pollutant group must be reported as implemented in the electronic reporting approach (as described by § 51.5(g)). Specific compound groups and individual pollutants are provided in Tables 1B and 1D to Appendix A of this subpart.

§ 51.10 What criteria determine when facilities must be reported as point sources?

(a) For point sources (as defined by § 51.50 of this subpart), when determining whether emissions data from a facility must be report as a point source, States and owners/operators must:

(1) Include total annual actual emissions from all stack and fugitive release points at the facility; and

(2) Include emissions from mobile sources as described by § 51.5(b) of this subpart, and in doing so, may exclude emissions from aircraft and ground support equipment occuring at the facility.

(b) For point sources associated with emission inventories required by Part 51 Subpart G, Subpart X, Subpart Z, Subpart AA, Subpart CC, States must interpret the definition of point sources (as per § 51.50 of this subpart) as follows:

(1) Use only the criteria of Table 1A to Appendix A of this subpart in assessing the definition;

(2) For Subpart G, the reporting threshold applies for oxides of nitrogen (NO_X);

(3) For Subparts X, AA, and CC, the reporting thresholds apply for NO_X, carbon monoxide (CO), and volatile organic compounds (VOC); and

(4) For Subpart Z, the reporting thresholds apply for Nox, CO, VOC, sulfur dioxide (SO_2), ammonia (NH_3), total particulate matter whose aerodynamic diameter is 2.5 microns or less ($PM_{2.5}$), and total particulate matter whose aerodynamic diameter is 10 microns or less (PM_{10}).

(c) If EPA finalizes revisions to any HAP reporting thresholds presented in Table 1B to Appendix A of this subpart, only those revised reporting thresholds published in the **Federal Register** at least 6 months before the start of an inventory year apply for that inventory year (*e.g.,* revised thresholds finalized by June 30, 2026, would apply for the 2026 emissions reports).

(d) To develop new HAP reporting thresholds for revisions of this subpart, the EPA would apply the following formula for changes to UREs: Revised reporting threshold = (Initial threshold in Table 1B to Appendix A of this subpart x URE in 2022)/Revised URE; and

(e) To develop new HAP reporting thresholds for revisions of this subpart, the EPA would apply the following formula for changes to RfCs: Revised reporting threshold = (Initial threshold in Table 1B to Appendix A of this subpart x Revised RfC)/RfC in 2022.

§ 51.12 What pollutants must be reported for point sources?

(a) *Criteria air pollutants and precursors.* For the purposes of reporting emissions data for this subpart, criteria pollutants and precursors are CO, NO_X, VOC, SO_2, NH_3, total $PM_{2.5}$, total PM_{10}, Pb, and either condensable PM (when emitted by the facility), or filterable $PM_{2.5}$. When the facility potential to emit of any such pollutant is greater than or equal to the reporting thresholds listed in Table 1A to Appendix A of this subpart, all such pollutants must be reported.

(b) *Hazardous air pollutants.*

(1) For major point sources, reported HAP must include all HAP as listed in section 112(b)(1) of the Clean Air Act, 42 U.S.C. 7412(b)(1), and 40 CFR 63.64(a).

(2) For point sources other than major sources, reported HAP must include any pollutant listed in Table 1B to Appendix A of this subpart when the annual actual emissions of that pollutant or pollutant group is greater than or equal to the HAP reporting threshold (presented in Table 1B to Appendix A of this subpart).

(c) *Incidental criteria air pollutants or precursors.* If a facility meets the point source definition of § 51.50 because of the facility HAP emissions but does have PTE or actual emissions of criteria pollutants or precursors exceeding the reporting thresholds of Table 1A to Appendix A of this subpart, emission reports for that facility must include incidental criteria pollutants or precursors as listed in the ''Associated CAPs'' columns Tables 1B and 1D to Appendix A of this subpart.

Specific Reporting Requirements for State Reporters

§ 51.15 What data does my State need to report to EPA?

State annual and triennial requirements are included in paragraphs (a) through (f) of this section, with the first inventory year for each requirement included in § 51.20. At a State's option, a State may report other emissions data described by paragraphs (g) through (i) of this section. Requirements on a State for inventories required by 40 CFR

Subparts G, X, Z, AA, and ZZ are included at paragraph (j) of this section.

(a) *Point sources.*

(1) A State must report the facility inventory and annual actual emissions of all criteria pollutants and precursors as described by § 51.12(a).

(2) If the EPA has approved a HAP reporting application as per § 51.1(d)(2) of this subpart, a State must report emissions of HAP consistent with § 51.12(b) and (c) of this subpart. A State may report one or more HAP voluntarily through the 2025 inventory year and may not report HAP without an approved application starting with the 2026 inventory year.

(3) Starting with the 2026 inventory year, a State must report the facility inventory and daily fuel consumption and associated required data elements as described in § 51.40 for small generating units when:

(i) Hourly or daily emissions and activity data from the unit are not otherwise reported to the EPA, and

(ii) The unit was operated to offset electricity demand from the electricity grid; and

(iii) The unit is located at a facility that operates on land.

(4) For electricity generation to offset electricity demand from the electricity grid, a State need not include any units in their report when an owner/operator has reported daily or hourly emissions or activity data directly to the EPA. The unit is located at a facility that operates on land.

(5) A State may report additional pollutants not required by § 51.12 of this subpart when supported by the EPA electronic reporting approaches (as described by §§ 51.5(g) and (h) of this subpart).

(6) A State must report point source data consistent with the required data elements described by § 51.40 of this subpart.

(b) *Airports.* Airport data includes emissions from aircraft that occur lower than 3,000 feet above the ground surface (the typical height considered to be part of the take-off or landing cycle) and emissions from ground support equipment (GSE). A State must report stationary sources and qualifying mobile sources as defined by § 51.5(b) (other than aircraft and GSE) at airports as part of § 51.15(a) and report aircraft and GSE data for triennial inventory years for all airports within a State's implementation planning authority:

(1) A State must submit activity data (*i.e.,* landings and takeoffs).

(2) In lieu of submitting aircraft activity data required by § 51.15(b)(1), a State may instead review EPA-provided data as described in § 51.5(k) of this subpart, submit comments on that data, and/or notify the agency that the State accepts these data.

(3) In addition to § 51.15(b)(1) or (2), a State may voluntarily submit annual actual emissions of aircraft and GSE for some or all airports. If submitting annual actual emissions, a State must:

(i) Use the latest aircraft emissions model specified by the NEI plan (as described by § 51.5(k) of this subpart);

(ii) Submit all pollutants estimated by the latest aircraft emissions model;

(iii) Submit documentation that describes how the State used the aircraft emissions model to estimate annual actual emissions and quality assured the data; and

(iv) Report aircraft data consistent with the required data elements described by § 51.40 of this subpart.

(c) *Rail yards.* Rail yard data include emissions from yard locomotive switchers and can include other emissions sources if present. For triennial inventory years for all rail yards within a State's implementation planning authority:

(1) A State must submit activity data and documentation that explains how the State collected or created the data.

(2) In lieu of submitting rail yard activity data and documentation required by § 51.15(c)(1), a State may instead review EPA-provided data as described in § 51.5(k) of this subpart, submit comments on that data, and/or notify the EPA that the State accept these values.

(3) In addition to § 51.15(c)(1) or (2), a State may voluntarily submit annual actual emissions for some or all rail yards. If submitting annual actual emissions, a State must:

(i) Submit all pollutants estimated by the EPA rail yard emissions method;

(ii) Submit documentation that describes how the State estimated rail yard annual actual emissions and quality assured the data; and

(iii) Report rail yard data consistent with the required data elements described by § 51.40 of this subpart.

(d) *Nonpoint sources.* For triennial inventory years, a State must report nonpoint sources, including information for all stationary source emissions not reported as point sources. For reporting purposes, nonpoint sources include commercial marine vessels and underway locomotives.

(1) For this section, ''tool'' refers to any calculation tool, spreadsheet, or other electronic instrument provided by the EPA for the purpose of nonpoint source emission calculations.

(2) A State must complete an online survey in the electronic reporting approach described in § 51.5(g) to indicate by source classification code (SCC) for which nonpoint sources a State will report nonpoint tool input data, accept EPA-provided tool input data, and/or report annual actual emissions.

(3) For nonpoint sources with EPA-provided emissions calculation tools (as described by § 51.5(k)), excluding commercial marine vessels and locomotives:

(i) A State must report input data for the nonpoint tools in the formats provided by EPA; or

(ii) In lieu of submitting tool inputs, a State may review and accept EPA-provided nonpoint tool input data; and

(iii) In addition to § 51.15(d)(3)(i) or (ii), a State may voluntarily submit annual actual emissions of any pollutants allowed by the electronic reporting approach (as described by § 51.5(g)).

(4) For commercial marine vessels and locomotives, a State must either:

(i) Report annual actual emissions of pollutants described by § 51.12(a); or

(ii) Provide comment on EPA-provided annual actual emissions data; or

(iii) Accept EPA-provided emissions data.

(5) For nonpoint sources without the EPA tools:

(i) A State must report annual actual emissions of pollutants described by § 51.12(a) of this subpart if the nonpoint source is not excluded by paragraphs (a)(6) and (8) of this section.

(ii) A State may report emissions of HAP listed in Table 1B.

(6) For actual annual emissions reported under § 51.15 (d) (3) through (5) of this subpart, a State must submit documentation that describes how the State estimated nonpoint annual actual emissions and quality assured the data.

(7) A State should exclude episodic wind-generated emissions from sources that are not point sources and exclude biogenic sources of emissions from vegetation and soils.

(8) A State may exclude nonpoint sources when such sources are reasonably estimated by the State to represent a *de minimus* percentage of total county and State emissions of a given pollutant.

(9) The EPA nonpoint tools include input data for the entire area within county boundaries and State waters, including any Indian country. For paragraphs § 51.15 (d) (3) through (6), a State must either:

(i) Include total activity input (inclusive of Indian country) when reporting nonpoint emissions; or

(ii) For a State that includes counties overlapping Indian country for an

Indian Tribe expected to report emissions as per § 51.1(b), the State must avoid double counting by excluding the activity within and emissions from Indian country from the county total data reported.

(10) An Indian tribe that reports nonpoint tool inputs and/or emissions to meet the requirements of paragraphs (3) through (7) of this section must report that data separately for each county that includes Indian country. When an Indian tribe reports nonpoint emissions, the EPA encourages the tribe to coordinate with the State(s) and to use EPA-provided tools and include documentation with their submissions.

(e) *Onroad mobile and nonroad mobile sources.* For triennial inventory years, a State must report onroad mobile and nonroad mobile data and include information for all onroad and nonroad categories included in the EPA mobile emissions model, such as the MOVES model.

(1) A State must provide model inputs to the EPA model. A State must include at a minimum:

(i) A county database checklist;

(ii) Vehicle miles travelled (by county and road type); and

(iii) Vehicle population (by county, vehicle type, fuel type and age).

(2) If a State has relevant data for the inventory year, a State may optionally provide inputs to the latest EPA-developed mobile emissions model for the following:

(i) Hourly average speed distribution by vehicle type, ideally different for weekday and weekend (distance traveled in miles divided by the time in hours);

(ii) Vehicle age distribution;

(iii) Inspection and maintenance program information; and

(iv) Documentation that describes how the State created these inputs and quality assured the data.

(3) In lieu of submitting model inputs for onroad and nonroad mobile sources, California:

(i) Must submit emissions values for the same pollutants estimates by the EPA model for criteria pollutants and precursors;

(ii) Must submit documentation that describes the model inputs, use of the model and any options selected, post-processing steps, and the quality assurance performed to estimate the emissions; and

(iii) May submit emissions of HAP, greenhouse gases, and other pollutants. The EPA urges California to include these other pollutants when they are estimated by the EPA onroad and nonroad model.

(iv) Must submit data consistent with the required data elements described by § 51.40 of this subpart.

(4) In lieu of submitting any data, States other than California may review and accept EPA-provided model inputs and emission estimates. Such States must use the electronic reporting approach provided by the EPA (as described by § 51.5(g) of this subpart).

(f) *Prescribed fires other than agricultural burning or land clearance burning.* A State must annually report data for any prescribed burn other than an agricultural burn or land clearance burn that meets the criteria described by § 51.1(c)(6) of this subpart. The EPA urges States to coordinate between State environmental agencies and forestry agencies, and forestry agencies may submit for the State.

(1) A State must report data consistent with the required and optional data elements described by § 51.40 and Table 3 to Appendix A of this subpart and other optional data fields as provided by the EPA through reporting format instructions.

(2) For burns that are a combination of broadcast or understory burns and pile burns, a State must submit separate entries for the broadcast or understory portion of the burn and for the pile burn.

(g) *Wildfires.* A State may report wildfire timing and activity data using the data elements described by § 51.40 of this subpart. A State may review and submit comments about EPA-provided emissions and activity data. The EPA urges States to coordinate between State environmental agencies and forestry agencies, and forestry agencies may submit for the State.

(h) *Agricultural Fires.* A State may report agricultural fire timing and activity data using the data elements described by § 51.40(f) of this subpart. A State may review and submit comments about EPA-provided emissions and activity data.

(i) A State may submit sub-annual data to EPA.

(1) A State may choose to report NO_X and VOC summer day emissions as required by the ozone SIP requirements rules (40 CFR Subparts, X, AA, or CC) or report CO winter work weekday emissions for CO nonattainment areas or CO attainment areas with maintenance plans to the EIS using the data elements described in this subpart.

(2) A State may choose to report ozone season day emissions of NO_X as required under the NO_X SIP Call and summer day emissions of NO_X that may be required under the NO_X SIP Call (40 CFR 51.122) for controlled sources to the EIS using the data elements described in this subpart.

(3) A State may choose to report average day emissions of any pollutants submitted under the $PM_{2.5}$ SIP Requirements Rule (40 CFR Subpart Z) to the EIS using the data elements described in this subpart.

(j) *Inventory requirements for State Implementation Plans required under Part 51 Subparts G, X, Z, AA, and CC.* The following paragraphs provide specifications that define how a State shall be consistent with the data elements required as per 40 CFR 51.122(g), §§ 51.915, 51.1008 (a)(1)(vi), 51.1115(e), and 51.1315(e).

(1) *Point sources, aircraft and GSE, and railyards.* A State must:

(i) Report sources as point sources as defined by § 51.50 of this subpart;

(ii) Meet the requirements of § 51.15(a)(1), limiting reports to those pollutants required by the SIP; and

(iii) Compile point source data consistent with the required data elements described by § 51.40 of this subpart.

(2) *Nonpoint sources.* A State must:

(i) Compile emissions for pollutants required for the SIP using the required data elements as described by § 51.40 of this subpart;

(ii) Include any airports (including aircraft and GSE) not reported as a point source; commercial marine vessels, locomotives, agricultural burning, prescribed burning, and wildfires;

(iii) Include all sources of emissions (including biogenic and geogenic sources) allowing for the provision of § 51.15(d)(8) of this subpart; and

(iv) Meet the requirements related to adjacent State land and Indian country of § 51.15(d) paragraphs (9) and (10) of this subpart when Indian country is within a nonattainment area.

(3) *Onroad and nonroad.* A State must:

(i) Compile emissions for pollutants required for the SIP rather than model input data using the required data elements as described in § 51.40 of this subpart; and

(ii) Meet the requirements related to adjacent State land and Indian country described by § 51.15(d) paragraphs (9) and (10) of this subpart when Indian country is within a nonattainment area. While § 51.15(d) paragraphs (9) and (10) are for nonpoint sources for the triennial reporting requirement under this subpart, they apply to onroad and nonroad sources for the purposes of this paragraph.

(k) *Supporting information.* A State must report the data elements in Tables 2A and 2B to Appendix A of this subpart and other data required for use

of EPA's electronic reporting approach (as described by § 51.5(g)). The EPA may ask States to report other data or documentation as needed to meet special purposes.

(l) *Quality assurance and supporting information.* In addition to the required reporting and documentation described in paragraphs (a) through (k) of this section, the EPA may ask States to review or revise data concerns identified through EPA quality assurance. The EPA may ask States for other data or documentation to support a State submission when the information provided does not fully explain the source or quality of the data. Based on the EPA quality review, the EPA may elect not to use the state-provided data if it does not pass quality assurance checks or if the State's documentation does not adequately explain the origin and quality of the submitted data.

§ 51.20 When does my State report which information to EPA?

A State is required to report both annual and triennial emission inventories to the EPA. The content of these inventories may vary depending on the inventory year and choices made by a State in accordance with the provisions of § 51.1(d).

(a) *Annual inventory.*

(1) For the 2023 through 2026 inventory years, a State must report data for point sources to the EPA (as defined by § 51.15(a) of this subpart) within 12 months and 15 days of the end of the inventory year (*e.g.,* for the 2022 inventory year, by January 15, 2024). For 2023 through 2025, this requirement excludes reporting of data for small generating units consistent with the requirements of § 51.15(a)(3) of this subpart.

(2) Starting with the 2026 inventory year, a State is required to report prescribed fire data (except for agricultural burning and land clearance burning, as described by § 51.15 (f)) within 6 months after the end of the inventory year. For example, 2026 data will be due by July 1, 2027, and then every July 1 thereafter. Prior to the 2026 inventory year, a State may report prescribed burning data or review EPA-provided data within 6 months after the end of the inventory year.

(3) A State may report wildfire and agricultural burning data or review EPA-provided data as identified in § 51.15 (g) and (h) by the same deadline of § 51.20(a)(2).

(4) For the 2027 through 2029 inventory years, a State must report point source data to the EPA (as described by § 51.15(a) of this subpart) within 9 months after the end of the inventory year (*e.g.,* for the 2027 inventory year, by September 30, 2028).

(5) Starting with the 2030 inventory year and for every inventory year thereafter, a State must report point source data to the EPA (as described by § 51.15(a) of this subpart) within 5 months after the end of the inventory year (*e.g.,* for the 2030 inventory year, by May 31, 2031).

(b) *Triennial inventory.* In addition to the annual inventory requirements of § 51.20(a) of this subpart, a State must report additional data starting with the 2023 inventory year and every triennial year thereafter (2026, 2029, etc.) by the dates provided below.

(1) A State must report airport data (as described by § 51.15 (b) of this subpart) within 9 months after the inventory year, or 60 calendar days after the EPA provides airport data to a State, whichever is later (*i.e.,* for the 2023 inventory year, by September 30, 2024, or later).

(2) A State must report data within 12 months and 15 days after the end of the inventory year (*i.e.,* for the 2023 inventory year, by January 15, 2025) for:

(i) Rail yard sources (as described by § 51.15 (c) of this subpart);

(ii) Onroad and nonroad sources (as described by § 51.15 (e) of this subpart); and

(iii) Nonpoint emissions for sources without EPA tools (as described by § 51.15(d)(5) of this subpart).

(3) A State must submit an online nonpoint survey (as described by § 51.15(d)(2) of this subpart) within 15 months after the end of the inventory year (*i.e.,* for the 2023 inventory year, by March 31, 2025).

(4) A State must submit nonpoint tool inputs (as described by § 51.15(d)(3) of this subpart), within 30 days of the EPA providing tool inputs to the State, or within the period defined by the EPA at the time the tool inputs are provided, whichever is longer.

(5) When a State optionally provides nonpoint emissions for nonpoint sources with EPA tools (as described by § 51.15(d)(3)(iii) of this subpart), a State must report such data and documentation (as described by § 51.15(d)(6) of this subpart) within 60 days of the EPA providing tool inputs to the State, or within the period defined by the EPA at the time the tool inputs are provided, whichever is longer.

Specific Reporting Requirements for Owners and Operators of Facilities

§ 51.25 What data do owners or operators of facilities within States need to report to EPA?

(a) An owner/operator of a facility within a State must report the facility inventory and annual actual emissions of HAP consistent with § 51.5 provisions of this subpart for owners/operators, § 51.12(b) and (c) of this subpart, and associated required data elements (as described by § 51.40 of this subpart) if:

(1) The facility is in a State that does not have an approved application (as per § 51.1(d)(1) of this subpart); and

(2) The facility is a point source as defined by § 51.50 of this subpart.

(b) An owner/operator of a point source must report results of source tests and performance evaluations if:

(1) Such results are not otherwise reported to the EPA based on regulations listed at *https://epa.gov/electronic-reporting-air-emissions/cedri#list;*

(2) Such results are gathered to meet any other Federal or State requirement;

(3) Such results are supported by an EPA electronic reporting system at the time the test conducted as described in § 51.35 of this subpart; and

(4) The tests are not subject to confidential treatment in accordance with exceptions for emission data provided by 40 CFR 2.301 paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B).

(c) *Quality assurance and supporting information. The EPA* may require an owner/operator of a point source to review and/or revise data that do not meet quality assurance criteria. The EPA may require an owner/operator of a point source to provide other data or documentation to support their submissions when information provided does not fully explain the source or quality of the data provided.

§ 51.27 What data do owners or operators of other facilities need to report to EPA?

(a) An owner/operator of a point source outside the geographic scope of a States' implementation planning authority is subject to the requirements of § 51.25(b) and (c) of this subpart.

(b) An owner/operator of a point source outside the geographic scope of a States' implementation planning authority must:

(1) Report the facility inventory and annual actual emissions of criteria pollutants, precursors, and HAP consistent with § 51.5 provisions for owners/operators, § 51.12(a) through (c) of this subpart and associated required data elements as described in § 51.40 of this subpart;

(2) Report the facility inventory and daily fuel consumption and associated required data elements as described in § 51.40 for small generating units when:

(i) Hourly or daily emissions and activity data from the unit are not otherwise reported to the EPA;

(ii) The unit was operated to offset electricity demand from the electricity grid; and

(iii) The unit is located at a facility that operates on land.

(3) For portable facilities operating across State and/or Indian country boundaries, report the facility inventory and the portion of annual emissions not reported by those States and/or tribes.

(c) For owners/operators of offshore facilities subject to Title V emissions reporting and/or emissions quantification requirements, owners/operators should use approaches consistent with those permits to identify the emissions sources of such facilities and to estimate and submit emissions data.

(d) An owner/operator of a facility subject to the requirements of 40 CFR 49.138 that also meets the point source definition of this subpart is still required to report in accordance with this subpart except that such facilities:

(1) Are exempt from the requirements of this subpart to report emissions of those pollutants which are reported under 40 CFR 49.138, and

(2) May at the option of the owner/operator, report those exempt pollutants to the EPA electronic reporting system described in § 51.5(h) of this subpart.

§ 51.30 When do owners or operators of facilities need to report data to EPA?

(a) *Optional reporting for 2024 and 2025.* For the 2024 and 2025 emissions inventory years, an owner/operator of a point source has the option to complete submission of data in accordance with §§ 51.25(a) and 51.27(b) through (d) of this subpart within 6 months after the end of the inventory year. The first date for meeting this optional reporting approach is May 31, 2025, for the 2024 inventory year.

(b) *Mandatory reporting for 2025.* For the 2025 emissions inventory year, an owner/operator of a point source within Indian country must complete submission of data in accordance with §§ 51.25(a) and 51.27(b) through (d) of this subpart by May 31, 2026.

(c) *Mandatory reporting for 2026.* For the 2026 emissions inventory year, an owner/operator of a point source reporting under this subpart directly to the EPA must complete submission of data required by §§ 51.25(a) and 51.27(b) through (d) of this subpart by May 31, 2027.

(d) *Mandatory reporting for 2027 and subsequent years.* Starting with the 2027 emissions inventory year and every year thereafter, an owner/operator of a point source reporting under this subpart directly to the EPA must complete submission of data required by §§ 51.25(a) and 51.27(b) through (d) of this subpart within 3 months after the inventory year. The first date for meeting this requirement is March 31, 2028, for the 2027 inventory year.

(e) Owners/operators conducting performance tests and performance evaluations that meet the requirements of § 51.25(b) of this subpart must report results from all such tests electronically to the EPA using approaches required by § 51.35 of this subpart. Test results conducted on and after the effective date of the final rule must be reported by:

(1) The earliest scheduled reporting date for any form of reporting (electronic or otherwise) as required by the Federal or State action motivating the measurements; or

(2) If no scheduled date exists, within 60 days of completing the measurements.

§ 51.35 How do owners or operators of a facility report emissions, source test, and performance evaluation results?

For purposes of this section, the terms ERT and CEDRI mean ERT and CEDRI or analogous electronic reporting approaches provided by the EPA, as per § 51.5(i).

(a) *Performance Tests and Performance Evaluations.* Owners or operators of facilities must submit performance test and performance evaluation data following the procedures specified in paragraphs (a)(1) through (3) of this section. Section § 51.5(i) of this subpart provides more information on ERT and a list of test methods, performance evaluations, and pollutants supported.

(1) *Performance Test Methods that are supported by the ERT as listed on the ERT website at the time the test is conducted.* Upload the ERT project data file or an electronic file consistent with the XML schema with the appropriate data to CEDRI as a part 51 submission.

(2) *Performance Evaluations of CEMS measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT as listed on the ERT website at the time the evaluation is conducted.* Submit the results of the performance evaluation to the EPA via CEDRI. Submit the data in a file format generated using the ERT. Alternatively, submit an electronic file consistent with the XML schema listed on the ERT website.

(3) *Performance Test Methods or Performance Evaluations that are not supported by the ERT as listed on EPA's ERT website at the time of the test or evaluation is conducted.* The results of the performance test method or performance evaluation must be included as an attachment (such as a Portable Document Format (PDF) file) in the ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the ERT-generated package or alternate file to the EPA via CEDRI.

(b) *Performance Test and Performance Evaluation Submission Content.* In addition to the data required to be submitted in § 51.35(a) of this subpart, unless otherwise approved by the Administrator in writing, submit the following elements identified in paragraphs (b)(1) through (11) of this section. If the elements are not already included as part of the performance test method or performance evaluation, put these elements in an attachment (such as a PDF file) in the ERT or an alternate electronic file consistent with the XML schema listed on EPA's ERT website. Submit the ERT-generated package or alternate file to the EPA using CEDRI.

(1) The capacity of the unit being tested.

(2) The load of the unit, in terms of percent capacity, during the testing period.

(3) The level of activity of the unit during the testing period (*e.g.,* input consumption rate, product consumption, heat input, and/or output production rate).

(4) The operating conditions of the unit during the testing period.

(5) The process data, such as temperatures, flow rates, pressure differentials, pertaining to the unit and its control devices during the testing period.

(6) General identification information for the facility including a mailing address, the physical address, the owner or operator or responsible official (where applicable) and his/her email address, and the appropriate Federal Registry System (FRS) number for the facility.

(7) Purpose of the test or evaluation including the applicable regulation requiring the test (if any), the pollutant(s) and other parameters being measured, the applicable emission standard (if any), any process parameter component, and a brief process description.

(8) Description of the emission unit undergoing testing or evaluation including fuel burned, control devices, and vent characteristics; the appropriate source classification code (SCC); the

permitted maximum process rate (where applicable); and the sampling location.

(9) Description of sampling or evaluation and analysis procedures used and any modifications to standard procedures, quality assurance procedures and results, record of process operating conditions that demonstrate the applicable test or evaluation conditions are met, and values for any operating parameters for which limits were being set during the test or evaluation, as applicable.

(10) Where a performance test method or performance evaluation requires you to record or report, the following shall be included in your submission: Record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, chain-of-custody documentation, and example calculations for reported results.

(11) Identification of the company conducting the performance test or evaluation including the company's primary office address, telephone number, email address, and the name of the company employee who conducted the test.

(c) *Extensions for CDX/CEDRI Outages.* If you are required to electronically submit a report through CEDRI in the CDX, you may assert a claim of an EPA system outage for failure to timely comply with that reporting requirement. To assert a claim of an EPA system outage, you must meet the requirements outlined in paragraphs (c)(1) through (5) of this section. The decision to accept the claim of an EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(1) 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 CEDRI or CDX systems.

(2) The outage must have occurred within the period beginning five business days prior to the date that the submission is due. The outage may be planned or unplanned.

(3) 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.

(4) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed, and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to an EPA system outage;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) 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.

(5) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(d) *Extensions for Force Majeure Events.* If you are required to electronically submit a report through CEDRI, 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 (d)(1) through (4) of this section.

(1) 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 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 facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically by the due date. 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 facility (*e.g.,* large scale power outage).

(2) 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.

(3) You must provide to the Administrator:

(i) A written description of the *force majeure* event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the *force majeure* event;

(iii) A description of measures taken or to be taken to minimize the delay in reporting; and

(iv) 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.

(4) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

(5) 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.

(e) *Recordkeeping.* Any records required to be maintained by this subpart that are submitted electronically via EPA's 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 a State or the EPA as part of an on-site compliance evaluation. For a minimum of 5 years after a performance test or performance evaluation is conducted, an owner/operator must retain and make available upon request, for inspection by the Administrator, the records or results of such performance test or performance evaluation and other data needed to determine emissions from a source.

Additional Specifications for Emission Reports

§ 51.40 In what form and format should emissions data be reported to EPA?

(a) *General.* A State or owner/operator reporting annually or triennially under this subpart must report the required data elements described in this section using the formats required by the EPA electronic data collection approaches described in § 51.45 of this subpart. A State or owner/operator must use reporting code values for certain data elements consistent with § 51.5(j) of this subpart. Because electronic reporting technology changes over time, the EPA provides the latest reporting format information and reporting codes on the EPA websites referenced in § 51.5 of this subpart.

(b) *Point sources.*

(1) A State or owner/operator (unless the facility is eligible for and elects to comply with reporting as provided in § 51.40(b)(3)) must:

(i) Report facility inventory data for the data elements listed in the ''point'' column in Table 2A to Appendix A of this subpart;

(ii) Report emissions data for the data elements listed in the ''point, airports, railyards'' column in Table 2B to Appendix A of this subpart;

(iii) Use the same unit, process, and release point identifiers for all pollutants emitted from the same unit, process, and release point at the facility; and

(iv) Report daily activity data for small generating units described by §§ 51.15(a)(3) and 51.27(b)(2) of this subpart using the data elements listed in Table 2C to Appendix A of this subpart.

(2) An owner/operator of a facility (or a State reporting on their behalf) is eligible to use the alternative reporting

approach of § 51.40(b)(3) for a facility when:

(i) The owner/operator is a small entity (as defined by § 51.50 of this subpart);

(ii) The owner/operator of the facility has never been notified that the EPA has modeled a cancer risk for that facility of 20/million or more, or the EPA has made such a notification less than 180 days prior to the next point source emissions reporting deadline as per § 51.20 for owners/operators reporting to a State and as per § 51.30 for owners/operators reporting to EPA; and

(iii) Estimates of more detailed emissions are not required by a State.

(3) An owner/operator of a facility (or a State reporting on their behalf) meeting the conditions of § 51.40(b)(2) may, as an alternative to the reporting requirements of § 51.40(b)(1) report as follows:

(i) Report facility inventory data for the data elements required as per the ''point (small entity)'' column in Table 2A to Appendix A of this subpart; and

(ii) Report emissions data for the data elements required as per the ''point (small entity)'' column in Table 2B to Appendix A of this subpart.

(c) *Airports and rail yards. The EPA* provides default data tables (*e.g.,* a spreadsheet) for a State to use (as described by § 51.5(k) of this subpart).

(1) To meet the requirement of §§ 51.15(b)(1) or (2) and 51.15(c)(1) or (2) of this subpart, a State must use the data tables provided by the EPA to submit data in an electronic format.

(2) For a State that optionally reports emissions and documentation for these sources, the State must:

(i) Report facility inventory data elements using the data elements as described by Table 2A to Appendix A of this subpart.

(ii) Report aircraft and rail yard source emissions using the data elements as described by Table 2B to Appendix A of this subpart.

(d) *Nonpoint sources.* The EPA provides default data tables (*e.g.,* tools or spreadsheet) for a State to use for some nonpoint sources as described by § 51.5(k) of this subpart.

(1) For nonpoint sources with EPA tools/spreadsheets excluding commercial marine vessels and locomotives (as described by § 51.15(d)(3), a State must use (*i.e.,* review and/or edit and submit online) the data tables provided.

(2) For a State that reports nonpoint actual emissions and documentation voluntarily or to meet a requirement of § 51.15(d), the State must report nonpoint sources using the data elements listed in Table 2B in Appendix A of this subpart. Documentation must be submitted in one of the formats supported by the electronic reporting system described by § 51.5(g).

(e) *Onroad and nonroad sources.*

(1) For a State submitting MOVES inputs, the State must use MOVES input formats for the version of MOVES and meet other requirements for electronic submission for a given inventory year (as described by § 51.5(l)).

(2) When California reports emissions to comply with § 51.15(e)(3), the State must report data and documentation to comply using the data elements listed in Table 2B in Appendix A of this subpart. Documentation must be submitted in one of the formats supported by the electronic reporting approach (as described by § 51.5(g)).

(f) *Prescribed burning, wildfires, and agricultural.* When reporting required and/or optional data for fires, a State must report data using the data elements listed in Table 3 in Appendix A of this subpart. The same format is used for both the mandatory data (prescribed burning except for agricultural burning or land clearance burning) and the voluntary data (wildfires and agricultural burning).

§ 51.45 How should States and owners/operators report the data required by this subpart?

(a) A State must submit required annual actual emissions and related data and documentation to comply with § 51.15 of this subpart to the EPA through the EIS or a comparable electronic reporting approach provided by the EPA (as described by § 51.5(g) of this subpart).

(b) An owner/operator must submit annual actual emissions and related data and documentation to comply with § 51.25(a) or § 51.27(b) of this subpart to the EPA through CAERS or a comparable electronic reporting approach provided by the EPA (as described by § 51.5(h) of this subpart).

(c) An owner/operator must submit source test and performance evaluation data and documentation to comply with § 51.25(b) of this subpart to the EPA through CEDRI or a comparable electronic reporting approach provided by the EPA (as described by § 51.5(i) of this subpart).

§ 51.50 What definitions apply to this subpart?

Aircraft engine type means a code defining a unique combination of aircraft and engine used as an input parameter for calculating emissions from aircraft.

Activity data means data needed to calculate emissions using an emission factor or emissions calculation tool. Activity data varies depending on the emissions calculation approach and therefore the emissions source. Examples of activity data include fuel consumed for combustion emissions, landing and takeoff data for airport emissions, acres burned, material used for solvent evaporation emissions, and vehicle miles traveled for onroad mobile source emissions.

Actual emissions means (for the purposes of this subpart) the emissions of a pollutant from a source that is required to be reported under this rule, determined by accounting for actual emission rates associated with normal source operation and actual or representative production rates (*i.e.,* capacity utilization and hours of operation). Actual emissions include emissions of a pollutant that occur during periods of startup, shutdown, and may include malfunctions. Since malfunctions are, by nature, unpredictable and given the myriad different types of malfunctions that can occur, malfunction emissions are difficult to estimate. However, to the extent that malfunctions become a regular and predictable event, then such emissions should be quantified with regular and predictable emissions and included in actual emissions.

Agency regulation description means the description of the State, local, or tribal regulation when reporting a regulation for which no code is available for reporting in EIS.

Agricultural burn means the use of a prescribed fire to burn crop residue.

Annual emissions means actual emissions for a facility, point, or process that are measured or calculated to represent a calendar year.

Air pollutants means criteria pollutants and their precursors, and hazardous air pollutants.

Aircraft engine type code means a code that defines the engine aircraft type for reporting airport emissions to EIS.

Broadcast burn means a prescribed burning event for which the biomass is burned in place, as opposed to being collected for a pile burn. Broadcast burning can include cuttings from fuels reduction treatments and logging slash that are not piled.

Combined Air Emissions Reporting System (CAERS) means the electronic reporting interface developed by the EPA to enable facility reporting to multiple EPA and State emissions reporting programs.

CDX means EPA's central data exchange, a system used for many electronic environmental data submissions to the U.S. EPA.

CEDRI means Compliance and Emissions Data Reporting Interface, a data collection system used by the EPA to collect electronic performance test reports, notification reports, and periodic reports.

CEMS means continuous emissions monitoring system, which is the total equipment necessary for the determination of a concentration or emission rate emitted from a source.

Control identifier means a unique code for a facility that identifies a control device, process specialization, or operational practice used to reduce emissions (*e.g.,* wet scrubber, low NO_X burner, flaring, process change, ban).

Control measure code means an EIS code used to specify the type of control measure.

Control measure percent pollutant reduction efficiency means the percent reduction achieved for the pollutant when the control measure is operating as designed.

Control percent effectiveness means an estimate of the portion of the reporting period's activity for which the control device was operating as designed (regardless of whether the control device is due to rule or voluntary).

Control pollutant code means the pollutant code for the pollutant associated with a control measure that has emissions changes caused by the control measure.

Control status code means the EIS code that identifies the operating status of the facility site *(e.g.,* operating, temporarily shut down, permanently shut down).

Control status year means the first inventory year for which the reported control status code applies.

Emission calculation method means the code describing how the emissions for a pollutant were calculated, *e.g.,* by stack test, continuous emissions monitor, EPA emission factor, etc.

Emission factor means the ratio relating emissions of a specific pollutant to an activity throughput level.

Emission operating type means the operational status of an emissions unit for the time period for which emissions are being reported, *i.e.,* Routine (including Startup/Shutdown), Malfunction.

Emission process identifier means a unique code for the process generating the emissions.

Emissions year means the calendar year for which the emissions estimates are reported.

ERT means the Electronic Reporting Tool.

Facility air centroid coordinates means a latitude-longitude using the WGS84 or NAD83 datum that maps to or near the centroid of the air emissions activities at a facility.

Facility attributes means the components of a facility including facility characteristics (*e.g.,* name, address, latitude/longitude), emissions units and their properties (*e.g.,* identification codes, name, capacity), emissions release points and their properties (*e.g.,* stack identification code, fugitive release identification code, release point height, release point latitude/longitude, release point width or diameter), emissions processes and their properties (*e.g.,* process identification code, source classification code), and emissions controls and their properties (*e.g.,* control identification code, control method type).

Facility inventory means the compilation of data about facility attributes for all facilities included in the national emissions inventory data repository.

Facility site identifier means the unique code for a plant or facility treated as a point source, containing one or more pollutant-emitting units. The EPA's reporting format allows for State submittals to use either the State's data system identifiers or EPA's EIS identifiers.

Facility site name means the name of the facility.

Facility site status code means the EIS code that identifies the operating status of the facility site (*e.g.,* operating, temporarily shut down, permanently shut down).

Facility site status year means the first inventory year for which the reported facility site status code applies.

Facility source category code means the EIS code that indicates the Clean Air Act stationary source designation (*e.g.,* major for criteria pollutants and precursors, major for HAP, non-major).

Federal waters means those waters over the ''outer Continental Shelf'' as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

Fugitive release midpoint latitude means the measure of the angular distance on a meridian north or south of the equator.

Fugitive release midpoint longitude means the measure of the angular distance on a meridian east or west of the prime meridian.

Incidental criteria air pollutant or precursor means a criteria pollutant or precursor emitted from a facility that meets the point source reporting definition for emissions of HAP but not for emissions of criteria pollutants and precursors.

Indian country means Indian country as defined by 18 U.S. Code 1151.

Land clearance burn means the use of a prescribed fire to burn vegetation debris resulting from land clearing projects for property development and right of way maintenance.

Lead (Pb) means elemental Pb or as a chemical compound containing Pb, which should be reported as the mass of the Pb atoms only.

Mobile source means a motor vehicle, nonroad engine or nonroad vehicle, where:

(a) A *motor vehicle* is any self-propelled vehicle designed for transporting persons or property on a street or highway;

(b) A *nonroad engine* is an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards under sections 111 or 202 of the CAA; and

(c) A *nonroad vehicle* is a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

NAICS means North American Industry Classification System code. The NAICS codes are U.S. Department of Commerce's codes for categorizing businesses by products or services and have replaced Standard Industrial Classification codes.

NAICS type means whether the reported NAICS is a primary, secondary, tertiary, etc. NAICS code.

Nitrogen oxides (NO_X) means nitrogen oxides (NO_X) as defined in 40 CFR 60.2 as all oxides of nitrogen except N_2O. Nitrogen oxides should be reported on an equivalent molecular weight basis as nitrogen dioxide (NO_2).

Nonpoint sources collectively represent individual sources that have not been inventoried as specific point or mobile sources and are compiled as a county total. The individual sources treated collectively as nonpoint sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Nonpoint survey means the form within the electronic reporting approach described in § 51.5(g) that is used by States to specify the use of State and/or EPA data for each nonpoint source type.

Particulate matter (PM) is a criteria air pollutant. For the purpose of this subpart, the following definitions apply:

(a) *Filterable $PM_{2.5}$ or Filterable PM_{10}≦* Particles that are directly emitted by a source as a solid or liquid at stack or release conditions and captured on the filter of a stack test train. Filterable $PM_{2.5}$ is particulate matter with an aerodynamic diameter equal to or less than 2.5 micrometers. Filterable PM_{10} is particulate matter with an aerodynamic

diameter equal to or less than 10 micrometers.

(b) *Condensable PM:* Material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid PM immediately after discharge from the stack.

(c) *Primary $PM_{2.5}$* The sum of filterable $PM_{2.5}$ and condensable PM.

(d) *Primary PM_{10}* The sum of filterable PM_{10} and condensable PM.

(e) *Secondary PM:* Particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM is usually formed at some distance downwind from the source. Secondary PM should not be reported in the emission inventory and is not covered by this subpart.

Percent control approach effectiveness means the percentage of time or activity throughput for a nonpoint source that a control approach is operating as designed, including the capture and reduction devices. This percentage accounts for the fact that controls typically are not 100 percent effective because of equipment downtime, upsets and decreases in control efficiencies.

Percent control approach penetration means the percentage of a nonpoint source category activity that is covered by the reported control measures.

Percent control measures reduction efficiency means the nonpoint source net emission reduction efficiency across all emissions control measures.

Percent control reduction efficiency means the point source percent reduction achieved for the pollutant when all control measures are operating as designed.

Percent control release point apportionment means the percentage of a point source exhaust gas stream captured for routing to a set of control devices.

Physical address means the location address (street address or other physical location description), locality name, State, and postal zip code of a facility. This is the physical location where the emissions occur; not the corporate headquarters or a mailing address.

Pile burn means a prescribed fire used to ignite hand or machine piles of cut vegetation resulting from vegetation or fuel management activities.

Point source means a stationary or portable facility that (1) is a major source under 40 CFR part 70 for any pollutant, or (2) has PTE or annual actual emissions of pollutants greater than or equal to the reporting thresholds in Table 1A to Appendix A of this subpart, or (3) has a primary NAICS code listed in Table 1C to Appendix A of this subpart and annual actual emissions of pollutants greater than or equal to the reporting HAP reporting thresholds (presented in Table 1B to Appendix A of this subpart). In assessing whether emissions levels exceed reporting thresholds, all provisions of this subpart related to emissions estimation approaches apply, including §§ 51.5 and 51.10 of this subpart.

Pollutant code means a unique code for each reported pollutant assigned by the reporting format specified by the EPA for each inventory year.

Portable facility means a facility that does not have a fixed location such as an asphalt plant or portable drilling rig, mobile offshore drilling units (MODUs), and offshore installation vessels.

Prescribed burning or *prescribed burn* means prescribed burning as defined by 40 CFR 50.1.

Primary NAICS means the NAICS code that most accurately describes the facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the facility or supplier.

Process status code means the EIS code that indicates the current operating status of the process (*e.g.,* operating, temporarily shut down, or permanently shut down).

Process status year means the first inventory year for which the reported process status applies.

Regulatory code means a unique code that identifies an air regulation that applies to an emission unit or process.

Regulation start year means the first year the air regulation (identified by the regulatory code) reduced emissions from the unit or process.

Regulation end year means the last year the air regulation (identified by the regulatory code) reduced emissions from the unit or process.

Release point apportionment control status means Indicator as to whether the release point apportionment is controlled or uncontrolled.

Release point apportionment identifier means the release point identifier to which an emission process is emitting when specifying the portion of the process emitting to that release point.

Release point apportionment means the component name used to describe the intersection between an emissions process and a release point.

Release point apportionment percent means the average annual percent of an emissions process that is vented through a release point.

Release point apportionment site path means the site path identifier to apply the release point apportionment percent.

Release point identifier means a code that uniquely identifies a release point of emissions at a facility.

Release point exit gas flow rate means the numeric value of the flow rate of a stack gas.

Release point exit gas temperature means the numeric value of the temperature of an exit gas stream in degrees Fahrenheit.

Release point exit gas velocity means the numeric value of the velocity of an exit gas stream.

Release point height means physical height of a stack or fugitive release above the surrounding terrain.

Release point identifier means a unique code for the point where emissions from one or more processes release into the atmosphere.

Release point identifier effective date means the date on which an agency began using the given identifier for the release point object.

Release point identifier end date means the date on which an agency stopped using the given identifier for the release point object (if no value is given for this element, it is assumed the identifier is still active).

Release point latitude means the location of a release point, the measure of the angular distance on a meridian north or south of the equator.

Release point length means the length of the release in the North-South direction as if the angle is zero degrees.

Release point longitude means the location of a release point, the measure of the angular distance on a meridian east or west of the prime meridian.

Release point stack diameter means the inner physical diameter of a stack.

Release point status code means the EIS code that indicates the current operating status of the release point (*e.g.,* operating, temporarily shut down, or permanently shut down).

Release point status year means the first inventory year for which the reported release point status applies.

Release point type code means the code for physical configuration of the release point.

Release point width means width of the release in the East-West direction as if the angle is zero degrees.

Reporting period type means the code describing the time period covered by the emissions reported, *i.e.,* Annual, 5-month ozone season, summer day, or winter.

Sequence number means the number that specifies the order of control measures and other site paths within a site path.

Site path means a collection of control devices at a facility that work in conjunction with each other to reduce emissions from a release point.

Site path average percent apportionment means the average percent of an emissions flow (during a year) that is vented through a control device (or control path) and provides for specification of venting to multiple controls and paths operating in parallel.

Site path identifier means a code unique to a facility that identifies a site path.

Site path name means the common name given for a site path (*e.g.,* by an owner/operator to label the path with words).

Site path percent effectiveness means an estimate of the portion of the reporting period's activity for which the overall control system was operating as designed (regardless of whether the control devices are due to a requirement or are voluntary).

Site path pollutant code means the pollutant code for the pollutant that is controlled by a site path.

Site path control measure percent reduction means the percent reduction achieved for the pollutant when all control measures are operating as designed.

Site path definition means a collection of data elements that identifies the relationship between a path and a control (or a group of controls, which must include control identifier(s) and/or path identifier(s), the sequence of the controls via sequence numbers, and the site path average percent apportionment for each control)

Small entity means an owner/operator that meets the small business definition of CAA section 507(c).

Small entity type means the small business definitions that apply to an owner/operator responsible for reporting emissions for a given facility.

Small generating unit means any boiler, turbine, internal combustion engine or other unit that combusts fuel on an occasional basis to generate electricity for the electricity grid or for on-site use by a facility other than for emergency use.

Source classification code means a code assigned to an emission process identifier that describes the equipment, fuel, and/or operation characteristics of the process that emits air pollutants.

State and county FIPS code means the system of unique identifiers in the Federal Information Placement System (FIPS) used to identify States, counties and parishes for the entire United States, Puerto Rico, and Guam.

Throughput means a measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source during the period for which emissions are reported. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, time of operation, employment, or number of units. Activity throughput is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Understory burn means a prescribed burning event for which the biomass is burned in place under a forest canopy, as opposed to being collected for a pile burn. Understory burning can include cuttings from fuels reduction treatments and logging slash that are not piled

Unit design capacity means a measure of the size of a point source, based on the reported maximum continuous throughput or output capacity of the unit.

Unit identifier means a unique code for the unit that generates emissions, typically a physical piece of equipment or a closely related set of equipment.

Unit status code means the EIS code that indicates the current operating status of the unit (*e.g.,* operating, temporarily shut down, or permanently shut down).

Unit status year means the first inventory year for which the reported unit status applies.

VOC means volatile organic compounds (as defined by 40 CFR 51.100).

XML means eXtensible Markup Language, which is a simple, text-based format for representing structured information for documents and data.

Appendix A to Subpart A of Part 51—Tables

TABLE 1A—TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS FOR CRITERIA POLLUTANTS AND PRECURSORS FOR TREATMENT AS POINT SOURCE

Pollutant	Thresholds [1] for 2021, 2022, 2024, and 2025 inventory years	Thresholds for the 2023, 2026, and subsequent inventory years	
		Most areas	Nonattainment areas [2]
(1) SO_2	≥2,500	≥100	≥100. $PM_{2.5}$ (Serious) ≥70.
(2) VOC	≥250	≥100 within OTR [3] ≥50	≥100. within OTR [3] ≥50. O_3 (Serious) ≥50. O_3 (Severe) ≥25. O_3 (Extreme) ≥10. $PM_{2.5}$ (Serious) ≥70.
(3) NO_X	≥2,500	≥100	≥100. O_3 (Serious) ≥50. O_3 (Severe) ≥25. O_3 (Extreme) ≥10. $PM_{2.5}$ (Serious) ≥70.
(4) CO	≥2,500	≥1,000	≥1,000. CO (all areas) ≥100.
(5) Pb		≥0.5 (actual)	≥0.5 (actual).
(6) Primary PM_{10}	≥250	≥100	≥100. PM_{10} (Serious) ≥70.
(7) Primary $PM_{2.5}$	≥250	≥100	≥100. $PM_{2.5}$ (Serious) ≥70.
(8) NH_3	≥250	≥100	≥100.

TABLE 1A—TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS FOR CRITERIA POLLUTANTS AND PRECURSORS FOR TREATMENT AS POINT SOURCE—Continued

Pollutant	Thresholds [1] for 2021, 2022, 2024, and 2025 inventory years	Thresholds for the 2023, 2026, and subsequent inventory years	
		Most areas	Nonattainment areas [2]
			$PM_{2.5}$ (Serious) ≥70.

[1] Reporting thresholds for point source determination shown in tons per year of potential to emit as defined in 40 CFR part 70, except for Pb. Reported emissions should be in actual tons emitted for the required period.
[2] The point source reporting thresholds vary by attainment status for SO_2, VOC, NO_X, CO, PM_{10}, $PM_{2.5}$, and NH_3.
[3] OTR = Ozone Transport Region, which means the area established by CAA section 184(a) or any other area established by the Administrator pursuant to CAA section 176A for purposes of ozone.

This table contains the HAP reporting thresholds for non-major sources.

TABLE 1B TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS BY POLLUTANT FOR HAZARDOUS AIR POLLUTANTS FOR TREATMENT AS POINT SOURCE

Description	Associated CAPs [1]	Pollutant code [2]	Actual emissions initial threshold (short tons/year)
1,1,2-Trichloroethane	VOC	79005	0.22
1,1,2,2-Tetrachloroethane	VOC	79345	10
1,2,4-Trichlorobenzene	VOC	120821	10
1,2-Dibromo-3-Chloropropane	VOC	96128	0.0015
1,1-Dimethyl Hydrazine	VOC	57147	10
1,2-Diphenylhydrazine	VOC	122667	10
1,2-Epoxybutane	VOC	106887	10
1,2-Propylenimine	VOC	75558	10
1,3-Butadiene	VOC	106990	0.078
1,3-Dichloropropene	VOC	542756	1.1
1,3-Propanesultone	VOC	1120714	0.0043
1,4-Dichlorobenzene	VOC	106467	0.26
1-Bromopropane	VOC	106945	10
2,2,4-Trimethylpentane	VOC	540841	10
2,4-Dinitrophenol	VOC	51285	10
2,4,6-Trichlorophenol	VOC	88062	2.2
2,4-D, salts and esters	VOC	See Table 1D	10
2,4-Dinitrotoluene	VOC	121142	10
2,4-Toluene Diisocyanate	VOC	584849	0.079
2,4,5-Trichlorophenol	VOC	95954	10
2-Chloroacetophenone	VOC	532274	0.21
2-Nitropropane	VOC	79469	0.58
3,3′-Dichlorobenzidine	VOC	91941	0.028
3,3′-Dimethoxybenzidine	VOC	119904	10
3,3′-Dimethylbenzidine	VOC	119937	10
4,4′-Methylenebis(2-Chloraniline)	VOC	101144	0.0041
4,4′-Methylenedianiline	VOC	101779	0.0027
4,4′-Methylenediphenyl Diisocyanate	VOC	101688	0.59
4-Aminobiphenyl	VOC	92671	10
4-Dimethylaminoazobenzene	VOC	60117	0.0020
4-Nitrobiphenyl	VOC	92933	10
4-Nitrophenol	VOC	100027	10
4,6-Dinitro-o-cresol	VOC	534521	10
Acetaldehyde	VOC	75070	0.49
Acetamide	VOC	60355	0.15
Acetonitrile	VOC	75058	10
Acetophenone	VOC	98862	10
Acrolein	VOC	107028	0.39
Acrylamide	VOC	79061	0.016
Acrylic Acid	VOC	79107	1.1
Acrylonitrile	VOC	107131	0.040
Allyl Chloride	VOC	107051	0.54
Aniline	VOC	62533	1.5
Anisidine	VOC	90040	10
Antimony	PM	7440360	10
Arsenic	PM	7440382	2.3E–04
Asbestos	PM	1332214	10
Benzene	VOC	71432	0.096
Benzidine	VOC	92875	1.5E–04

TABLE 1B TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS BY POLLUTANT FOR HAZARDOUS AIR POLLUTANTS FOR TREATMENT AS POINT SOURCE—Continued

Description	Associated CAPs [1]	Pollutant code [2]	Actual emissions initial threshold (short tons/year)
Benzotrichloride	VOC	98077	10
Benzyl Chloride	VOC	100447	0.080
Beryllium	PM	7440417	4.1E–04
Biphenyl	VOC	92524	10
Bis(2-Ethylhexyl)Phthalate	VOC	117817	2.0
Bis(Chloromethyl)Ether	VOC	542881	3.8E–04
Bromoform	VOC	75252	3.8
Cadmium	PM	7440439	5.6E–04
Captan	VOC	133062	10
Carbaryl	VOC	63252	10
Carbon Disulfide	VOC	75150	10
Carbon Tetrachloride	VOC	56235	0.45
Carbonyl Sulfide	VOC	463581	10
Catechol	VOC	120809	10
Chlordane	VOC	57749	0.027
Chlorine		7782505	0.26
Chloroacetic Acid	VOC	79118	10
Chlorobenzene	VOC	108907	10
Chlorobenzilate	VOC	510156	0.22
Chloroform	VOC	67663	10
Chloromethyl Methyl Ether	VOC	107302	10
Chloroprene	VOC	126998	0.0065
Chromium Compounds:			
Chromium	PM	7440473	1.2E–04
Chromium (III)	PM	16065831	10
Chromic Acid (VI) [3]	PM	7738945	1.2E–04
Chromium Trioxide [3]	PM	1333820	1.2E–04
Chromium (VI)	PM	18540299	1.2E–04
Cobalt	PM	7440484	2.2E–04
Coke Oven Emissions	VOC	140	0.0068
Cresol/Cresylic Acid (Mixed Isomers)	VOC	See Table 1D	10
Cumene	VOC	98828	10
Cyanide Compounds	PM	See Table 1D	10
DDE (1,1-Dichloro-2,2-Bis(p-Chlorophenyl) Ethylene)	VOC	72559	10
DDE (2,2-Bis(p-chlorophenyl)ethane)	VOC	3547044	10
Dibenzofuran	VOC	132649	10
Dibutyl Phthalate	VOC	84742	10
Dichloroethyl Ether	VOC	111444	0.012
Dichlorvos	VOC	62737	10
Diethanolamine	VOC	111422	10
Diethyl Sulfate	VOC	64675	10
Dimethyl formamide	VOC	68122	10
Dimethyl Phthalate	VOC	131113	10
Dimethyl Sulfate	VOC	77781	10
Dimethylcarbamoyl Chloride	VOC	79447	10
Dioxins and Furans	PM	See Table 1D	1.1E–07
Epichlorohydrin	VOC	106898	1.3
Ethyl acrylate	VOC	140885	10
Ethyl Carbamate	VOC	51796	0.0058
Ethyl Chloride	VOC	75003	10
Ethyl Benzene	VOC	100414	10
Ethylene Dibromide	VOC	106934	0.0038
Ethylene Dichloride	VOC	107062	0.092
Ethylene Glycol	VOC	107211	10
Ethylene Oxide	VOC	75218	4.1E–04
Ethylene Thiourea	VOC	96457	0.079
Ethyleneimine (Aziridine)	VOC	151564	10
Ethylidene Dichloride	VOC	75343	2.6
Fine Mineral Fibers	PM	See Table 1D	10
Formaldehyde	VOC	50000	0.083
Glycol Ethers	VOC	See Table 1D	10
Heptachlor	VOC	76448	0.0021
Hexachlorobenzene	VOC	118741	0.010
Hexachlorobutadiene	VOC	87683	0.14
Hexachlorocyclopentadiene	VOC	77474	0.31
Hexachloroethane	VOC	67721	10
Hexamethylene Diisocyanate	VOC	822060	0.010
Hexamethylphosphoramide	VOC	680319	10

TABLE 1B TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS BY POLLUTANT FOR HAZARDOUS AIR POLLUTANTS FOR TREATMENT AS POINT SOURCE—Continued

Description	Associated CAPs [1]	Pollutant code [2]	Actual emissions initial threshold (short tons/year)
Hexane	VOC	110543	10
Hydrazine		302012	3.8E–04
Hydrochloric Acid		7647010	10
Hydrogen Fluoride		7664393	7.8
Hydroquinone	VOC	123319	10
Isophorone	VOC	78591	10
Lead	PM	7439921	0.074
Lindane (all isomers)	VOC	See Table 1D	0.0015
Maleic Anhydride	VOC	108316	0.64
Manganese	PM	7439965	0.16
Mercury Compounds	PM	See Table 1D	0.0026
Methanol	VOC	67561	10
Methyl Bromide	VOC	74839	10
Methyl Chloride	VOC	74873	10
Methyl Chloroform		71556	10
Methyl Iodide	VOC	74884	10
Methyl Isobutyl Ketone	VOC	108101	10
Methyl Isocyanate	VOC	624839	1.1
Methyl Methacrylate	VOC	80626	10
Methyl Tert-Butyl Ether	VOC	1634044	5.3
Methylene Chloride		75092	10
Methylhydrazine	VOC	60344	10
Naphthalene	VOC	91203	0.027
Nickel Compounds	PM	See Table 1D	0.0021
Nitrobenzene	VOC	98953	0.076
N,N-Dimethylaniline	VOC	121697	10
N-Nitrosodimethylamine	VOC	62759	3.5E–04
N-Nitrosomorpholine	VOC	59892	6.6E–04
o-Toluidine	VOC	95534	0.058
p-Dioxane	VOC	123911	0.40
p-Phenylenediamine	VOC	106503	10
Parathion	VOC	56382	10
Pentachloronitrobenzene	VOC	82688	10
Pentachlorophenol	VOC	87865	1.7
Phenol	VOC	108952	10
Phosgene	VOC	75445	0.48
Phosphine		7803512	0.16
Phosphorus	PM	7723140	10
Phthalic Anhydride	VOC	85449	10
Polychlorinated Biphenyls	VOC	See Table 1D	0.29
Polycyclic Organic Matter: Polycyclic aromatic compounds (includes 25 specific compounds).	VOC	N590	0.027
1,6-Dinitropyrene	VOC	42397648	0.0011
1,8-Dinitropyrene	VOC	42397659	0.0025
1-Nitropyrene	VOC	5522430	0.028
3-Methylcholanthrene	VOC	56495	4.70E–04
4-Nitropyrene	VOC	57835924	0.028
5-Methylchrysene	VOC	3697243	0.0025
6-Nitrochrysene	VOC	7496028	0.0011
7,12-Dimethylbenz[a]anthracene	VOC	57976	4.90E–05
7H-Dibenzo[c,g]carbazole	VOC	194592	0.0025
Benz[a]anthracene	VOC	56553	0.028
Benzo[a]phenanthrene (Chrysene)	VOC	218019	0.31
Benzo[a]pyrene	VOC	50328	0.0025
Benzo[b]fluoranthene	VOC	205992	0.028
Benzo[j,k]fluorene (Fluoranthene)	VOC	206440	0.027
Benzo[j]fluoranthene	VOC	205823	0.028
Benzo[k]fluoranthene	VOC	207089	0.31
Dibenz[a,h]acridine	VOC	226368	0.028
Dibenz[a,j]acridine	VOC	224420	0.028
Dibenzo[a,e]fluoranthene	VOC	5385751	0.027
Dibenzo[a,e]pyrene	VOC	192654	0.0025
Dibenzo[a,h]anthracene	VOC	53703	0.0025
Dibenzo[a,h]pyrene	VOC	189640	0.0011
Dibenzo[a,i]pyrene	VOC	189559	0.0011
Dibenzo[a,l]pyrene	VOC	191300	0.0011
Indeno[1,2,3-c,d]pyrene	VOC	193395	0.028
Polycyclic Organic Matter, other than N590:			

TABLE 1B TO APPENDIX A OF SUBPART A—REPORTING THRESHOLDS BY POLLUTANT FOR HAZARDOUS AIR POLLUTANTS FOR TREATMENT AS POINT SOURCE—Continued

Description	Associated CAPs [1]	Pollutant code [2]	Actual emissions initial threshold (short tons/year)
PAH, total [4]	VOC	130498292	0.027
PAH/POM—Unspecified	VOC	250	0.027
Other POM	VOC	See Table 1D	10
1-Methylnaphthalene	VOC	90120	0.027
1-Methylphenanthrene	VOC	832699	0.027
1-Methylpyrene	VOC	2381217	0.027
12-Methylbenz(a)Anthracene	VOC	2422799	0.027
2-Chloronaphthalene	VOC	91587	0.027
2-Methylnaphthalene	VOC	91576	0.027
2-Methylphenanthrene	VOC	2531842	0.027
2-Nitrofluorene	VOC	607578	0.31
5-Nitroacenaphthene	VOC	602879	0.027
9-Methyl anthracene	VOC	779022	0.027
Acenaphthene	VOC	83329	0.027
Acenaphthylene	VOC	208968	0.027
Anthracene	VOC	120127	0.027
Benzo(a)fluoranthene	VOC	203338	0.027
Benzo(c)phenanthrene	VOC	195197	0.027
Benzo(g,h,i)fluoranthene	VOC	203123	0.027
Benzo[e]pyrene	VOC	192972	0.027
Benzo[g,h,i]perylene	VOC	191242	0.027
Benzofluoranthene	VOC	56832736	0.027
Benzolphenanthrene	VOC	195197	0.027
Carbazole	VOC	86748	0.31
Coal Tar	VOC	8007452	0.0035
Fluorene	VOC	86737	0.027
Indeno[1,2,3-c,d]Pyrene	VOC	193395	0.028
Methylanthracene	VOC	26914181	0.027
Methylbenzopyrene	VOC	65357699	0.027
Methylchrysene	VOC	41637905	0.0025
Perylene	VOC	198550	0.027
Phenanthrene	VOC	85018	0.027
Pyrene	VOC	129000	0.027
Propionaldehyde	VOC	123386	5.7
Propoxur	VOC	114261	10
Propylene Dichloride	VOC	78875	10
Propylene Oxide	VOC	75569	1.3
Quinoline	VOC	91225	10
Quinone	VOC	106514	10
Selenium	PM	7782492	10
Styrene	VOC	100425	10
Styrene oxide	VOC	96093	10
Tetrachloroethylene		127184	7.7
Titanium Tetrachloride		7550450	0.22
Toluene	VOC	108883	10
Toluene-2,4-Diamine	VOC	95807	0.010
Toxaphene	VOC	8001352	0.0084
Trichloroethylene	VOC	79016	0.48
Triethylamine	VOC	121448	9.5
Trifluralin	VOC	1582098	10
Vinyl Acetate	VOC	108054	10
Vinyl Bromide	VOC	593602	0.79
Vinyl Chloride	VOC	75014	0.43
Vinylidene Chloride	VOC	75354	10
Xylenes	VOC	See Table 1D	10

[1] For pollutants denoted with "PM," incidental CAPs include at least primary PM_{10} and $PM_{2.5}$ and filterable PM_{10} and $PM_{2.5}$.
[2] The pollutant code is usually the Chemical Abstracts Service (CAS) code but is otherwise assigned for use in reporting to EPA.
[3] Report as Chromium (VI), converting mass when emissions value represents compound mass rather than chromium mass.
[4] If total PAH or any combination of individual PAH exceeds the total PAH reporting threshold or any individual PAH compound exceeds its reporting threshold, then all individual PAHs as well as total PAH must be reported.

TABLE 1C TO APPENDIX A OF SUBPART A—APPLICABLE PRIMARY NAICS CODES TO IDENTIFY NON-MAJOR SOURCES FOR POINT SOURCE REPORTING

NAICS [1]	Description
21xxxx, 22xxxx, 3xxxxx except for 311811.	Industrial and manufacturing industries.
4247xx	Petroleum and Petroleum Products Merchant Wholesalers.
481xxx	Scheduled Air Transportation.
486xxx	Pipeline Transportation.
4883xx	Support Activities for Water Transportation.
493xxx	Warehousing and Storage.
5417xx	Scientific Research and Development Services.
54199x	Other Professional, Scientific, and Technical Services.
56191x	Packaging and Labeling Services.
5622xx	Waste Treatment and Disposal.
5629xx	Waste Management and Remediation Services.
61131x	Colleges, Universities, and Professional Schools.
62211x	General Medical and Surgical Hospitals.
62231x	Specialty (except Psychiatric and Substance Abuse) Hospitals.
811121	Automotive Body, Paint and Interior Repair and Maintenance.[2]
8122xx	Death Care Services.
812332	Industrial Launderers.
92214x	Correctional Institutions.
927xxx	Space Research and Technology.
928xxx	National Security and International Affairs.

[1] Based on 2017 NAICS codes. The "x" values represent all NAICS codes starting with the digits preceding the "x" values.
[2] Excluding small entities for primary NAICS 811121.

TABLE 1D—TO APPENDIX A OF SUBPART A—POLLUTANTS TO REPORT FOR COMPOUND GROUPS

Pollutant group	Component pollutant name	Associated CAPs	Pollutant code
2,4-D, salts and esters	2,4-Dichlorophenoxy Acetic Acid	VOC	94757
	2,4-D sodium salt	VOC	2702729
	2,4-D diethanolamine salt	VOC	5742198
	2,4-D dimethylamine salt	VOC	2008391
	2,4-D isopropylamine salt	VOC	5742176
	2,4-D triisopropanolammonium salt	VOC	32341803
	2,4-D butoxyethyl ester	VOC	1929733
	2,4-D 2-ethylhexyl ester	VOC	1928434
	2,4-D isopropyl ester	VOC	94111
	2,4-D butyl ester	VOC	94804
	2,4-D propylene glycol butyl ether ester (2,4-D 2-butoxymethyl-ethyl ester).	VOC	1320189
	2,4-D chlorocrotyl ester	VOC	2971382
	2,4-D 2-ethyl-4-methylpentyl ester	VOC	53404378
Cresol/Cresylic Acid (Mixed Isomers).	Cresol/Cresylic Acid (Mixed Isomers)	VOC	1319773
	m-Cresol	VOC	108394
	o-Cresol	VOC	95487
	p-Cresol	VOC	106445
Cyanide Compounds	Calcium Cyanamide	PM	57125
	Cyanide	PM	156627
	Hydrogen Cyanide	PM	74908
Dioxins and Furans	1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin	PM	3268879
	1,2,3,4,6,7,8,9-Octachlorodibenzofuran	PM	39001020
	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin	PM	35822469
	1,2,3,4,6,7,8-Heptachlorodibenzofuran	PM	67562394
	1,2,3,4,7,8,9-Heptachlorodibenzofuran	PM	55673897
	1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin	PM	39227286
	1,2,3,4,7,8-Hexachlorodibenzofuran	PM	70648269
	1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin	PM	57653857
	1,2,3,6,7,8-Hexachlorodibenzofuran	PM	57117449
	1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin	PM	19408743
	1,2,3,7,8,9-Hexachlorodibenzofuran	PM	72918219
	1,2,3,7,8-Pentachlorodibenzo-p-dioxin	PM	40321764
	1,2,3,7,8-Pentachlorodibenzofuran	PM	57117416
	2,3,4,6,7,8-Hexachlorodibenzofuran	PM	60851345
	2,3,4,7,8-Pentachlorodibenzofuran	PM	57117314
	2,3,7,8-Tetrachlorodibenzo-p-dioxin	PM	1746016
	2,3,7,8-Tetrachlorodibenzofuran	PM	51207319
Fine Mineral Fibers	Fine Mineral Fibers	PM	383
	Ceramic Fibers (man-made fibers)	PM	608
	Glasswool (man-made fibers)	PM	613

TABLE 1D—TO APPENDIX A OF SUBPART A—POLLUTANTS TO REPORT FOR COMPOUND GROUPS—Continued

Pollutant group	Component pollutant name	Associated CAPs	Pollutant code
	Slagwool (man-made fibers)	PM	616
	Rockwool (man-made fibers)	PM	617
Glycol Ethers	1,2-Dimethoxyethane	VOC	110714
	2-(Hexyloxy)Ethanol	VOC	112254
	2-Butoxyethyl Acetate	VOC	112072
	2-Propoxyethyl Acetate	VOC	20706256
	Butyl Carbitol Acetate	VOC	124174
	Carbitol Acetate	VOC	112152
	Cellosolve Acetate	VOC	111159
	Cellosolve Solvent	VOC	110805
	Diethylene Glycol Diethyl Ether	VOC	112367
	Diethylene Glycol Dimethyl Ether	VOC	111966
	Diethylene Glycol Ethyl Methyl Ether	VOC	1002671
	Diethylene Glycol-Mono-2-Methyl-Pentyl Ether	VOC	10143563
	Diethylene Glycol Monobutyl Ether	VOC	112345
	Diethylene Glycol Monoethyl Ether	VOC	111900
	Diethylene Glycol Monoisobutyl Ether	VOC	18912806
	Diethylene Glycol Monomethyl Ether	VOC	111773
	Ethoxytriglycol	VOC	112505
	Ethylene Glycol Diethyl Ether	VOC	629141
	Ethylene Glycol Methyl Ether	VOC	109864
	Ethylene Glycol Mono-2-Methylpentyl Ether	VOC	10137969
	Ethylene Glycol Mono-Sec-Butyl Ether	VOC	7795917
	Ethylene Glycol Monomethyl Ether Acetate	VOC	110496
	Ethylene Glycol Monophenyl Ether Propionate	VOC	23495127
	Glycol Ethers	VOC	171
	Isobutyl Cellosolve	VOC	4439241
	Methoxytriglycol	VOC	112356
	Methyl Cellosolve Acrylate	VOC	3121617
	N-Hexyl Carbitol	VOC	112594
	Phenyl Cellosolve	VOC	122996
	Propyl Cellosolve	VOC	2807309
	Triethylene Glycol Dimethyl Ether	VOC	112492
	Triglycol Monobutyl Ether	VOC	143226
	1,2,3,4,5,6-Hexachlorocyclohexane (technical) (Mixed Isomers)	VOC	608731
	.alpha.-Hexachlorocyclohexane	VOC	319846
	.beta.-Hexachlorocyclohexane	VOC	319857
	.delta.-Hexachlorocyclohexane	VOC	319868
	.gamma.-Hexachlorocyclohexane (Lindane)	VOC	58899
	.epsilon.-Hexachlorocyclohexane	VOC	6108107
	.zeta.-Hexachlorocyclohexane	VOC	6108118
	.eta.-Hexachlorocyclohexane	VOC	6108129
	.theta.-Hexachlorocyclohexane	VOC	6108130
	1,2,3,4,5,6-Hexachlorocyclohexane (technical) (Mixed Isomers)	VOC	608731
Mercury Compounds	Mercury	.....	7439976
	Elemental gaseous mercury	.....	200
	Gaseous divalent mercury	.....	201
	Particulate divalent mercury	PM	202
Nickel Compounds	Nickel	PM	7440020
	Nickel Oxide	PM	1313991
	Nickel Refinery Dust	PM	604
	Nickel Subsulfide	PM	12035722
Other POM	1-Amino-2,4-dibromoanthraquinone	VOC	81492
	1-Amino-2-methylanthraquinone	VOC	82280
	2-Aminoanthraquinone	VOC	117793
	2-Phenylphenol	VOC	90437
	3,3′-Dichlorobenzidine dihydrochloride	VOC	612839
	3,3′-Dichlorobenzidine sulfate	VOC	64969342
	3,3′-Dimethoxybenzidine dihydrochloride	VOC	20325400
	3,3′-Dimethoxybenzidine monohydrochloride	VOC	111984099
	3,3′-Dimethylbenzidine dihydrochloride	VOC	612828
	3,3′-Dimethylbenzidine dihydrofluoride	VOC	41766750
	4,4′-Diaminodiphenyl ether	VOC	101804
	4,4′-Isopropylidenediphenol	VOC	80057
	4,4′-Methylenebis(N,N-dimethyl)benzenamine (4,4'-Methylenebis[N,N-dimethylaniline]).	VOC	101611
	4,4′-Thiodianiline	VOC	139651
	4-Aminoazobenzene	VOC	60093
	Acifluorfen, sodium salt	VOC	62476599
	alpha-Naphthylamine (1-Naphthalenamine)	VOC	134327
	Amitraz	VOC	33089611

TABLE 1D—TO APPENDIX A OF SUBPART A—POLLUTANTS TO REPORT FOR COMPOUND GROUPS—Continued

Pollutant group	Component pollutant name	Associated CAPs	Pollutant code
	Benzoyl peroxide	VOC	94360
	beta-Naphthylamine (2-Naphthalenamine)	VOC	91598
	Bifenthrin	VOC	82657043
	C.I. Acid Green 3	VOC	4680788
	C.I. Acid Red 114	VOC	6459945
	C.I. Basic Green 4 (Malachite green)	VOC	569642
	C.I. Basic Red 1	VOC	989388
	C.I. Direct Black 38	VOC	1937377
	C.I. Direct Blue 218	VOC	28407376
	C.I. Direct Blue 6	VOC	2602462
	C.I. Direct Brown 95	VOC	16071866
	C.I. Disperse Yellow 3	VOC	2832408
	C.I. Food Red 15 (Rhodamine B)	VOC	81889
	C.I. Food Red 5	VOC	3761533
	C.I. Solvent Orange 7	VOC	3118976
	C.I. Solvent Yellow 14	VOC	842079
	C.I. Solvent Yellow 3	VOC	97563
	C.I. Solvent Yellow 34 (Auramine)	VOC	492808
	C.I. Vat Yellow 4	VOC	128665
	Cyfluthrin	VOC	68359375
	Cyhalothrin	VOC	68085858
	Decabromodiphenyl oxide	VOC	1163195
	Desmedipham	VOC	13684565
	Dichlorophene	VOC	97234
	Diclofop methyl	VOC	51338273
	Dicofol	VOC	115322
	Diflubenzuron	VOC	35367385
	Diphenamid	VOC	957517
	Diphenylamine	VOC	122394
	Fenarimol	VOC	60168889
	Fenbutatin oxide	VOC	13356086
	Fenoxaprop-ethyl	VOC	66441234
	Fenoxycarb	VOC	72490018
	Fenpropathrin	VOC	39515418
	Fenvalerate	VOC	51630581
	Fluvalinate	VOC	69409945
	Fomesafen	VOC	72178020
	Hexachloronaphthalene	VOC	1335871
	Hexachlorophene	VOC	70304
	Hydramethylnon	VOC	67485294
	Lactofen	VOC	77501634
	Michler's ketone	VOC	90948
	Nitrofen	VOC	1836755
	N-Nitrosodiphenylamine	VOC	86306
	Octachloronaphthalene	VOC	2234131
	Oxyfluorfen	VOC	42874033
	Permethrin	VOC	52645531
	Phenolphthalein (3,3-Bis(4-hydroxyphenyl) phthalide)	VOC	77098
	Phenothrin	VOC	26002802
	Phenytoin	VOC	57410
	p-Nitrosodiphenylamine	VOC	156105
	Polybrominated biphenyls (PBBs)	VOC	N575
	Quizalofop-ethyl	VOC	76578148
	Sodium o-phenylphenoxide	VOC	132274
	Temephos	VOC	3383968
	Tetrabromobisphenol A	VOC	79947
	Triphenyltin chloride	VOC	639587
	Triphenyltin hydroxide	VOC	76879
	Trypan blue	VOC	72571
	Warfarin and salts	VOC	N874
Polychlorinated Biphenyls	2,3,3′,4,4′,5/2,3,3′,4,4′,5-Hexachlorobiphenyl (PCBs156/157)	VOC	38380084
	2,3,3′,4,4′-Pentachlorobiphenyl (PCB–105)	VOC	32598144
	2,3′,4,4′,5,5′-Hexachlorobiphenyl (PCB–167)	VOC	52663726
	2,3,4,4′,5-Pentachlorobiphenyl (PCB–114)	VOC	74472370
	2,3′,4,4′,5-Pentachlorobiphenyl (PCB118)	VOC	31508006
	2,4,4′-Trichlorobiphenyl (PCB–28)	VOC	7012375
	2-Chlorobiphenyl (PCB–1)	VOC	2051607
	3,3′,4,4′-Tetrachlorobiphenyl (PCB–77)	VOC	32598133
	4,4′-Dichlorobiphenyl (PCB–15)	VOC	2050682
	Decachlorobiphenyl (PCB–209)	VOC	2051243
	Heptachlorobiphenyl	VOC	28655712

TABLE 1D—TO APPENDIX A OF SUBPART A—POLLUTANTS TO REPORT FOR COMPOUND GROUPS—Continued

Pollutant group	Component pollutant name	Associated CAPs	Pollutant code
	Hexachlorobiphenyl	VOC	26601649
	Nonachlorobiphenyl	VOC	53742077
	Octachlorobiphenyl	VOC	55722264
	Pentachlorobiphenyl	VOC	25429292
	Polychlorinated Biphenyls	VOC	1336363
	Tetrachlorobiphenyl	VOC	26914330
Xylenes	m-Xylene	VOC	108383
	o-Xylene	VOC	95476
	p-Xylene	VOC	106423
	Xylenes (Mixed Isomers)	VOC	1330207

All required, conditionally required, and limited optional data elements are included in this table. To access a website with the reporting formats and all available optional data elements, refer to § 51.5(g) and (h) of this subpart.

TABLE 2A—TO APPENDIX A OF SUBPART–A—FACILITY INVENTORY DATA FIELDS FOR REPORTING EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.15

	Required (R)[1], Conditionally Required (C) or Optional (O)			
Data elements	Point	Point (small entity)	Airports	Rail yards
State and County FIPS Code or Tribal Code.[2]	R	R	R	R
Facility Site Identifier	R	R	R	R
Small Entity Type	O	[3]R		
Unit Identifier	R	R	R	R
Emission Process Identifier	R	O	R	R
Process Status Code and Process Status Code Year	R	O		
Release Point Identifier	R	O	R	R
Facility Site Name	R	R	R	R
Physical Address (Location Address, Locality Name, State and Postal Code)	R	R	R	R
Facility Source Category Code	[3]R	[3]R	[3]R	[3]R
Facility air centroid coordinates (latitude, longitude, and datum).[4]	R	R	R	R
Title V operating permit identifier	[3]C	[3]C	[3]C	[3]C
Source Classification Code	R	O	R	R
Aircraft Engine Type Code			R	
Facility Site Status Code and Facility Site Status Year	R	R	R	R
Release point coordinates (latitude, longitude, and datum).[4]	[3]R	O	[3]R	[3]R
Fugitive release midpoint latitude and longitude.[4]	C	O	C	C
Release Point Height and Unit of Measure	C	O	C	C
Release Point Stack Diameter and Unit of Measure	C	O		
Release Point Exit Gas Temperature	C	O		
Release Point Exit Gas Velocity or Release Point Exit Gas Flow Rate and Unit of Measure	C	O		
Release Point Width, Release Point Length, and Units of Measure	C	O	C	C
Release Point Status Code and Release Point Status Year	R	O	R	R
NAICS Code for Facility (5- or 6-digits)	R	R	R	R
NAICS Type (*e.g.,* ''PRIMARY'', ''SECONDARY'', ''TERITIARY'')	C	C	C	C
Unit Design Capacity and Unit of Measure	C	C	O	C
Unit Type	R	R	R	R
Unit Status Code and Unit Status Year	R	R	R	R
Source Classification Code	R	O	R	R
Release Point Apportionment Identifier	O	O		
Release Point Apportionment Control Status	C	O		
Release Point Apportionment Site Path	C	O		
Release Point Apportionment Percent	R	O		
Release Point Type Code	R	O		
Regulatory Code, Regulation Start Year, and Regulation End Year (as applicable and limited to those point sources with State or EPA permits)	[3]R	[3]R	[3]R	[3]R
Agency Regulation Description (when providing agency regulations not covered by an available regulatory code)	[3]C	[3]C	[3]C	[3]C
Control Identifier	[5]C	O		
Control Measure Code	[5]C	O		
Control Status Code and Control Status Year	[5]C			
Control Pollutant Code	[5]C	O		
Control Measure Percent Pollutant Reduction Efficiency	[5]C	O		
Control Percent Effectiveness	[5]C			
Site Path Name	[5]C	O		
Site Path Identifier	[5]C	O		

TABLE 2A—TO APPENDIX A OF SUBPART–A—FACILITY INVENTORY DATA FIELDS FOR REPORTING EMISSIONS FROM POINT SOURCES, WHERE REQUIRED BY 40 CFR 51.15—Continued

Data elements	Required (R)[1], Conditionally Required (C) or Optional (O)			
	Point	Point (small entity)	Airports	Rail yards
Site Path Percent Effectiveness	[5] C			
Site Path Pollutant Code	[5] C			
Site Path Control Measure Percent Reduction	[5] C			
Site Path Definition (Control Identifier(s) and/or Path Identifier(s), Sequence Number(s), and Site Path Average Percent Apportionment(s))	[5] C			

[1] Facility inventory data elements need only be reported once to the EIS and then revised if needed. They do not need to be reported for each triennial or annual emissions inventory.
[2] Facilities meeting the definition of portable facilities should be reported by State using county code "777". In this case, facilities are exempt from reporting facility air centroid coordinates and release point coordinates.
[3] Starting with the 2026 inventory year reports.
[4] Only datum WGS84 and NAD83 are allowed.
[5] Data are required when a control measure is present.

All required, conditionally required, and limited optional data elements are included in this table. To access a website with the reporting formats and all available optional data elements, refer to § 51.5(g) and (h) of this subpart.

TABLE 2B—TO APPENDIX A OF SUBPART A—DATA FIELDS FOR REPORTING EMISSIONS FROM POINT, NONPOINT, ONROAD MOBILE AND NONROAD MOBILE SOURCES, WHERE REQUIRED BY 40 CFR 51.15

Data elements	Required (R), Conditionally Required (C), Optional (O), or Facility Total (F)				
	Point, airports, railyards	Point (small entity)	Nonpoint	Onroad	Nonroad
Emissions Reporting Period	R	R	R	R	R
Reporting Period Type (*e.g.,* Annual)	R	R	R	R	R
Emission Operating Type (*e.g.,* Routine)	R	R			
State and County FIPS Code or Tribal Code	[1] C	[1] C	R	R	R
Facility Identifier	R	R			
Unit Identifier	R	R			
Emission Process Identifier[1]	R	O			
Shape Identifiers (for commercial marine vessels)			C		
Source Classification Code			R	R	R
Emission Calculation Method	R	R	R		
Emission Factor (Value, Unit of Measure)	R	O	R		
Emission Factor Comment	[2] C	O			
Throughput (Value, Material, Unit of Measure, and Type)	R	O	R	R	
Fuel Use for combustion processes, if not included as throughput (Value, Unit of Measure)	C	O			
Pollutant Code	R	R	R	R	R
Annual Emissions and Unit of Measure	R	F	R	R	R
Control Measure Code			[3] C		
Control Pollutant Code			[3] C		
Percent Control Measures Reduction Efficiency			[3] C		
Percent Control Approach Effectiveness			[3] C		
Percent Control Approach Penetration			[3] C		
Emissions Documentation Citation			R	R	R
Emissions Documentation Attachment			R	R	R

[1] When using State, local, or tribal identifiers, rather than the unique EIS facility, unit, and emission process identifiers, the State/county FIPs code or tribal code must be included with the State, local, or tribal facility identifier, unit identifier and emission process identifiers and all codes must match those provided in the Facility Inventory (Table 2A).
[2] Starting with 2026 inventory year, required when Emissions Calculation Method indicates use of speciation profile and when a source test or continuous emissions monitor value is available but not used.
[3] Data are required when a control measure is present.

All required data elements are included in this table. To access a website with the reporting formats and all available optional data elements, refer to § 51.5(g) and (h) of this subpart.

TABLE 2C—TO APPENDIX A OF SUBPART A—DATA FIELDS FOR REPORTING FUEL USE FOR SMALL GENERATING UNITS, WHERE REQUIRED BY 40 CFR 51.15(a)(3) AND 40 CFR 51.27(b)(2)

Date elements	Required (R), Conditionally Required (C) or Optional (O)	
	Point, airports, railyards	Point (small entity)
Emissions Reporting Period	R	O
Reporting Period Type (Daily)	R	O
State and County FIPS Code or Tribal Code	[1] C	O
Facility Site Identifier	R	O
Unit Identifier	R	O
Emission Process Identifier	R	O
Date of activity.	R	O
Activity: Fuel Used or Heat Input on date.	R	O
Activity unit of measure	R	O
Start hour of operation	O	O
End hour of operation	O	O

[1] When using State, local, or tribal identifiers, rather than the unique EIS facility, unit, and emission process identifiers, the State/county FIPs code or tribal code must be included with the State, local, or tribal facility identifier, unit identifier and emission process identifiers and all codes must match those provided in the Facility Inventory (Table 2A).

All required and selected optional data elements are included in this table. To access a website with the reporting formats and all available optional data elements, refer to § 51.5(g) of this subpart.

TABLE 3—TO APPENDIX A OF SUBPART A—DATA FIELDS FOR REPORTING DATA FROM EVENT SOURCES, WHERE REQUIRED BY 40 CFR 51.15

Data elements	Required (R), Conditionally Required (C) or Optional (O)
Emissions Reporting Period	R
Event Identifier	R
Event Date	R
State and County FIPS Code or Tribal Code	R
Event latitude and longitude centroid for date	R
Source classification code	R
Fuel loading per acre and unit of measure	O
Fuel moisture and unit of measure (any or all of 1-hr, 10-hr, 100-hr, and 1000-hr values)	O
Emission reduction technique	O
Burn perimeter geographic information system shape	O
For broadcast or understory burns:	.....
Acres burned actual for date (if total planned acres and percent burned not provided)	C
Total planned acres for date (if acres burned not provided)	C
Percent burned for date (if total planned acres provided)	C (if total planned acres provided)
For pile burns:	.....
Affected acres	C
Number of hand piles per acre	C
Number of machine piles per acre	C
Average height and diameter of hand piles	O
Average height and diameter of machine piles	O

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